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To Thomas C. Schelling—
mentor, colleague, and friend—
whose example I strive to emulate

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RACIAL JUSTICE

IT WILL be helpful to summarize the argument to this point. I have argued that race is best thought of as a social convention: Markings on the bodies of human beings—of no intrinsic significance in themselves—become invested through time with reasonable expectations and powerful social meanings. Seeing race as a conventional, not a natural, category suggests that no innate, sizable disparity of human potential between distinct racial groups exists. So no appeal to innate racial difference can explain African-American disadvantage. Yet because race conventions can seem to be natural and quite consistent with reason, and because they convey significant social meanings, people with particular race-markers may become stigmatized—seen by their fellows as “damaged goods,” as THEM not US, as persons who lack the ability or “culture” to succeed in society’s mainstream. Moreover, since legitimate public action in a democracy must comport with how observers interpret social experience, and because the meanings connected with race

conventions can distort social-cognitive processes in the citizenry to the detriment of the stigmatized, reform policies that ameliorate the disadvantage of the racial "other" may fail to garner a majority's support. I argued in Chapter 3 that black Americans are a stigmatized people in this sense. I want now to investigate what might be implied by this view for the pursuit of social justice in the United States.

Two distinct moral desiderata animate the discourse about race and social justice in America. One view I will call "race-blindness"—the conviction that racial identity should play no part in the way people are treated in public life, that we should be "blind" to race. The other view I will call "race-egalitarianism"—the conviction that, because of an unjust history, we should endeavor to reduce inequalities of wealth and power between racial groups, as such. It is instructive to contrast these two ideas. Race-blindness is a procedural standard. It deals with prerogatives of the individual. It emphasizes autonomy and impartiality. And it does not depend on history—either for its rationale or for its implementation. Advocacy of "blindness" in this sense, as a touchstone of moral public action in matters of race, is a natural consequence of a commitment to liberal individualism.

By contrast, race-egalitarianism focuses explicitly on the status of groups. It entails looking not only at the procedures employed in a society but also at the social outcomes those procedures generate. And it finds its justification in a comprehensive understanding of how current racial disparities

have come to be. Thus race-egalitarianism is a view that conflicts to a degree with the precepts of liberal individualism.

I will be arguing here for a priority of these moral concerns: race-egalitarianism over race-blindness. My view is that one cannot think sensibly about social justice issues in a racially divided society if one does not attend to the race-mediated patterns of social intercourse that characterize interpersonal relations in that society. Once the reality of these racially biased interactive patterns is taken into account, race-blindness begins to look much less attractive as a moral position, precisely because of its individualistic, ahistorical, and purely procedural focus.

ANONYMITY AND LIBERAL NEUTRALITY

To aid in the development of this argument, I invite the reader to consider the formidable intellectual edifice that is modern social choice theory. This literature at the junction of economics and philosophy pursues the formal, logical derivation of implications for public decision-making that issue from various postulates chosen to capture ethical intuitions about social justice. Over the last half-century, social choice theory has been central to the ambition of laying down a coherent intellectual foundation for the normative assessment of public action. Its best-known text is also its founding text: Kenneth Arrow's monumental *Social Choice*

and *Individual Values* (Arrow 1963). The reputation in philosophy and economics of another Nobel Laureate, Amartya Sen, is also grounded on his early work in this field.

A question of fundamental importance is raised in this literature—a question concerning the right ordering of relations between the state (which has a monopoly on the legitimate exercise of coercion) and the citizenry (which must live with the consequences of state action). That question may be posed as follows: Suppose some social, public, or collective choice is to be made, and that individuals can rank the alternatives from among which that choice will be taken. Individuals are capable, that is, of putting the alternatives into an order—of saying, from their personal points of view, which is the most desirable, second most, third most, and so forth. Further, imagine that—in an expression of collective rationality—this public choice, the one to be enforced by the state, is to be taken in accordance with some (now) collective or public ranking scheme. Then how ought this collective ordering of social alternatives to relate to the rankings of individuals?

Surely, in a society that values liberty (may I and my children ever live in such a place!), there must be some link between these two. The state's actions, imposed by force on all of us, ought to "respect" in some way our individual valuations. So the central question of social choice theory is whether and how the evaluative criterion guiding public decisions with collective consequences can be derived from the evaluative criteria held by individual citizens. The rela-

tionship between the values of individuals and the criterion of social choice cannot be arbitrary—else "liberty" is a sham.

Do not misunderstand. I am not here celebrating freedom to the exclusion of all other values. Nor do I claim that the only dimension of freedom worthy of consideration finds its expression in the linkage between individuals' preferences and the criteria of public choice. Still, if collective choices among public policies—between preserving the environment and "growing" the economy, for instance—are made in a manner that is neither responsive to nor reflective of the "will(s) of the people," then surely the persons living in that society do not enjoy a degree of autonomy that most of us would associate with freedom. So social choice theory expresses, in a formal and logically precise way, one of the central problems of liberal political theory.

Now, I invoke this theory so as to sharpen my discussion of the question at hand: How ought we Americans approach the public issue of pronounced and durable racial inequality? I believe that liberal theory is inherently limited in its capacity to engage this question, and a consideration of the social choice problem helps us to see why. An oft-imposed constraint on the relationship between individual and collective valuation in the social choice literature is the so-called Anonymity Axiom. This is a postulate that declares it to be illegitimate for the social ranking to favor one state of affairs over another—A over B, say—if the only distinction between the two situations is that the identities of persons located in various positions of the social order have been

changed. That is, let situations A and B entail the same number of persons in poverty, with inadequate health care, held in prison, and the like, but with different groups of people suffering these conditions in situations A and B. "Anonymity" in public choice requires that state action express no preference between these two situations.

This is a kind of neutrality. If the only reason to prefer one situation to another is that different people enjoy what is worth having or suffer what must be endured—then identity pure and simple will have been allowed to dictate public valuation. This, a certain brand of liberal social philosophy holds, amounts to giving some people power over others on the basis of nothing more substantial than who they happen to be. The "anonymity" postulate rules such an eventuality out of bounds.

Notice one thing, however. An immediate corollary of this axiom is that a project to reduce inequality between identity-based groups in society—for its own sake, and not merely as a means to some other, identity-neutral end—would have to be judged an illegitimate social goal. This is because pursuing racial equality for its own sake means valuing more highly a situation in which racial disparities are reduced, even if overall inequality among persons remains unchanged. Ultimately, my argument in this chapter rejects this implication of "anonymity" as a requirement of social choice. Thus, perforce, I must argue against the axiom itself. Race-blindness, when interpreted so as to delegitimate actions needed to foster greater racial equality in contempo-

rary American public life, is one expression of the liberal neutrality principle underlying the Anonymity Axiom. I will argue here that race-blindness represents a superficial moral stance, given the historical situation, and that it should be rejected.

More generally, I call into question the adequacy of liberal individualism as a normative theory, given the historical fact of racial subordination and the continuing reality of racial inequality. I suggest that there are questions of social ethics arising under these conditions—in societies sharply stratified along racial lines—to which liberal individualism gives no good answers.

By "liberal individualism" I refer to the tendency of thought that seeks to critically assess the justice of a society's distribution of resources solely in terms of the welfare of individuals, while giving no independent weight to the economic or social position of identity-based groups. I think this tendency of thought particular to liberalism is mistaken. I think (and think I can show) that it is an error to see only individuals, and never groups, as the legitimate subjects of a discourse on social equity. I believe (and believe I can demonstrate) that the manner in which liberal political theory deals with the ethical problems raised by the pronounced and durable social-economic disadvantage of African Americans is troubled, inadequate, superficial, and incomplete.

My topic, then, is racial justice. Now, as just suggested, it is impossible to avoid a philosopher's quibble over this use of

words. Taking "racial" as modifier of "justice" inevitably raises hackles, because doing so declares an interest in the well-being of groups of persons—groups defined in terms of something called "race." Liberals fear that the freedom, dignity, integrity, autonomy, and/or rights of individuals will be trodden underfoot in a mad rush to obtain justice for fictitious "races." Beneath the surface of ostensibly progressive rhetoric about "racial justice," liberal individualists detect the distinct odor of an unjustifiable essentialism—a retrograde belief in racial essences.

I disagree. The concerns expressed by liberal critics of the idea of "racial justice," though not unreasonable, are nevertheless misplaced. Indeed, I hold that public talk about justice for racial groups is necessary for an intellectually rigorous and historically relevant social criticism in the United States. Moreover, I think it possible to conceive of social justice in regard to matters of race in such a way that the pitfalls liberals most fear can be avoided.

WHY USE "WHITE PHILOSOPHY"?

Some readers may wonder why I have chosen this way of framing the discussion in the first place. Is it not obvious, a critic might ask, that the liberalism of the European Enlightenment will be inadequate to the task of defining and pursuing racial justice? Why, that is, would I be content to work within what the philosopher Charles Mills calls "white philosophy,"¹ given that no less a figure than Immanuel Kant

held racist anthropological views, that John Locke profited from slave trading, or that Thomas Jefferson fathered the children of Sally Hemmings? Why, this hypothetical critic might go on, would I even bother to criticize a purportedly trans-racial ethical tradition that served merely to cover European domination of nonwhite bodies? Here were theoretic reflections supposedly of universal significance that advanced hand-in-glove with the European appropriation of the world.

The tension here between ideal and practice is substantial, and Mills exploits it—not just rhetorically. Mills has interesting things to say about epistemology, for example, about how whites in the name of trans-racial ideals can be conveniently blind to the reality of the raced cultural and political spaces from which they benefit. They can refuse to see certain things—being not colorblind, but just blind. Mills can be quite interesting, and his argument with "white philosophy" is often pertinent to my concerns here. His essay on Frederick Douglass's "Whose Fourth of July?" is a marvelous illustration of this point (Mills 1998, ch. 8). At bottom, Mills argues there that Frederick Douglass stood in 1852 and gave a July 4th address that idealized the Founders' conception of universality, in contrast to the conception held by the ruling white elite of America circa 1852, an elite that continued to tolerate the institution of slavery. Whose Fourth of July, Douglass asked. Evidently it is not that of "our" Founding Fathers. (Linger, if you will, on the exquisitely ambiguous antecedent for that first person pronoun!)

Mills argues, persuasively in my view, that Douglass's historical reconstruction was fanciful. He claims that Roger Taney's now notorious opinion in the *Dred Scott* case (that blacks have no rights that a white need respect) was by far the more accurate account of prevailing opinion at the time of the Founding. He observes further that, by crediting the Founders as moral exemplars and exhorting his contemporaries to return to that state of virtue, Douglass had just written the Native Americans out of the domain of American social justice. All of that seems right. It seems right to say that, with few exceptions, the Founders thought the Africans in their midst were not quite fully human. They did not see them—my ancestors (well, some of my ancestors, anyway!)—as part of the social contract. No, they didn't put the word "slavery" in the Constitution—true enough. They merely put the institution of slavery under the protection of the Constitution—rather a worse offense.

But here is the problem, and the source of my dissatisfaction with Mills's argument, and the reason I am not, just now, hunting for what the social critic Cornel West has called a "counter-hegemonic political theory": What are we to do? Overthrow Kantian ethics? And put what, exactly, in its place? Do we think democratic ideas are bad ideas? Do we think that striving for a racially transcendent, non-particularistic understanding of how we should interact with one another is an unworthy quest? To recognize the flaws of the liberal tradition is one thing; to replace it with something workable is quite another. How are we going to govern our-

selves? Are we to cherish representative institutions—and the rule of law? These are all the fruit of the Enlightenment, these ideas. One cannot throw them off because some of the Founding Fathers were themselves duplicitous or hypocritical. Thus a historically oriented effort to expose the particularity at the core of universalistic arguments may be interesting, but it is not a refutation of the universalistic claims.

So, with due humility, I am a reformer, not an "abolitionist," when it comes to political liberalism. But I object to the sociological naïveté, and the limited attention to history, which I think must be associated with liberal theory as applied to the problem of racial inequality.

THE TROUBLE WITH LIBERALISM

Succinctly stated, my problem with liberal individualism is that it fails to comprehend how stigma-influenced dynamics in the spheres of social interaction and self-image production can induce objective racial inequality, decoupled from contemporaneous discriminatory acts of individuals, carrying over across generations, shaping political and social-cognitive sensibilities in the citizenry, making racial disparity appear natural and nondissonant, stymieing reform, and locking in inequality.² The core point for me is that those "selves" who are the enshrined subjects of liberal theory—the autonomous, dignity-bearing individuals whose infinite value (ends in themselves, never means to an end) has been

enshrined by Immanuel Kant at the center of the liberal project—these selves are not given a priori. They are, instead, products of social relations, and of economic and political institutions. That is, the selves at the center of liberal theory are, to a not inconsiderable degree, creatures of the very systems of laws, social intercourse, and economic relations that a normative theory is to assess.³ Neither their goals in life nor (crucial for my purposes here) their self-understandings as raced subjects come into being outside the flow of history and the web of culture.

And so the diminished selves, the self-doubting, alienated, nihilistic, self-destructive selves—these are social products. I want to attend to this fact within the project of political theory. I cannot abide the imposition of abstract strictures of neutrality upon a game in which systematically nonneutral practices have left so many raced and stigmatized outsiders with so few good cards to play.

I reiterate: This is not some over-theorized discourse in defense of affirmative action policies. I desperately want to avoid having the far-reaching implications of my argument projected onto the narrow and partisan ground of the debate over racial preferences. I am not motivated here by a desire to preserve special treatment for blacks, or to keep someone's child from being admitted to a prestigious college. Rather, I am moved by the specter of one million African-American men physically confined in penal institutions, by the fact that the average black seventeen-year-old reads with the proficiency of the average white thirteen-year-old, and

by the racial poverty rates, unemployment rates, and marriage patterns that are documented in the Appendix. The position I hold is that race is not irrelevant to these problems. One ought not to be "colorblind" when addressing them. Race is important not only for technical reasons, or instrumentally—these being problems whose solutions might entail race-conscious action. Race also matters in American society, in regard to problems of this kind, because these disparities rest upon and in turn serve to reinforce powerful social meanings detrimental to blacks.

Moreover, I believe that the phenomenon of racial stigma poses intractable problems for liberal individualism. For there is a sphere of intimate social intercourse, governed to some degree by raced perceptions in individuals' minds, that, out of respect for liberty and the dignity of human beings, should not become the object of political or bureaucratic manipulation. Yet, as I have argued, race-preferential associative behavior helps perpetuate a regime of development bias against blacks, largely because of a projected, ignoble history during which reward bias against blacks was the norm. How, then, can racial justice be achieved while individual autonomy is respected? Thinking in terms of racial stigma provides insight into race-constrained social interactions, and into race-influenced processes of social cognition, exposing the forces at work in a raced society like the United States that create causal feedback loops perpetuating racial inequality, and that impede their identification. Moreover, this way of looking at things

leads me to reject colorblindness (or the related notions of race-neutrality and racial impartiality) as *the* moral standard in regard to issues of social justice and racial inequality in the United States.

True, the so-called underclass in the ghettos of America is behaving badly, in self-destructive and threatening ways. But those patterns of behavior, embodied in those individuals, reflect structures of human development that are biased because of a history of deprivation and racial oppression. The result then is to produce, in our time, wide disparities in some indicia of behavior across racial groups. What does the abstract individualism of liberal theory suggest that we do now? Throw up our hands? Declare that no questions of justice are raised? Scratch our heads and say that we don't quite know what to do? Too bad, we lament, but . . . There is, I believe, a gaping hole in any normative framework that can provide us with no better answers than those.

HISTORICAL CAUSATION AND SOCIAL JUSTICE

I have been invoking history as a factor conditioning the ethical assessment of contemporary social arrangements. And yet the explicit channels of historical influence, on which social scientific work can shed some light, must of necessity remain opaque and vaguely specified. What might be called an "epistemological fog" obscures the causal dynamics at work across the generations and limits our ability to know in

detail how past events have shaped current arrangements. Thus it may be reasonable to assert in a general way that past racial discrimination in contract, together with present discrimination in contact, disadvantages blacks by impeding their acquisition of skills. But it is nearly impossible to say with any quantitative precision just *how much* of current racial inequality is due to this source of disadvantage.

Consider the recent argument of Orlando Patterson on behalf of the proposition that the high rate of paternal abandonment of children among present-day African Americans is due to the devastating consequences for gender relations among blacks of American slavery, and of the racist system of Jim Crow segregation that followed (Patterson 1998). In my view, Patterson's argument is persuasive. But even so he can provide no answer to this crucial counterfactual query: What would family patterns be like among today's blacks in the absence of these historical deprivations? This question is important because, without some sense of the extent of damage caused by past violation, it is difficult to gauge the appropriate scope of remedy.

Now, one could take the view, as some conservatives have done, that this limitation in knowledge should short-circuit claims for racial egalitarianism that rely upon the past unjust treatment of some racial group.⁴ While acknowledging the plausibility of this view, I nevertheless reject it. Rather, I hold that a compensatory model, familiar from tort and liability law, is the wrong way to think about this question. My position, contrary to what I believe are simplistic

applications of liberal neutrality that issue in mandates of colorblindness, is that *past racial injustice is relevant in establishing a general presumption against indifference to present racial inequality* (thereby militating against the implication of the Anonymity Axiom). But the degree to which social policy should be oriented toward reducing present racial inequality, the weight to be placed on this objective in the social decision calculus, is not here conceived in terms of "correcting" or "balancing" for historical violation. Thus I argue that, even though quantitative attribution of causal weight to distant historical events may not be possible, one can still support qualitative claims.

Indeed, a sharp contrast can be drawn between two categorically different responses to the problem of a morally problematic racial history. One seeks "reparations," conceiving the problem in *compensatory* terms. The other conceives the problem, let us say, in *interpretative* terms—seeking public recognition of the severity, and (crucially) the contemporary relevance, of what transpired. In the latter view, the goal is to establish a common baseline of historical memory—a common narrative, if you like—through which the past injury and its continuing significance can enter into current policy discourse. (A crude analogy might be drawn here, suggested by the debate over the Truth and Reconciliation Commission in post-Apartheid South Africa: The *compensatory* approach is rather like putting as many past offenders as possible on trial, punishing them for their

wrongdoing, and getting justice for survivors of the victims. The interpretative approach is a bit like waiving the pursuit of individual criminal liability so as to shed public light on the true nature of what took place under Apartheid.) What seems conceptually important, though, is to clarify that, while some reckoning with the racist history of the United States remains to be done, this reckoning may, for political as well as epistemological reasons, be inappropriately cast in terms of "reparations." What is required, instead, is a commitment on the part of the public, the political elite, the opinion-shaping media, and so on to take responsibility for such situations as the contemporary plight of the urban black poor, and to understand them in a general way as a consequence of an ethically indefensible past. (This is not so much to "compensate" for an ethnically troubled past as to adopt the "right interpretation" of it.) Such a commitment would, on this view, be open-ended and not contingent on demonstrating any specific lines of causality.

This distinction between quantitative and qualitative historically based claims is also important, I think, because it casts doubt on the adequacy of purely procedural theories of justice in matters of race. Race-blindness is one such theory. In general, procedural theories of social justice turn on the answers to two kinds of questions: What are people entitled to? And what actions affecting the distribution of claims are legitimate? Then any state of affairs that respects individuals' entitlements and comes about from procedurally

legitimate actions is held to be just. However, procedural theories are essentially incomplete, because they cannot cope with the consequences of their own violations.

Suppose we are given a set of rules about how people are to treat one another. Suppose further that people happen not always to follow these rules. As just noted, history can be messy stuff. Teasing out causal implications across the centuries of procedural violations is impossibly difficult. So if procedurally just requirements are not adhered to at some point—people entitled to the fruits of their labor are not rewarded accordingly, say—then at some later point, perhaps a century on, consequences will be rife in the interstices of society. But, as argued earlier, it will be impossible in principle to identify and to quantify these effects. What then would a procedural account have to say about this? Simple notions about providing compensation for identifiable historical wrongs may work when individual interactions are being considered, but they cannot possibly work for broad social violations—chattel slavery, for instance. A procedural theory leaves us with no account of justice under such circumstances. This is a fundamental incompleteness in the theory, one that is especially pertinent to a consideration of racial justice in the United States.⁵

To pursue this point somewhat more formally, let us call a system of rules about social justice *procedural* if it satisfies the following: (1) a list of rules or procedures is specified about how people are supposed to deal with one another; and (2) a state of affairs is held to be just if it evolves from a

just original state, where every step in the evolution is brought about by the freely chosen actions of mutually consenting agents, all of which are consistent with the rules specified in (1). Furthermore, call such a system *closed to moral deviation* if it meets the following test: Whenever some state of affairs is brought about through actions by some agents that breach the rules specified in (1), it is in principle possible to “recover” from the effects of this breach through a series of counter-actions that are themselves consistent with the rules set out in (1).

In other words, a *procedural* account of social justice is *closed to moral deviation* if one can correct the consequences of rule violation through actions that are themselves consistent with the rules. In the absence of this “closure” property, a procedural theory would need to be supplemented by some nonprocedural account of how to manage the states of affairs arrived at in the aftermath of the commission of procedurally unjust acts. Elsewhere I have demonstrated (in the context of a theoretical example) that notwithstanding the effective prohibition of discrimination in contract, historically engendered economic differences between racial groups can persist indefinitely when discrimination in contact continues to be practiced (see Loury 1977 and 1995). That is, nondiscrimination, once having been established in the sphere of contract but not in the sphere of contact, can admit of an indefinite perpetuation of the racial inequality originally engendered by historical contractual discrimination. Stated in terms of the language just introduced,

this demonstration implies that the colorblindness derived from the Anonymity Axiom—treat all subjects interchangeably and take note of no person's racial identity in the execution of social choice—when viewed as a procedural account of racial justice, is not closed to moral deviation. This, then, is the basis of my larger argument that, as a matter of social ethics, policies should be undertaken to mitigate the economic marginality of an historically stigmatized racial group like black Americans. *This is not an argument for reparations. When the developmental prospects of an individual depend on the circumstances of those with whom he or she is socially affiliated, and when racial stigma continues to operate, even a minimal commitment to equality of opportunity for individuals requires such policies.*

AFFIRMATIVE ACTION AND THE POVERTY OF PROCEDURALISM

The current policy debate over racial preferences in higher education, while not the most significant racial justice question facing the nation today, is nonetheless worth considering here. I incline toward the view that the affirmative action debate receives too much attention in public discourses about racial inequality, obscuring as much as it clarifies. However, by exploring some aspects of this hotly contested public question, I hope to illustrate more incisively the conceptual distinctions that drive my larger argument.⁶

In their study *The Shape of the River*, William Bowen

and Derek Bok, two former Ivy League university presidents, argue that administrators of the great educational philanthropies in the United States should be able to pursue more racial diversity in their undergraduate enrollments as a vitally important educational goal (Bowen and Bok 1998). They offer data to suggest that, through the prudent use of racial identity in the admissions process, this objective is now being achieved by many institutions, and at a tolerable cost. Their evidence persuades me, though, of course, reasonable people can differ on this point. But, in the main, this controversy does not turn on the facts, and it will not be resolved by more or better evidence. Rather, at the core of this argument is a dispute over the very idea that *racial* integration in elite higher education is a good thing.

One might well ask why such an evidently progressive goal should be so controversial. I see two reasons: First, the goals openly espoused by prestigious colleges and universities are inevitably indicative of the larger, collective ideals animating the nation. (And, in light of their considerable influence on national life and culture, this is no less the case for the private than for the public institutions. What a Harvard or Princeton strives after is necessarily, to some degree, what America seeks.) That this society remains a deeply flawed one as long as black Americans are not fully included in its upper reaches is a notion which no longer garners universal assent. Second, the plain fact is that access to elite higher education dramatically enhances one's chances to acquire influence in our putatively meritocratic society.

Competition for a relatively few seats at the table of power is keen, and many chafe at the idea of their child's place being taken by someone "undeserving."

So the process of selecting those who will enter the prestigious colleges and universities is a visible, high-stakes civic exercise. And the perceived legitimacy of these annual "selection rituals" is a matter of vital public interest. As I have noted, two normative concerns are at play in the struggle to define "legitimacy" here—race-blindness and race-egalitarianism. Among the most important conclusions emerging from *The Shape of the River* is that, though not mutually inconsistent, these two ideals are in tension with each other: It is often the case that violating race-blindness can powerfully abet the pursuit of racial equality. This is because, given the differences in test-score distributions among blacks and whites, achieving racial integration at highly selective colleges requires that the chance of being admitted, given a student's test scores, be higher for black than for white applicants. As a matter of simple logic, a college with limited places to fill can achieve more racial diversity only if some black applicants are admitted who would otherwise have been rejected, while some nonblack applicants are rejected who would otherwise have been admitted. Selective institutions will naturally try to reject the least qualified of the otherwise admissible nonblack applicants while admitting the most qualified of those black applicants who would otherwise have been rejected. Yet, in doing so, the college necessarily uses a racially preferential admissions

policy. Thus, with resources limited, and with a college committed to remaining highly selective, the two normative concerns come clearly into conflict. A choice between them must be made.

Now, the relevant point for the purposes of this argument turns on the conceptual distinction between procedural and egalitarian moral interests. To develop this point, I suggest a terminological convention: Let us reserve the phrase "race-blind" to describe the practice of not using race when carrying out a policy. And let us employ a different term—"race-indifferent"—to identify the practice of not thinking about race when determining the goals and objectives on behalf of which some policy is adopted. If a selection rule for college admissions can be applied without the racial identity of applicants being known, call that rule "race-blind." In contrast, if a selection rule is chosen with no concern as to what impact it might have upon the various racial groups, then call that rule "race-indifferent." My fundamental claim is that the most important moral questions in matters of race are about indifference, not blindness (which is not to deny, of course, that "blindness questions" can sometimes matter a great deal).

The utility of distinguishing between indifference and blindness becomes clear when one considers that both ameliorating the social disadvantage of blacks and exacerbating this disadvantage can alike be achieved with race-blind policies. Yet whereas a race-blind policy explicitly intended to harm blacks could never be morally acceptable, such policies adopted for the purpose of reducing racial

inequality are commonplace, and uncontroversial. Put differently, given the facts of U.S. history, departures from race-indifference are, and should be, evaluated asymmetrically: Those harmful to blacks are widely held to be suspect, whereas non-indifferent undertakings that assist blacks are widely recognized as necessary to the attainment of just social policy.

For example, when a court ruling forbade the practice of affirmative action in college admissions in Texas, the legislature responded by guaranteeing a place at any public university to the top ten percent of every high school class in the state. This so-called ten percent rule mainly benefits students with low test scores and good grades at less competitive high schools—disproportionately blacks and Hispanics—and certainly this was the intent. That is, this rule, while being race-blind, is most decidedly not race-indifferent. Thus we have a situation in Texas in which the explicit use of race in a college admissions formula is forbidden, while the intentional use of a proxy for race publicly adopted so as to reach a similar result is allowed. Can there be any doubt, had a different race-blind proxy been adopted in order to *exclude* black and Hispanic students from public institutions in Texas, that this would be morally unacceptable?

This example illustrates why the key moral issues having to do with race are most often about indifference, not blindness: On the whole, most citizens in the United States see reversing the effects of a history of immoral race re-

lations as a good thing and perpetuating those effects as a bad thing. The choice of instruments to pursue these ends is often of less moment than the choice among the ends themselves.

Indeed, this is so in other policy areas as well: The primary normative concern is not racial discrimination as such, but rather involves deciding how much account to take of racially disparate consequences when choosing among what may be alternative, nondiscriminatory policies. Consider some typical policy dilemmas:

1. Where should a new public facility be located—in the urban center or at the periphery?
2. How will a county's governing commissioners be selected—by elections at the local district level, or from a countywide competition?
3. What protocol should govern the use of deadly force by police officers—shoot whenever feeling threatened, or only when one's life seems to be in the gravest danger?
4. Should a school's history curriculum stress the glories of European exploration and settlement, or the horrors visited upon indigenous peoples by that settlement?

To insist on *indifference* to race when approaching these questions is to evidence both political stupidity and a willful disregard of the concerns of social justice. But to insist on *blindness* to race is also inadequate as a guide to policy. Just as worthy racial goals can sometimes be effectively pursued with race-blind means, so too, a race-transcending public

goal is sometimes best pursued with non-race-blind (shall we say "race-sighted"?) means.

Consider, to further illustrate, a state's governor who seeks to appoint judges to the courts. He might reason as follows:

I need to have a diverse group of appointees both for my own political protection and in the long-term interest of preserving the legitimacy of the administration of justice in this jurisdiction. If I appoint all white men, even though they appear to be the best qualified, not only might I do damage to my reputation, I might also cause some people to doubt that the courts will treat them fairly, thereby undermining public confidence in legal institutions. One of my responsibilities as governor is to ensure that this does not occur.

Maintaining the courts' institutional legitimacy is not a racial goal; it is something everybody has a stake in. And yet, in order to do it, a governor might have to take racial identity into account to see whether his list of possible appointees contains a sufficient number of racial minority group members.

In contrast, consider a federal anti-drug policy concentrating on arresting street-level traffickers and putting them away for a long time. This is a race-blind policy, formulated to pursue nonracial public ends, but one having pronounced racially unequal results. Such policies have led to the incarceration of young people of color in vastly disproportionate numbers—young people, it might be argued, who to some

degree are engaged in the illicit traffic precisely because they are at the margin of society and their alternative opportunities are scant.⁷ As a result of this and similar policies, out of the 2 million people under lock and key on any given day in the United States, some 1.2 million are blacks, though blacks are only about one-eighth of the national population. A concern solely for the race-blindness of policy instruments—Are the police and the courts applying the laws without racial discrimination?—would fail to raise the larger question: Is this not a public policy that should be examined because of the cost it is imposing on a particular community?

Of course, the example of U.S. anti-drug policy is controversial, but at a minimum reasonable people must accept the central logical claim here: that this race-blind policy instrument raises a question of social justice, the answer to which turns in part on the policy's racially disproportionate effects.⁸ And it is *this* distinction—between "blindness" and "indifference"—that I seek to emphasize, because one can slide quickly from a forceful critique of race-sighted policy instruments (arguing that they should be *race-blind*) into a denial of the legitimacy of any discussion of public issues that is formulated in racial terms (arguing that such discussions should be *race-indifferent*).

With these concepts in hand, it is now easier to see the relevance of the affirmative action controversy to my larger claims about the limitations of liberal individualism. The deep questions here are these: When should we explicitly

undertake to reduce racial disparities, and what are the means most appropriately employed in pursuit of that end? My argument asserts an ordering of moral concerns, racial justice before race-blindness. I hold that departures from "blindness" undertaken to promote racial equality ought not be barred as a matter of principle. Instead, race-sighted policies should be undertaken, or not, as the result of prudential judgments made on a case-by-case basis. The broad acceptance of this view in U.S. society would have profound consequences. When prestigious institutions use affirmative action to ration access to their ranks, they tacitly and publicly confirm this ordering of moral priorities, in a salient and powerful way. This confirmation is the key civic lesson projected into American national life by these disputed policies. At bottom, what the argument over racial preference, in college admissions and elsewhere, is really about is this struggle for priority among competing public ideals. This is a struggle of crucial importance to the overall discourse on race and social justice in the United States.

Fundamentally, it is because these elite institutions are not "indifferent" to the racial effects of their policies that they have opted not to be "blind" to the racial identities of their applicants. If forced to be race-blind, they can pursue their race-egalitarian goals by other (in all likelihood, less efficient) means. Ought they to do so? Anyone interested in racial justice needs to answer this question. Liberal individualism provides little useful guidance here.

The priority of concerns I am asserting has far-reaching consequences. It implies, for example, that an end to formal discrimination against blacks in this post-civil rights era should in no way foreclose a vigorous public discussion about racial justice. More subtly, elevating racial equality above race-blindness as a normative concern inclines us to think critically, and with greater nuance, about the value of race-blindness. It reminds us that the demand for race-blindness—our moral queasiness about using race in public decisions—has arisen for historically specific reasons, namely slavery and enforced racial segregation over several centuries. These reasons involved the caste-like subordination of blacks—a phenomenon whose effects still linger, and one that was certainly not symmetrical as between the races. As such, taking account of race while trying to mitigate the effects of this subordination, though perhaps ill-advised or unworkable in specific cases, cannot plausibly be seen as the moral equivalent of the discrimination that produced the subjugation of blacks in the first place. To see it that way would be to mire oneself in ahistorical, procedural formalism.

Yet this is precisely what some critics of affirmative action have done, putting forward as their fundamental moral principle the procedural requirement that admissions policies be race-blind. "America, A Race-Free Zone," screams the headline from a recent article by Ward Connerly, who led the successful 1996 ballot campaign against

affirmative action in California and is now at the helm of a national organization working to promote similar initiatives in other jurisdictions. Mr. Connerly wants to rid the nation of what he calls "those disgusting little boxes"—the ones applicants check to indicate their racial identities. He and his associates see the affirmative action dispute as an argument between people like themselves, who seek simply to eliminate discrimination, and people like the authors of *The Shape of the River*, who want permission to discriminate if doing so helps the right groups.⁹

This way of casting the question is very misleading. It obscures from view *the most vital matter at stake in the contemporary debate on race and social equity—whether public purposes formulated explicitly in racial terms (that is, violating race-indifference) are morally legitimate, or even morally required.* Anti-preference advocates suggest not, arguing from the premise that an individual's race has no moral relevance to the race-indifferent conclusion that it is either wrong or unnecessary to formulate public purposes in racial terms. But this argument is a *non sequitur*. Moral irrelevance does not imply instrumental irrelevance. Nor does the conviction that an individual's race is irrelevant to an assessment of that individual's worth require the conclusion that patterns of unequal racial representation in important public venues are irrelevant to an assessment of the moral health of our society.

The failure to make these distinctions is dangerous, for it leads inexorably to doubts about the validity of discussing

social justice issues in the United States in racial terms at all. Or, more precisely, it reduces such a discussion to the narrow ground of assessing whether or not certain policies are race-blind. Whatever the anti-preference crusaders may intend, and however desirable in the abstract may be their colorblind ideal, their campaign is having the effect of devaluing our collective and still unfinished efforts to achieve greater equality between the races. Americans are now engaged in deciding whether the pursuit of racial equality will continue in the century ahead to be a legitimate and vitally important purpose in our public life. Increasingly, doubts are being expressed about this. *Fervency for race-blindness has left some observers simply blind to a basic fact of American public life: We have pressing moral dilemmas in our society that can be fully grasped only when viewed against the backdrop of our unlabeled racial history.*

"FIGMENT OF THE PIGMENT" OR "ENIGMA OF THE STIGMA"?

Consider the stubborn social reality of race-consciousness in U.S. society. A standard concern about racial preferences in college admissions is that they promote an unhealthy fixation on racial identity among students. By classifying by race, it is said, we distance ourselves further from the goal of achieving a race-blind society. Many proponents of race-blindness as the primary moral ideal come close to equating the use of racial information in administrative practices with

the continued awareness of racial identity in the broad society. They come close, that is, to collapsing the distinction between racial *information* and racial *identity*. Yet consciousness of race in the society at large is a matter of subjective states of mind, involving how people understand themselves and how they perceive others. It concerns the extent to which race is taken into account in the intimate social lives of citizens. The implicit assumption of advocates of race-blindness is that, if we would just stop putting people into these boxes, they would oblige us by not thinking of themselves in these terms. But this assumption is patently false. Anti-preference advocates like to declare that we cannot get beyond race while taking race into account—as if someone has proven a theorem to this effect. But no such demonstration is possible.

The conservative scholars Stephan and Abigail Thernstrom, in their influential study *America in Black and White*, provide an example of this tendency of thought. They blame race-conscious public policies for what they take to be an excess of racial awareness among blacks. Affirmative action, they argue, induces blacks to seek political benefits from racial solidarity. This, in turn, encourages a belief by blacks in what they call “the figment of the pigment”—the conviction that, for African Americans, race is a trait that is inexorably and irrevocably different from European or Asian ethnicity (Thernstrom and Thernstrom 1997, p. 535). This gets it exactly backwards, in my view. It is not the use of race as a criterion of public action that causes blacks to nurture a

sense of racial otherness. Rather, it is the historical fact and the specific nature of blacks’ racial otherness that causes affirmative action—when undertaken to benefit blacks—to be so fiercely contested in contemporary American politics.

To see what I am getting at here, consider the following thought experiment: Few people, upon entering a shop with the sign “Smith and Sons” in the window to encounter a youngish proprietor at the counter, will begin to worry that they are about to be served by an unqualified beneficiary of nepotism. But I venture that a great many people, upon seeing a black as part of their treatment team at a top-flight hospital, may be led to consider the possibility that, because of affirmative action in medical school admissions, they are about to be treated by an unqualified doctor. Yet supposing that some preference had, in fact, been given in both cases and bearing in mind the incentives created by the threat of a malpractice suit, the objective probability that a customer will receive lower-quality service in the former situation is likely to be greater than the chance that a patient will receive lower-quality treatment in the latter. This difference between reality and perception has little to do with political principles, and everything to do with racial stigma.

Moreover, the ongoing experience of racial stigma is what causes many blacks to see racial solidarity as an existential necessity. Perhaps I could put it this way: It’s not *the figment of the pigment*, it is *the enigma of the stigma* that causes race to be so salient for blacks today. Now mind you, I have already stipulated (in Axioms 1 and 2) that, at the most

fundamental level, the "pigment" is a "figment." I have rejected racial essentialism. But I also have argued that, notwithstanding the arbitrariness of racial markers, the classifying of persons on the basis of such markers is an inescapable social-cognitive activity. And I have suggested that such markers could be invested with powerful social meanings—that meaning-hungry agents could build elaborate structures of self-definition around them.

So after centuries of intensive racial classification we are now confronted with raced subjects demanding to be recognized as such. Here are selves endogenous to the historical and cultural flow, who see their social world partly through the lens of their "pigment," and the best some critics can do by way of a response is to dismiss them as deluded, confused believers in a "figment." ("Why are they so obsessed with race? Can't they see it was all a big mistake?") Would-be moralists, even some blacks (Kennedy 1997), are puzzled and disturbed at the specter of African Americans being proud of the accomplishments, and ashamed of the failures, of their co-racialists.¹⁰ And those to whom the "wages of whiteness" flow like manna from heaven, who have a race but never have to think about it, can blithely declare, "It's time to move on."

This is simplistic social ethics and sophomoric social psychology, it seems to me. And it is an especially odd position for a liberal individualist to take. I have always supposed that the core idea of liberalism is to credit the dignity of human beings. Yet when those subjected to racial stigma, having

managed to construct a more or less dignified self-concept out of the brute facts of an imposed categorization, confront us with their "true" selves—perhaps as believers in the need to carry forward a tradition of racial struggle inherited from their forebears, or as proponents of a program of racial self-help—they are written off as benighted adherents of a discredited creed. We would never tell the antagonists in a society divided by religion that the way to move forward is for the group in the minority to desist from worshipping their false god. But this, in effect, is what many critics today are saying to black Americans who simply refuse to "get over it."

The basic point needing emphasis here is this: The use of race-based instruments is typically the result, rather than the cause, of the wider awareness of racial identity in society. This is why race-blindness is such a superficial moral ideal: To forgo cognizance of race, out of fear that others will be encouraged to think in racial terms, is a bit like closing the barn door after the horses have gone. One cannot grasp the workings of the social order in which we are embedded in the United States without making use of racial categories, because these socially constructed categories are etched in the consciousness of the individuals with whom we must reckon. Because they use race to articulate their self-understandings, we must be mindful of race as we conduct our public affairs. This is a *cognitive*, not a *normative* point. One can agree with the liberal individualist claim that race is irrelevant to an individual's moral worth, that individuals and not groups are the bearers of rights, and nevertheless affirm

that, to deal effectively with these autonomous individuals, account must be taken of the categories of thought in which they understand themselves.

Indeed, it is easy to produce compelling examples in which the failure to take race into account serves to exacerbate racial awareness. Consider the extent to which our public institutions are regarded as legitimate by all the people. When a public executive (like the hypothetical governor considered earlier) recognizes the link between the perceived legitimacy of institutions and their degree of racial representation, and acts on that recognition, he or she is acting so as to *inhibit*, not to *heighten*, the salience of race in public life. When the leaders of elite educational philanthropies attempt to bring a larger number of black youngsters into their ranks, so as to increase the numbers of their graduates from these communities, they are acting in a similar fashion. *To acknowledge that institutional legitimacy can turn on matters of racial representation is to recognize a basic historical fact about the American national community, not to make a moral error.* The U.S. Army has long understood this.¹¹ It is absurd to hold that this situation derives from the existence of selection rules—in colleges and universities, in the military, or anywhere else—that take account of race.

So much may seem too obvious to warrant stating but, sadly, it is not. In the 5th U.S. Circuit Court of Appeals *Hopwood* opinion, Judge Smith questions the diversity rationale for using racial preferences in higher education admis-

sions.¹² He argues that, because a college or university exists to promote the exchange of ideas, defining diversity in racial terms necessarily entails the pernicious belief that blacks think one way, whites another. But this argument is fallacious for reasons just stated. Suppose one begins with the contrary premise, that there is no "black" or "white" way of thinking. Suppose further that conveying this view to one's students is a high pedagogic goal. The students being keenly aware of their respective racial identities, some racial diversity may be required to achieve the pedagogic goal. Teaching that "not all blacks think alike" will be much easier when there are enough blacks around to show their diversity of thought. More generally, *conveying effectively the ultimate moral irrelevance of race in our society may require functional attention by administrative personnel to the racial composition of the learning environment. Whether, and to what extent, this may be so is a prudential, not a principled, question. It cannot be resolved a priori.*

AN APPROPRIATE VENUE FOR COLORBLINDNESS

There is, however, an objection to be raised to the position being developed here. At the consequentialist level, a critic may concede that some departures from colorblindness are needed, though they should be "narrowly tailored" to meet only the most "compelling interest" as the language of recent Supreme Court rulings on affirmative action would

have it. But at the most profound moral level, doesn't someone who abhors the consequences of racial stigma have to affirm a kind of moral blindness to the race of agents? I think this is in fact the case, and I am not the least bit reluctant to say so, but I continue to urge clarity on this point.

Let us distinguish among three domains or venues of public action in a racially stratified society where the "blindness" intuitions of liberal neutrality might be applied.

First is the domain of *policy implementation*—where we decide on the instruments of public action. Here we are admitting students to college or hiring public employees or distributing social benefits. Some mechanism is being used to do this, and that mechanism may, or may not, take cognizance of a subject's race. "Blindness" here means structuring public conduct so that people from different racial groups who are otherwise similar can expect similar treatment. This is what most people have in mind when they insist that the government should be "colorblind."

Second is the domain of *policy evaluation*—where we assess the consequences of public action. Here we are deciding whether to build a prison or a school, and if it is a school, whether it should serve the general population or only the most accomplished students. We are fighting a war on drugs and deciding whether to concentrate on the buying or the selling side of illicit transactions. As a general matter, prior to choosing a course of public action we need to assess the relative costs and benefits of the alternatives before us. The impact of an alternative on particular racial groups may,

or may not, be explicitly reckoned in this assessment. "Blindness" here means not seeing a policy as more or less desirable on account of the race of those affected. This is what the Anonymity Axiom of social choice theory requires.

Third is what I will call the domain of *civic construction*—where we develop our nation's sense of shared purpose and common fate. Here we are building monuments, constructing public narratives, enacting rituals, and, most generally, pursuing policies that have an inescapably expressive as well as a directly instrumental effect. "Blindness" to race in this domain means deploying the instruments of civic pedagogy so as to promote a sense of national community that transcends racial divisions. This is what my Axiom 2 (on anti-essentialism) requires, when it is embraced without reference to empirical assessments.

Veterans of the racial preferences wars are most familiar with the questions—having mainly to do with the unfairness of racial discrimination—that arise in the domain of implementation. To get a glimpse of the subtle dilemmas that arise in the domain of evaluation, imagine that the central bank is trying to decide whether or not to induce a recession, so as to lower the risk of inflation. Would it be legitimate to tolerate a somewhat greater chance of inflation while maintaining a strong demand for labor because doing so also manages to hold the unemployment rate of black youth at humane levels for the first time in a half-century? Can we reckon that this is a good policy because it contributes to overcoming racial stigma, draws blacks more fully into the

mainstream of society, and permits them to earn the respect of their fellow citizens? (Here I mean to suggest that, but for this racial benefit, a different decision might be taken.) In other words, can we explicitly count as a benefit to society what we calculate to be the racially progressive consequences (reducing black economic marginality) of what is a race-blind action (electing to take a greater risk of inflation)?

The issues arising in the domain of civic construction are also subtle. Consider the practice of capital punishment, which may or may not deter murder, but which is most definitely the state-sanctioned killing of a human being. Would it be legitimate when deciding whether or not to undertake the powerfully symbolic public ritual of executing lawbreakers to take note of what may be a large racial disparity in its application? (Here I am supposing for the sake of argument that the processes of policing, judging, and sentencing that lead to persons being executed are not racially biased, and I am asking whether we might nevertheless question the use of capital punishment because of its racially disproportionate effects.) In other words, must we be "blind" to the possibility that such a racial imbalance could distort our civic self-understanding in the United States?

Or, to take a very different case, consider the conscious act of integrating by race the elite who exercise power and who bear honor in the society—the people to whom we delegate discretion over our lives. Suppose we undertake to ensure that there are, visibly, African Americans among that elite. Suppose this goal is pursued not to bestow benefits on

black people, as such, but with the specific intent of integrating the national community by rubbing out in the consciousness of the populace a perception of racial difference in inherent capacities or deserved social standing. Would that be a valid enterprise? Such a project, after all, pays tribute to the idea of race-blindness, too: It seeks to diminish the sense within the polity that we consist of racial groups that are differently endowed or unequally worthy of respect, with some more deserving than others of inclusion in the prized venues of public life.

We have, then, these three domains—implementation, evaluation, and civic construction—giving rise to three classes of public questions: How should we treat individuals? How should we choose the goals to be pursued through our policies? And how much awareness ought we to have of the ways in which the conduct of public business can perpetuate into yet another generation the inherited stigma of race?

Liberal individualism seems to militate strongly in favor of "blindness" in both the first and the second domains. I believe this is wrong on both counts, because it is ahistorical and sociologically naïve. Race-blind proceduralism fails, I have suggested, because (among other reasons) it is not closed to moral deviation. And a principled stand of race-indifference is unacceptable as well, I have argued, because it rules out policies that are almost universally credited as being necessary and proper to combat the lingering effects of past racial discrimination. Given U.S. history, few

thoughtful people are prepared to import their love of the race-blind principle into the domain of evaluation. They may object to race-based selection rules, but they do not object to the pursuit of explicitly race-egalitarian outcomes through public policies that take no notice of race at the point of implementation (like the ten percent plan in Texas). That is, though they may embrace race-*blindness* they reject race-*indifference*. Thus, for example, there is much (I think plausible) disquiet at the thought of constructing race-based electorates for the purpose of giving blacks greater political voice, but hardly any opposition to moving from at-large to non-racially drawn single-member voting districts when the intent is to produce a similar outcome.

I want to suggest that only in the domain of civic construction should some notion of race-blindness be elevated to the level of fundamental principle. The operative moral idea would be what the sociologist Orlando Patterson has called the principle of infrangibility (that is, the absence of boundary)—saying that we are One Nation, Indivisible, and taking that idea seriously enough to try to act (whether in a race-blind or a race-sighted fashion) so as to bring that circumstance about. Those people languishing at the margins, even if they are strange and threatening, are to be seen, in the ways that most fundamentally count for our politics and civic life, as being essentially like us. We're going to prudentially and constitutionally, but determinedly and expeditiously, move so as to tear down, or certainly build no higher, the boundaries of race that divide the body politic.

Thus when elite college presidents who practice race-preferential admissions say, in effect, "While administering multi-billion-dollar philanthropies that enjoy (for the public good) the protection of tax exemption, we endeavor, among other things, to construct an elite leadership cadre of African Americans at the end of the twentieth and the beginning of the twenty-first century," they say a very modest thing. In the elite schools studied by Bowen and Bok (1998), the average admissions rate for whites is about 25 percent. Getting rid of all the affirmative action is calculated to raise that rate to about 27 percent. So for every 75 whites rejected under the regime of race-preferential admissions currently being practiced, 73 would still be rejected after the eradication of affirmative action. Why, then, all the energy, why all the angst, why all the hand wringing, why all the clamor, why all the concern that America is being run aground, that our standards are being trashed, that the barbarians are at the gates? Why such resistance when, as the data in Bowen and Bok's book strongly suggest, the boundary of racial hierarchy is being erased just a little bit by the trickling few black students who, at the margin and because of the colleges' practice of affirmative action, are being inducted into the leadership cadres of the United States?

Conversely, why is there so little alarm at the enormous racial disparity in the rates of imprisonment experienced by young American men? Why is it that, when a black American scholar of unquestioned competence and respectable intellectual pedigree raises this question, he can be accused

of "playing the race card"—that is, of letting his sense of racial loyalty take precedence over his commitment to promote universal public goals? In a society that loves justice and that has a troubled racial history, like the United States, is not avoiding the further demonization of disadvantaged and socially isolated inner-city black youth a public purpose of trans-racial significance?

I hold that there is nothing in political liberalism, rightly understood, that should lead us to reject that public goal. There is nothing wrong with a liberal, concerned about social justice, undertaking to fight racial stigma. There is nothing wrong with constructing a racially integrated elite in America. There is nothing wrong with fretting over 1.2 million African-American young bodies under the physical control of the state. Indeed, I am led to wonder how any thoughtful person aware of the history and the contemporary structure of U.S. society could conclude otherwise.

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CONCLUSIONS