

Responding to Racial Injustice

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In what public discourse does the reference to black people not exist? It exists in every one of this nation's mightiest struggles. . . . It is there in the construction of a free and public school system; the balancing of representation in legislative bodies; jurisprudence and legal definitions of justice.

—Toni Morrison

“Mr. Ashe, I guess this must be the heaviest burden you have ever had to bear, isn't it?” she asked finally.

I thought for a moment, but only a moment. “No, it isn't. It's a burden, all right. But AIDS isn't the heaviest burden I have had to bear.”

“Is there something worse? Your heart attack?”

I didn't want to detain her, but I let the door close with both of us still inside. “You're not going to believe this,” I said to her, “but being black is the greatest burden I've had to bear.”

“You can't mean that.”

. . . I stand by my remark. Race is for me a more onerous burden than AIDS. My disease is the result of biological factors over which we, thus far, have had no control. Racism, however, is entirely made by people, and therefore it hurts and inconveniences infinitely more.

—Arthur Ashe

. . . my inheritance was particular, specifically limited and limiting: my birthright was vast, connecting me to all that lives, and to everyone, forever. But one cannot claim the birthright without accepting the inheritance.

—James Baldwin

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Racial injustice may be the most morally and intellectually vexing problem in the public life of this country.¹ How should we respond? I doubt there is a simple or single way of responding. As a political philosopher, I develop a political morality for a society still suffering from racial injustice. My response to racial injustice need not be yours, but I hope to convince you that we all should respond and try to justify our responses to one another, rather than wish the problem would go away or be taken care of by others. I focus in these lectures on responding to racial injustice toward black Americans, but nothing I say should suggest that injustice toward blacks is the only surviving, systematic instantiation of racial injustice in the United States. I choose the issue of racial injustice toward black Americans because it is certainly among the most long-standing, systematic, and intellectually vexing instantiations of racial injustice in our society. We should not be deterred from focusing on this urgent issue because there are other instances of racial injustice, or injustice with no racial source, also (urgently) to be addressed.

In public debate about racial issues, many people speak as if we must be bound by the same morality that would be suitable to a just society. That morality, they claim, is color-blind. Color-blindness, I argue in the first part of this lecture, is not a fundamental principle of justice for our society. Fairness is, and it does not always call for color-blindness, with regard to either employment or university admissions.

Others argue that if not for principled reasons of fairness then for pragmatic reasons of coalition building we should replace preferential treatment by race with preferential treatment by class, which has the advantage of being color-blind. The “Class, Not Race” proposal, which I assess in the second part of this lecture,

¹ By *racial* injustice I mean any injustice whose source includes either present or past discrimination based on race. By racial discrimination, I mean any morally indefensible distinctions based on race.

has been called “the hottest idea in the affirmative action debate.”² It is half-baked, I suggest: fairness calls for class-conscious policies but not to the exclusion of race-conscious ones.

What’s wrong with color-blindness is what’s right about race consciousness, but not all race-conscious policies or all kinds of race consciousness are right. In the second lecture, I distinguish between two different kinds of race consciousness. Some kinds of race consciousness are based on a pernicious prejudice, but others are based on the very principle of fairness that is fundamental to the case for color-blindness. What’s right about race consciousness, I hope to show by the end of these two lectures, is also the partial truth in color-blindness. Part of that truth is the recognition that race is strictly speaking a scientific notion, but in its common social usage it is a fiction that functions *sotto voce* as fact in our identification of individuals. The fiction is that skin color and facial features, sometimes coupled with information about ancestry, sort individuals into genetically distinguishable subgroups (or sub-species) that are properly identified as races and can be meaningfully treated as such for scientific purposes.³

Although it often functions as well-established fact, the fiction of racial identification cannot survive scrutiny, so it is best brought out in the open among open-minded people. Similar skin color and other easily discernible physical features do not a race, or sub-species, make. Yet many people who use the term “race” to refer to human subgroupings assume, or use the term in a way that assumes, the existence of a meaningful scientific referent, a referent that indicates something more than the presence of genes

² Michael Kinsley, “The Spoils of Victimhood,” *New Yorker*, March 27, 1995, p. 66. Kinsley is a critic of the idea. One of the best of many defenses, which I discuss below is, Richard Kahlenberg, “Class, Not Race,” *New Republic*, April 3, 1995, pp. 21–26.

³ “Today, when we use the term ‘race,’ we are actually talking about the social construction of differences” (Darlene Clark Hine, “‘In the Kingdom of Culture’: Black Women and the Intersection of Race, Gender, and Class,” in *Lure and Loathing: Essays on Race, Identity and the Ambivalence of Assimilation*, ed. Gerald Early ([New York: Penguin Books, 1994], p. 338).

for mere morphological features such as skin pigmentation or facial features. Scientists, however, have not established the existence of human subspecies, or races, which sort people in a scientifically meaningful way into separate groups on the basis of large packaged sets of genetic differences that are relatively stable over time.

The common usage of race superficially refers to skin color and facial features. Were this all that race meant today, then it would not be a morally dangerous fiction. Nor would it be a very significant social or scientific category, around which some of the most vexing political problems of our time revolve. The common usage of race often means, and conveys, much more, which we can ignore only at the cost of perpetuating misunderstandings as well as injustice. I focus on the injustices in these two lectures, but perhaps I should say something briefly here about the misunderstandings that are often implicit, although sometimes even explicit, in the common usage.

As far as scientists now know, the superficial differences that often trigger common references to someone as a member of this or that race are not accompanied by a large set of biological differences that would meaningfully distinguish human beings as members of different subspecies for scientific purposes. Scientists have not found a large, relatively stable set of genetic similarities —beyond the morphological differences —among the people commonly categorized into separate races by our ordinary usage. Even the morphological differences are not as distinct as many people assume. One does not have to be a scientist to know that black Americans have an enormously broad range of skin colors and facial features, as do white Americans. This should not surprise us, because black and white Americans have greatly mixed ancestries.

Scientists estimate that 20 to 30 percent of the genetic material of African-Americans derives from European or American Indian ancestors.⁴ Facial features and skin color certainly vary among

⁴ James Shreeve, "Terms of Estrangement," *Discover* (November 1994), p. 58.

regions of the world, and among people whom Americans call “black” and “white,” but the variations in these features are not part of a large packaged set of genetic variations that would warrant the scientific separation of blacks and whites into two subspecies, or races.⁵ Neither the traditional one drop of (black) blood rule for identifying someone as black nor the official one-sixteenth black ancestry rule makes biological sense, but these were among the rules of recognition that defined and perpetuated the dominant understanding of race in the United States.⁶

Scientists calculate that the average genetic difference between two randomly chosen individuals is .2 percent of the total genetic material. Of that genetic diversity, 85 percent can be found between neighbors; 9 of the remaining 15 percent can be found between ethnic or linguistic groups; 6 percent represents differences among geographically more separate groups, such as Europeans and Asians. If Europeans and Asians are considered separate races, only .012 percent — .00012! — of their genetic differences are accounted for by their “race.”⁷ And those genetic differences that can be accounted for have little or no scientific importance.

Today, black and white Americans are racially distinguished for political purposes not by a scientific standard or the one drop of blood rule but (ostensibly) by self-identification. In light of our history, we should not infer from this practice of self-identification that racial identification is voluntary.⁸ By the time the vast majority of Americans fill out the census forms, enrollment forms for schools, application forms for jobs, and governmental mortgage, scholarship, and loan forms asking what race we and our children

⁵ Ibid.

⁶ For a summary of these conventional rules and recent efforts to introduce new categories of race and ethnicity into public life, see Lawrence Wright, “One Drop of Blood,” *New Yorker*, July 25, 1994, pp. 46–55

⁷ See Paul Hoffman, “The Science of Race,” *Discover* (November 1994), p. 4.

⁸ A recent study, however, finds that “in the early 1970s, 34 percent of the people participating in a census survey in two consecutive years changed racial groups from one year to the next” (Shreeve, “Terms of Estrangement,” p. 58).

are, we have been told the answer by the way we have been treated ever since we were too young to choose for ourselves. Our self-categorizations (currently into Black, White, American Indian or Alaskan Native, Asian or Pacific Islander) are neither voluntaristic nor scientific.⁹ “These sorts of distinctions,” as Anthony Appiah puts it, “are not — as those who believe in races apparently suppose — markers of deeper biologically-based racial essences, correlating closely with most (or even many) important biological (let alone nonbiological) properties.”¹⁰

What scientists do know about genetic similarities and differences among large groups of people therefore suggests that everyday distinctions do not remotely correspond to a scientific understanding of race.¹¹ Although scientists have recently made great strides in locating specific genes for various diseases, there is no genetic evidence that would justify grouping people who commonly identify each other as black and white into two different races.

Shared genetic predispositions do exist among some people who are commonly identified as a race. For example: a shared genetic predisposition to sickle cell anemia exists among most Afri-

⁹ Hoffman, “The Science of Race,” p. 4.

¹⁰ Anthony Appiah, “‘But Would That Still Be Me?’ Notes on Gender, ‘Race,’ Ethnicity, as Sources of ‘Identity,’” *Journal of Philosophy* 87, no. 10 (October 1990), 496. Appiah goes on to argue, interestingly, that there is not even something analogous to the “sex-gender distinction” on which to base the claim that there are in fact different biological races. In the case of race, biology “does not deliver something that we can use, like the sex chromosomes, as a biological essence of the Caucasian or the Negro.” Appiah is not suggesting that there is, by contrast, a sexual essence, only that there is a *biological* difference (i.e., the sex chromosomes) that could provide *some* basis in biological reality for such a claim about sex, a basis that is missing altogether in the case of race.

¹¹ For useful summaries of the state of scientific knowledge, see the special issue of *Discover* (November 1994). Especially relevant to our discussion are James Shreeve, “Terms of Estrangement,” pp. 57–63; Christopher Wills, “The Skin We’re In,” pp. 77–81; and Jared Diamond, “Race without Color,” pp. 83–93. For the most comprehensive discussion of human genetic distribution as it relates to the issue of race among human beings, see L. Luca Cavalli-Sforza, Paolo Menozzi, and Alberto Piazza, *The History and Geography of Human Genes* (Princeton: Princeton University Press, 1994).

cans, which some people take as evidence for the idea that Africans are a single racial group. But some nonscientific notion of racial identity must also be operating here because the same sickle cell anemia gene is found among people in southern India and the Arabian Peninsula, but is rare among the Xhosa of South Africa and Northern Europeans.¹² The genetic disposition to Tay Sachs Disease is shared by Eastern European Jews and French Canadians, but nobody surmises that this shared genetic characteristic makes East European Jews and French Canadians into a racial group. Yet some people seem to think that the shared genetic predisposition to sickle cell anemia among (some) Africans supports the idea that they are a single racial group.

A nonscientific notion of racial identity clearly precedes the genetic evidence, which does not come close to establishing a separate and scientifically meaningful racial identity for black and white Americans, or blacks and whites more generally. The existing scientific evidence about genetic similarities and differences should lead an open-minded observer to be extremely skeptical of any usage of race that trades on the idea that human beings can be classified into distinct races for significant scientific purposes.¹³ But it is not this skepticism alone that leads me to discuss the meaning of race consciousness. It is also a concern for the connection between race consciousness and our response to social injustice. If we believe in treating all human beings as equals, then we must recognize that not all kinds of race consciousness, or color-blindness, are created equal. By the end of these lectures, I hope to clarify the morally significant differences in two kinds of race consciousness. I begin, however, by evaluating the standard

¹² A critic quips: "Does that make Nelson Mandela and Bjorn Borg racial kin?" (Steven A. Holmes, "You're Smart If You Know What Race You Are," in *News of the Week in Review*, *New York Times*, Sunday, October 23, 1994, p. 5).

¹³ The existing scientific evidence about race and intelligence is even scantier. For a useful primer and bibliographic source on the voluminous debate over the sources of intelligence, see Russell Jacoby and Naomi Glauberman, *The Bell Curve Debate: History, Documents, Opinions* (New York: Times Books, 1995).

that many people take to be the answer to racial injustice: the principle of color-blindness.

I. WHAT'S WRONG WITH COLOR-BLINDNESS ?

1. *Must Public Policy Be Color-blind?*

In 1989, the school board of Piscataway High School faced budget cuts that required it to fire one of two teachers of typing and secretarial studies, Sharon Taxman and Debra Williams. Taxman and Williams had equal seniority, having been hired on the same day in 1980. Rather than flipping a coin to decide which teacher to fire, the school board decided to fire Taxman and retain Williams, the only black teacher in the school's department of business education.

This example of race-conscious action is an easy target for a color-blind perspective. The school board violated Taxman's right not to be discriminated against on grounds of race, and the school board's action should therefore be prohibited. It is beside any moral point admitted by a color-blind perspective to say that the board may have acted consistently with the aim of overcoming racial injustice and that this kind of action can be morally distinguished from race-conscious policies that reflect "prejudice and contempt for a disadvantaged group" or increase the disadvantage of an already disadvantaged group.¹⁴ "[D]iscrimination on the

¹⁴ Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), p. 330. Dworkin asks whether "any race conscious distinction is always and inevitably wrong, even when used to redress inequality?" His answer is that it is not generally wrong because there is a difference between racial distinctions that reflect prejudice against members of a disadvantaged group (and are used to perpetuate the disadvantage) and distinctions that are designed to redress the disadvantage.

This distinction is the first step in a response to advocates of color-blindness who invoke Justice John Marshall Harlan's admirable lone dissent in *Plessy v. Ferguson*: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." His constitutional argument is clearly intended to avoid the legal creation or perpetuation of a caste system in which there is a "superior, dominant, ruling class of citizens" (163 U.S. 537 r1896). Although I am concerned directly with the moral rather than the constitutional question, answers to the two tend to go together.

basis of race,” Alexander Bickel wrote in a famous defense of color-blindness, “is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned, and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored.”¹⁵ A contemporary critic echoes Bickel when he associates the Piscataway school board’s action with “the most extreme form of racialism.”¹⁶

If we assume an ideal society, with no legacy of racial injustice to overcome, then there is everything to be said for the color-blind standard for making public policy. Fair opportunity requires that every qualified applicant receive *equal* consideration for a job on the basis of his or her ability to do the job well, not on some other basis. Preferential hiring or firing considers something other than a candidate’s ability to do the job well. It considers race, gender, class, or another characteristic that is not strictly speaking a qualification for the job. On this widely held and morally defensible understanding of fair opportunity, preferential hiring or firing — as its name implies — is unfair to individuals, violating their right to equal consideration on the basis of their qualifications.

It is equally important to say what preferential hiring or firing does not violate, even in an ideal society. It does not violate anyone’s right to a particular job. The principle of nondiscrimination grants no one a right to a particular job. It grants all individuals a right to equal consideration for those jobs for which they are basically qualified. In an ideal society, some wrong is therefore done to people who are passed over for jobs on the basis of something other than their qualifications (or unavoidable bad luck). But it is in our context, not the ideal one, that we must ask whether the Piscataway school board is morally bound to color-blindness. Advocates of preferential treatment can agree with critics that in a just society public policies would not distinguish among individ-

¹⁵ *The Morality of Consent* (New Haven: Yale University Press, 1975), p. 133.

¹⁶ Jeffrey Rosen, “Is Affirmative Action Doomed?” *New Republic*, October 17, 1994, p. 26.

uals on the basis of their ostensible race. This is our common ground. A commitment to nondiscrimination underlies the most publicly defensible response to racial injustice. The controversy over preferential treatment persists because despite this widely shared commitment the United States in the 1990s does not satisfy the premise of a perspective that makes color-blindness the obviously correct interpretation of what fairness among individuals demands. Color-blindness itself is not a fundamental principle of justice; nondiscrimination or fairness among individuals is.

Ongoing racial discrimination beginning early in the life of most black Americans compounded by grossly unequal and often inadequate income, wealth, educational opportunity, health care, housing, parental and peer support —all of which are plausibly attributable (in some significant part) to a history of racial discrimination —denies many black Americans a fair chance to compete for a wide range of highly valued job opportunities in our society. This observation by itself does not justify preferential treatment for blacks, but it does call the color-blind perspective into question. That perspective conflates the fundamental principle of fairness with a commitment to color-blindness. It therefore fails to leave room for according moral relevance to the fact that we do not yet live in a land of fair equality of opportunity. We will never live there unless we find a way of overcoming our legacy of racial injustice.¹⁷

¹⁷ There is almost no theory of justice —liberal, egalitarian, or libertarian — by which the United States today can be judged a just or nearly just society. My own conception of a just society would secure everybody's basic liberties (regardless of race, religion, gender, or sexual preference, for example) and also secure basic opportunities (such as a good education, adequate health care, and physical security) for everyone, would provide decent jobs and childcare opportunities for all adults who are willing and able to work and a substantial safety net to those unable to work through no fault of their own, and would distribute scarce, highly skilled jobs according to the principle of nondiscrimination. A just society would also, and as importantly, empower citizens and their representatives to deliberate about the political decisions that affect their lives. A defense and elaboration of this conception of justice is in Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University Press, in press).

The principle of nondiscrimination in hiring remains relevant even in societies that fall far short of justice (as all societies do, although to different degrees and on different dimensions). But the policy implications of nondiscrimination are far more complex than color-blindness admits. In our nonideal context, we can say something principled in the Piscataway school board's favor by invoking the same principle of nondiscrimination that would require color-blindness in an ideal society. Nondiscrimination means that equal consideration should be given to all qualified candidates so that candidates are chosen on the basis of their qualifications, where qualifications are set that are relevant to the legitimate social functions of the position in question. Just as a university like Stanford may reasonably think that geographical diversity contributes to its educational purposes—that being from Iowa is an added qualification for admission, for example—so a school like Piscataway may reasonably think that racial diversity contributes to its educational purposes.

There is more to be said for the educational relevance of racial diversity than for geographical diversity. Were it not for the presence of black students and teachers in schools and universities, nonblacks would have far less sustained contact with significantly different life experiences and perceptions, and correspondingly less opportunity to develop the mutual respect that is a constitutive ideal of democratic citizenship. Educational institutions in a liberal democracy should be dedicated to cultivating not only tolerance—an attitude of live and let live—but also mutual respect—a positive reciprocal regard based on understanding—among people with diverse life experiences and perceptions.¹⁸

The Piscataway school board reasonably thought that being black was a relevant qualification in a department that had only one black teacher. Being black was not the only or even the most

¹⁸ A discussion of the ideal of mutual respect among citizens is found in Amy Gutmann and Dennis Thompson, "Moral Conflict and Political Consensus," *Ethics* 101 (October 1990), 64–88.

important qualification, but one important enough to break a tie in deciding which of two otherwise equally qualified teachers to fire. Taxman lacked the tie-breaking qualification, through no fault of her own. Many applicants to universities lack the qualification of being from Iowa (and many people who might otherwise aspire to play pro basketball lack the qualification of being sufficiently tall) through no fault of their own, yet we permit universities to prefer Iowans over equally qualified Californians (and the NBA to prefer tall players to short ones),

The Piscataway case helps us pinpoint a problem with the common use or, more accurately, misuse of the standard of non-discrimination. There is a tendency, on the one hand, to accept as legitimate qualifications those characteristics, qualities, and abilities of persons that have long been considered relevant qualifications while, on the other hand, to suspect race as a qualification for any position because it has long been unjustly used to discriminate against individuals. This tendency is understandable —the suspicion is useful to a point —but when left unchecked or considered a correlate of an absolute principle of color-blindness, which prohibits using race as a qualification, it fuels injustice. The unchecked tendency insulates long-established hiring and admissions practices —such as counting seniority as a qualification for hiring, or geographical origins and legacy status as qualifications for university admissions —from critical scrutiny at the same time as it erects an insurmountable barrier to open-minded consideration of a case like that of the Piscataway school board, where being black was at least as relevant to the social function of teaching as having seniority or as being from Iowa is for university admissions.

We do not undermine the idea of qualifications for social offices and higher education when we recognize that the set of qualifications for hiring or admissions is typically quite open-ended, even if there are boundaries beyond which it would be unreasonable to claim that someone is basically qualified to be admitted to Stanford or hired as a high school teacher. Within these bounds,

the setting of qualifications is legitimately subject to the ever-changing results of ongoing deliberation by those people whom a democratic society authorizes to decide. The school board's decision that Williams had a qualification for teaching in Piscataway that Taxman lacked falls within these bounds.

There is another, even more controversial way in which being black may legitimately be taken into account by employers: by giving *preference* to basically qualified candidates for reasons other than their qualifications for the job. How could preferential treatment —as distinguished from affirmative action that entails taking steps to ensure that individual members of disadvantaged groups are not discriminated against in hiring or admissions —ever be justified? The case for preferential treatment rests on the idea that giving preference to basically qualified black candidates may help create the background conditions for fair equality of opportunity in our society. Many scarce and highly valued jobs in our society are racially stereotyped because of our racist past. In our context, even institutions that faithfully apply the principle of nondiscrimination in hiring may not be conveying a message of fair opportunity to blacks.

If preferential hiring of basically qualified blacks can break down the racial stereotyping of jobs, then there is a case to be made for considering not only a candidate's qualifications, which are specific to the function of a social office, but also a candidate's capacity to move our society forward to a time when the principle of nondiscrimination would work more fairly than it does today. The presence of basically qualified blacks in positions that have been stereotypically white can move us in this direction. In breaking down the racial stereotyping of jobs, preferential hiring of blacks can also create *identity role models* for black children and, as importantly, *diversity role models* for all citizens. Identity role models teach black children that they too can realistically aspire to social accomplishment, while diversity role models teach all children and adults that blacks are accomplished contributors to our

society from whom we all may learn.¹⁹ All three of these considerations —breaking racial stereotypes, creating identity role models, and diversity role models —are race-conscious.

It is worth noting that no principled case can be made for a university admitting students who cannot graduate or for a company hiring employees who cannot carry out their jobs well. Neither affirmative action nor preferential hiring should be dismissed by pointing to policies that admit or hire unqualified blacks. Affirmative action and preferential hiring are no doubt subject to abuse. But it would be a mistake to dismiss either or both for this reason. We could as readily dismiss color-blindness by pointing to those policies that are color-blind on their face but in reality discriminate by setting qualifications (such as being the child of an alumnus or fitting in well with the existing work force) that are not essential to the basic social purposes of a university or a business. It is as unfair to dismiss affirmative action as it is to dismiss color-blindness by pointing to their avoidable abuses. The abuses on both sides are avoidable by good-willed people.

If we need not be color-blind, then we may be race-conscious. But not all race-conscious policies are defensible. We can distinguish more defensible responses to racial injustice from less defensible ones on the basis of three features of a public policy. The first feature is its effectiveness in breaking down racial stereotyping and providing (identity and diversity) role models. The more effectively a race-conscious policy serves these broad social purposes, the greater its justification in light of the aim of achieving a color-blind society. The second feature is the ability of a race-conscious policy to move us toward the time when it is no longer necessary. The best race-conscious policies help bring about a society where racial preferences will no longer be needed to secure

¹⁹ Diversity role models also can help break down racial prejudice. “It is one thing for a white child to be taught by a white teacher that color, like beauty, is only ‘skin-deep,’” as Justice John Paul Stevens wrote in his dissenting opinion in *Wygant v. Jackson*. “It is far more convincing to experience the truth on a day-to-day basis” (*Wygant v. Jackson Board of Education*, 476 U.S. 287 [1986]).

fair opportunity for black Americans. The third feature is fairness toward all those individuals who are significantly affected by the policy relative to the available alternatives. Race-conscious policies in which race is a legitimate qualification for a job, for example, are more defensible than preferential treatment policies. Among preferential treatment policies, those that discriminate against individuals who would not be as advantaged had they not benefited from racial injustice are more defensible than those policies that discriminate primarily against relatively disadvantaged individuals. Policies that compensate individuals who are discriminated against are more defensible than those that do not.

The most justifiable policies of preferential treatment are therefore not the most moderate. The most justifiable policies avoid gratuitous unfairness and also help secure their own demise by bringing black Americans into positions of social status, economic power, and civic standing. The Piscataway plan is fair relative to the alternatives. It falls short of the model because it comes into play only in the relatively rare cases of ties in seniority and therefore (even if generalized) would have a relatively small effect in breaking down racial stereotyping and creating role models.²⁰ The problem is not the small effect per se, which is still positive, but the negative publicity that accompanies it and often overwhelms it. Even if the negative publicity is mistaken in suggesting that the

²⁰ Policies like Piscataway's fall prey to the criticism that "the bottom line on affirmative action is the paltriness of its material benefits." See Carol M. Swain, "A Cost Too High to Bear," *New Democrat*, May/June 1995, p. 19. But the AT&T example, which I discuss below, does not support Swain's conclusion that "[w]hatever else one may say about affirmative action policies, the actual progress they have brought has been meager indeed." We are not constrained by a "love it or leave it" approach to all affirmative action programs if we can distinguish among different kinds of policies. Swain urges us to address the challenging question that conservatives pose to liberals of "whether the practical gains from these policies outweigh the resentment and pain they have caused." Without pretending to offer a calculus of costs and benefits, we can assess the pros and cons of the vastly different kinds of affirmative action policies. I have only begun such an assessment here. See also the interesting attempt to carve out a "middle ground on affirmative action" by Jeffrey Rosen, "Affirmative Action: A Solution," *New Republic*, May 8, 1995, pp. 20-25.

costs of white resentment in reaction to such policies are greater than the benefits, the publicity can be self-fulfilling in provoking even more white resentment, which does in fact overwhelm the modest benefits.

We can expect more from preferential hiring policies than its critics admit, although only if citizens accept the idea that some (not purely compensatory) race-conscious policies can be justified. We should consider a far more consequential program that dates back to the early 1970s. AT&T instituted a “Model Plan,” which has been called the “largest and most impressive civil rights settlement in the history of this nation.”²¹ The mother of all preferential hiring programs was instituted in an out-of-court settlement under governmental pressure. The plan was anything but color-blind, and its effects were anything but incremental. The plan applied to 800,000 employees and led to an estimated 50,000 cases of preferential hiring over a six-year period. It gave preference to basically qualified blacks (and women) for management positions over white men who had better qualifications and (in many cases) greater seniority as well. The plan successfully broke down racial stereotyping of management positions and also helped integrate AT&T’s work force by race and gender.²² The plan set a timetable of six years, after which AT&T instituted a policy of nondiscrimination in hiring and firing. In this six-year period, AT&T transformed its work force, breaking down the racial and gender stereotyping of positions ranging from telephone operators to crafts workers to corporate management.

But should the small number of people passed over for positions at AT&T because of their race, most of whom are not among

²¹ *EEOC v. AT&T*, 365 F. Supp. 1105 (1973) at 1108, cited by Robert Fullinwider, “Affirmative Action at AT&T,” in *Ethics and Politics*, 2d ed., ed. Amy Gutmann and Dennis Thompson (Chicago: Nelson-Hall, 1990), p. 211. A fuller discussion of the AT&T case can be found in Gutmann and Thompson, *Democracy and Disagreement*.

²² The plan also gave preference to men over more qualified women in non-management positions such as telephone operator and thereby helped break down the gender stereotyping of these jobs.

the most advantaged in our society, be asked to pay the entire price of remedying the effects of racial injustice?²³ Not if we can find an equally effective alternative to preferential hiring that spreads the costs more equitably. Reparations for all those blacks who have suffered from racial discrimination, paid for by a progressive income tax, would be a morally better policy, but it has never come close to being adopted in this country. A massive reparations policy for all black Americans coupled with full employment, health care, housing, child care, and educational policies could in all likelihood do more to overcome racial injustices than the best preferential hiring programs — especially if these programs were designed in ways that strengthen local communities.

But would these policies have been adopted were it not for preferential hiring? (Will they be adopted if the California Civil Rights Initiative, which outlaws state support for preferential treatment programs, becomes law?) Arthur Ashe, himself no advocate of preferential hiring programs, captures the historical context in which they are morally defensible:

No one has paid black Americans anything. In 1666, my state, Virginia, codified the conversion of black indentured servants, with limited terms of servitude, into slaves. The Emancipation Proclamation came in 1863. In my time, no one has seriously pursued the idea of making awards to blacks for those centuries of slavery and segregation.²⁴

²³ The costs of preferential hiring, as Michael Walzer points out, are largely borne by the next-weakest group in society. Preferential hiring, Walzer writes, “won’t fulfill the Biblical prophecy that the last shall be first; it will guarantee, at most, that the last shall be next to last. . . .” Preferential hiring is nonetheless fairer as well as faster than the color-blind alternative of burdening the weakest group so as to avoid burdening the next-weakest (Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* [Oxford: Oxford University Press, 1983], p. 154).

²⁴ Arthur Ashe and Arnold Rampersand, *Days of Grace: A Memoir* (New York: Ballantine, 1993), p. 168. Ashe goes on to argue that although black Americans may be entitled to something, “our sense of entitlement has been taken too far.” He argues that “[a]ffirmative action tends to undermine the spirit of individual initiative. Such is human nature; why struggle to succeed when you can have something for nothing?” (p. 170). But preferential hiring plans of the kind implemented by AT&T — and of the kind whose merits we are considering — do not give

In the absence of better alternatives, we can defend those preferential hiring policies that effectively move us in the direction of racially integrating our economy provided they are not gratuitously unfair to the disadvantaged individuals who are passed over. (Adding class to racial preferences is one way of avoiding gratuitous unfairness. Although class preferences, as I suggest in the next section, are not an adequate substitute for race-conscious policies, they are an important supplement to them.) Were this country to expand employment opportunities, improve education, and provide health care, child care, and housing opportunities for all its citizens, regardless of their race, some preferential hiring policies might still be justifiable if they were needed to equalize job opportunities in the short run by breaking down the racial stereotyping of jobs and providing role models.²⁵ Preferential hiring will not itself overcome racial injustice, but neither will social welfare policies, taken by themselves. In light of our long history of racial discrimination, we should not be surprised to find that none of these policies is sufficient to secure fair opportunity for black Americans.

2. Should Public Policy Be Class Conscious?

We have yet to consider a color-blind proposal that promises to secure fair opportunity for black Americans by shifting the

black Americans something for nothing. They give them jobs for being basically qualified and black, rather than for being the most qualified among the available candidates.

²⁶ For a counterargument, see Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (New York: Harper, 1991), esp. pp. 11–125. It is hard to know how to evaluate Steele's case that affirmative action (unintentionally) demoralizes blacks and enlarges their self-doubt. We should not deny people otherwise justified benefits because of the paternalistic consideration that the benefits may demoralize them or enlarge their self-doubt. (Many successful people are tormented by self-doubt partly because they are more successful than they believe they deserve to be.) If Steele is right about the psychological effects of affirmative action programs, there is cause for concern but not retraction. Without more evidence, it is hard to know whether and to what extent he is right. Steele's claim that affirmative action denies blacks responsibility for their own educational and economic development is not sustainable against programs that consider only basically qualified candidates and expect successful candidates to perform well in their positions.

focus of public policy from race to class. One advocate of “Class, Not Race” argues that “it was clear that with the passage of the Civil Rights Act of 1964, class replaced caste as the central impediment to equal opportunity.”²⁶ If class is the central impediment to equal opportunity, then class preferences may be fairer to individuals than race preferences.²⁷ They help only poor blacks, not middle-class or affluent blacks, and they also help poor nonblacks.²⁸ In addition to being fairer, class preferences may be politically more feasible and therefore potentially more effective in addressing racial injustice.²⁹ The apparently rising tide of race resentment

²⁶ Kahlenberg, “Class, Not Race,” p. 21. Kahlenberg writes: “As the country’s mood swings violently against affirmative action . . . , the whole project of legislating racial equality seems suddenly in doubt. The Democrats, terrified of the issue, are now hoping it will just go away. It won’t. But at every political impasse, there is a political opportunity. Bill Clinton now has a chance . . . to turn a glaring liability . . . into an advantage — without betraying basic Democratic principles.”

²⁷ Class preferences are sometimes said to be fairer because they are more individualized than race preferences. But the claim that income is an individual characteristic while race is a group characteristic makes little sense. In itself, race is no more or less a group characteristic than income. Both generalize on the basis of a group characteristic, as do all feasible public policies. As Michael Kinsley puts it: “[T]he generalization ‘Black equals disadvantaged’ is probably as accurate as many generalizations that go unchallenged, such as ‘High test scores equals good doctor’ or ‘Veteran equals sacrifice for the nation’ (Kinsley, “The Spoils of Victimhood,” p. 66).

²⁸ Disadvantage by race, moreover, is not remediable merely by civil or criminal penalties for people who are found guilty of racial discrimination. The costs of bringing lawsuits and the difficulty of proving discrimination are so great as to cast doubt on the argument offered by advocates of color-blindness that laws against discrimination can serve as an effective deterrent. But compare Swain, “A Cost Too High to Bear,” p. 20.

²⁹ There is also a legal case that class preferences are better than race preferences, which is based on the claim that class is not a suspect category under the Fourteenth Amendment, while race is. Class preferences therefore have the advantage of not being constitutionally suspect. The constitutional case against racial preferences, however, is largely dependent on the moral case for color-blindness, which I criticized in the first part of this lecture. Racial preferences that are used to create fair opportunity for blacks need not be suspect under the Fourteenth Amendment. Only those racial preferences that reflect prejudice against a disadvantaged group and serve to further disadvantage that group should be considered suspect. Racial distinctions that are relevant to carrying out a job well or that are designed to redress disadvantage therefore should not be deemed unconstitutional or even subject to the strictest scrutiny. See esp. Ronald Dworkin, “Reverse Discrimination,” in *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), pp. 223–39; and Dworkin, *Matter of Principle*, pp. 293–334. Compare Kahlenberg, “Class, Not Race,” p. 24.

in the United States makes the call to leave race preferences behind all the more credible.³⁰

The case for “Class, Not Race” is most commonly made with regard to university admissions. How solid is the claim that university admissions policies would be fairer if considerations of race were left behind, and considerations of class took their place? One advocate of this shift notes that “[w]e rarely see a breakdown of [SAT] scores by class, which would show enormous gaps between rich and poor, gaps that would help explain differences in scores by race.”³¹ After breaking down average SAT scores by class and race, we see enormous gaps between rich and poor students. But we also see equally enormous gaps between black and white students within the same income groups. The same evidence that lends support to the idea that students who grow up in poor families face distinctive educational disadvantages also lends support to the idea that black students face distinctive educational disadvantages, which are not statistically accounted for by the income differentials between white and black students.

The average combined SAT scores for black students whose parents earn between \$10,000 and \$20,000 is 175 points lower than the average combined score for white students whose parents fall in the same income category. The gap between the average SAT scores of black and white students within this income category narrows by only 21 points out of the 196 point gap between all black and white students taking the test.³² If selective colleges

³⁰ Advocates of class preferences also argue that class-based preferences are less likely to be stigmatizing because “[t]here is no myth of inferiority in this country about the abilities of poor people comparable to that about African Americans” (Kahlenberg, “Class, Not Race,” p. 26). This is highly speculative since once class-based preferences are instituted they may elicit a similar myth about the inferiority of the poor. For an insightful piece of political fiction on this score, see Michael Young, *The Rise of the Meritocracy* (Baltimore: Penguin Books, 1961).

³¹ Kahlenberg, “Class, Not Race,” p. 24.

³² The gap for parental incomes between \$20,000 and \$70,000 is 157 points. The gap between white and black students with parental incomes over \$70,000 is 144 points. The gap between white and Asian students, by contrast, increases as parental income increases. Asian students on average overtake white students once

and universities leave race-based preferences behind and adopt class-based preferences, their student bodies would become almost entirely nonblack.³³

The fundamental problem would not be results per se, but what they indicate about the nature of educational opportunity and experience in our society. Proportional representation by race in selective universities is not the ultimate goal of a just society. Fair equality of opportunity is. The problem in universities' focusing on class considerations to the exclusion of race is not disproportionality of results but unfairness, as indicated by the inconsistency in the reasoning that supports the proposed shift from race to class. The statistical evidence of lower average SAT scores by income categories is taken to indicate that low-income students are disadvantaged in a way that warrants giving them preference. But the analogous statistical evidence of lower average SAT scores by racial categories is not taken to indicate that black students are disadvantaged in a way that warrants giving them preference.³⁴

Why should the same statistical evidence that is used to establish the case for class preferences be ignored or discounted when

parental income surpasses about \$20,000. The average SAT scores for Hispanic students range from 52 to 89 points greater than the average for black students, controlling for parental income. The source for this information about the 1990 SAT is the College Board. It is reported and discussed in Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* (New York: Scribner, 1992), pp. 139-46.

³³ Using income as a proxy for both disadvantages discriminates in favor of low-income white students and against low-income and middle-income black students. Need-based preferences in university admissions, as Jeffrey Rosen recently observed, if "honestly applied, would replace middle-class black students with lower-class white students" (Rosen, "Affirmative Action: A Solution," p. 22). "This is why," as Andrew Hacker argues in *Two Nations*, "affirmative action that aims at helping blacks must take race into account" (p. 141).

³⁴ After observing that "SAT scores correlate lockstep with income at every increment," Kahlenberg notes that "[u]nless you believe in genetic inferiority, these statistics suggest unfairness is not confined to the underclass." He therefore endorses giving preference to "offspring of the working poor." The same logic applies to racial disadvantage. At every income level, SAT scores vary with race. Unless you believe in genetic inferiority (for which no good evidence exists), the statistics suggest that unfairness is not confined to blacks whose parents are poor or working class (Kahlenberg, "Class, Not Race," p. 26).

considering race preferences? In both cases, institutions as well as individuals should share responsibility for overcoming the obstacles associated with being poor or black (or both). In both cases, the mission of a university in furthering fair equality of educational opportunity and creating a culturally diverse student body is consistent with counting the overcoming of these obstacles as qualifications for admission, although by no means the only qualifications. Quite the contrary, universities would be falling short of providing fair equality of opportunity to the extent that their admission policies neglected the economic and racial obstacles that applicants have had (and still have) to overcome. The obstacles of class and race are both overlapping and distinct in this society.

The inconsistency and unfairness in shifting from race to class, rather than adding class to race as an independently important consideration in admissions, becomes vivid when we imagine what universities that adopt the “Class Not Race” proposal would effectively be saying to their applicants. To the average low-income white student, they would say: “Giving you a boost in admissions is consistent with our expectation that you have worked hard to get where you are and will continue to work hard to earn your future success.” To the average low-income black student, they would say: “If we give you an added boost in admissions over the average low-income white student, we will be denying your responsibility for your lower scores and decreasing your incentive to work hard and earn your success.” To average middle-income black students, they would say: “We cannot give you any boost in admissions over average middle-income white students because you no more than they have any special obstacles to overcome.”

Universities could achieve consistency if they discounted the educational obstacles faced by students, whether they be poor, or black, or physically handicapped. But the price would be forsaking fair equality of educational opportunity. Universities could also achieve consistency by discounting the educational and associational value of cultural diversity on campus. The price would be

forsaking a culturally diverse association, which has educational value. This policy would also entail rejecting many of the other, nonacademic factors that universities have traditionally considered relevant in admissions, such as geographical diversity and athletic ability. A case can be made that universities should forsake these factors, but giving up on race as a consideration in admissions is neither the fairest nor the most effective way of moving universities in this direction.

Some advocates of “Class Not Race” in university admissions rest the case on a defense of individual responsibility. Their view is that when universities give a boost to applicants above and beyond their actual educational achievements, they foster in that group of applicants a sense of irresponsibility for their (relative lack of) educational achievements. This is a peculiar argument for two reasons. First, it is not the case that responsibility is zero-sum. If universities assume some responsibility for helping applicants who have faced unusually great obstacles to educational achievement, they are not denying the responsibility of those applicants to work hard and demonstrate their capacity to succeed once they are admitted. Second, the same argument from responsibility is not invoked in opposition to giving a boost to low-income students, even though it applies with the same force. The force of this argument—even if consistently applied—is weak, because responsibility for educational success is both institutional and individual. When universities share responsibility for helping students overcome educational obstacles, they do not therefore relieve them of the responsibility to succeed academically. Students who are given a boost in an admissions process still must compete for admissions, work for their grades, and compete for jobs on the basis of their qualifications.

The case for income *and* race as considerations in university admissions is strong: stronger than either consideration taken to the exclusion of the other. The “Class Not Race” proposal, by contrast, fails by the color-blind test of fairness; it does not treat

like cases alike. It discriminates against blacks by giving a boost only to students who score low because of disadvantages associated with poverty, but not to students who score low because of disadvantages that are as credibly associated with race.³⁵ A fairer and far more complex version of class preferences would count not only parental income, education, and occupation, but also “net worth, the quality of secondary education, neighborhood influences and family structure.” Since blacks “are more likely than whites to live in concentrated poverty, to go to bad schools and live in single-parent homes,” this more “complex calculus of disadvantage” would “disproportionately” benefit blacks.³⁶ This proposal would go almost as far toward fair equality of educational opportunity as would explicit considerations of race in university admissions without calling attention to the enduring racial divisions in our society.

This strength of the complex calculus of disadvantage is also its weakness. By not calling attention to our enduring racial divisions, we may better be able to overcome them. Or we may never overcome them. It is impossible to say on the basis of available evidence—and the enduring imperfections of our self-understanding—which is more likely to be the case. What we can say is that if blacks who live in concentrated poverty, go to bad schools, or live in single-parent homes are also stigmatized by racial prejudice as whites are not, then even the most complex calculus of *class* is an imperfect substitute for also taking race explicitly into account. Perhaps racial disadvantage can be adequately addressed by remedies that do not explicitly take race into account, but the adequacy of a proposal such as the complex calculus of disadvantage

³⁵ Giving preferences on the basis of race or class depends on the claim that admissions are not a prize for past merit, but a bet on future promise along with a judgment of each student’s ability to contribute to the educational institution itself. For discussion of an important distinction between the distribution of social offices, based on qualifications, and the distribution of social prizes, based on merit, see Walzer, *Spheres of Justice*, pp. 135-39.

³⁶ Kahlenberg, “Class, Not Race,” p. 25.

will then be closely related to the intention of its designers to come as close as possible to achieving justice on a racial as well as a class dimension. In the name of fairness, we may reject the “Class, Not Race” proposal, but we are far better off with a complex calculus of class than with a simple one. And better off still with policies that at least implicitly recognize the independent dimension of race as an obstacle to educational achievement in our society. The color-blind principle of fairness has these inclusive implications; it encourages employers and universities to consider both dimensions of disadvantage in giving preference (along with other dimensions, such as gender) and also to consider a wider range of qualifications for jobs and places in a university.

Even race, class, *and* gender preferences, taken together, however, would not adequately address the problem of racial injustice. Neither class nor race nor gender preferences, as commonly defended, address a more urgent problem: the deprivation experienced by the poorest citizens, over 30 percent of whom are black. The poorest citizens are not in a position to benefit from preferential admissions or hiring based on either class or race. This is a weakness shared by all kinds of policies that focus on giving a boost to individuals—whatever their skin color and relative advantage to one another—who are already among the more advantaged of our society. Millions of citizens, a vastly disproportionate number of them blacks, suffer from economic and educational deprivations so great as to elude the admittedly incomplete and relatively inexpensive remedies of affirmative action.³⁷ Policies aimed at increasing employment, job training, health care, child care, housing, and education are desperately needed for all these individuals, regardless of their color. These policies would not give

³⁷ As William Julius Wilson writes, “[n]either programs based on equality of individual opportunity nor those organized in terms of preferential group treatment are sufficient to address the problems of truly disadvantaged minority group members” (*The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* [Chicago: University of Chicago Press, 1987], p. 112).

preferential treatment to anyone.³⁸ They would treat the least advantaged citizens as civic equals who should not be deprived of a fair chance to live a good life or participate as equals in democratic politics due to the bad luck of the natural lottery of birth or upbringing.

Social welfare and fair workfare policies — which provide jobs that pay and adequate childcare for everyone who can work — are a necessary part of any adequate response to racial injustice. They are also far more expensive than policies of preferential treatment, at least in the short run. Over time, these policies would more than pay for themselves. They would alleviate the increasingly expensive and widespread problems of welfare dependency, unemployment, and crime in this country. Without fair workfare and welfare policies, we cannot be a society of civic equals. Citizens will be fighting for their fair share of a social pie that is too small to provide fairness for everyone. The political fights will invariably divide us by groups, since effective democratic politics on any but the smallest scale is group politics. If we aim to build a society in which citizens both help themselves by helping each other and help each other by helping themselves, then we must also try to make the economic pie sufficiently large and divided in such a way that every person who is willing to work can find adequate childcare and decent work that pays.

As urgent as social welfare, workfare, and childcare policies are, they would not by themselves constitute a sufficient response to racial injustice in the short run. We have seen that race-conscious programs are also part of a comprehensive response to injustice, although not the most urgent (or most expensive) part. A more comprehensive, race-conscious perspective is fair, a sympathetic critic might reply to this argument, but is it feasible? A recent, eye-opening study shows that mere mention of the words “affirma-

³⁸ For an extended and insightful defense of some of these policies, see Wilson, *The Truly Disadvantaged*. See also Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993), esp. pp. 229–36.

tive action” elicits negative attitudes about black Americans from white Americans. After affirmative action is mentioned in the course of an interview with white citizens, the proportion who agree with the claim that “blacks are irresponsible” grows from 26 percent to 43 percent. (The proportions grow from 20 to 31 percent for the claim that “blacks are lazy” and from 29 to 36 percent for the claim that “blacks are arrogant.”³⁹) The authors of this study conclude that white Americans’ “dislike of particular racial policies can provoke dislike of blacks, as well as the other way around.”⁴⁰

“Provoking dislike” is importantly ambiguous between *producing* dislike and *triggering* the open expression of it (where the dislike already preceded the mere mention of affirmative action). It is doubtful that the mere mention of affirmative action *creates* racial prejudice. (We have no evidence that it has this effect.) But we do have evidence that the mere mention of affirmative action *releases greater oral expression* of racial animosity. It is likely that many white Americans take the mention of affirmative action, particularly in a matter-of-fact question that opens up the possibility of their criticizing affirmative action policies, as a signal that it is acceptable to be critical not only of affirmative action but also

³⁹ Paul M. Sniderman and Thomas Piazza, *The Scar of Race* (Cambridge: Harvard University Press, 1993), pp. 97–104. Another surprising finding discussed in this study is that larger percentages of black Americans express these negative images of blacks. Larger proportions of blacks also express positive images of blacks.

⁴⁰ *Ibid.*, p. 104. A few pages later, Sniderman and Piazza claim that “affirmative action is so intensely disliked that it has led some whites to dislike blacks—an ironic example of a policy meant to put the divide of race behind us in fact further widening it” (p. 109). But this claim is without adequate empirical support by their study, since the divide of race should be measured by more than public opinion.

Even if affirmative action does lead some whites to dislike blacks, its beneficial effects in bringing more blacks into skilled jobs and high-status positions might outweigh its negative effects. We have many reasons to doubt that affirmative action suffices to put the divide of race behind us. But we also have many reasons to doubt that affirmative action on balance has widened the divide of race in this country, since that divide must be measured by far more than the expression of white dislike of blacks (or black dislike of whites). The increase in the black middle class, and the decrease in the racial stereotyping of jobs, for which affirmative action is at least partly responsible, has helped narrow the divide of race.

of blacks. This is cause for concern, and at least a reason to avoid labeling policies as affirmative action if nothing significant is to be gained by so doing. (Something seems to be lost.) But it is not a sufficient reason to abandon affirmative action programs — whatever we call them — that are otherwise fair and beneficial to blacks.

Another finding of this same study suggests why it would be a mistake to oppose affirmative action only on these grounds. The popularity of programs that are perceived to help blacks is highly volatile, shifting with the public's perception of the state of the law and the moral commitments of political leadership. When white citizens are asked for their views on a set-aside program for minorities — “a law to ensure that a certain number of federal contracts go to minority contractors,” 43 percent say they favor it. But when white citizens are told that the set-aside program for minorities is a law passed by both houses of Congress, the support significantly increases to 57 percent.⁴¹

Not only does the force of law seem to have the capacity to change people's minds on race matters, so does the force of moral argument. When exposed to counterarguments to their expressed positions on various policy responses to racial problems, many people switch their position in the direction of the counterarguments. This tendency is greatest for social welfare policies, such as government spending for blacks, but the tendency is also significant for affirmative action policies, where an even greater proportion of whites shift to favoring a pro-affirmative action position than switch to an anti-affirmative action position when exposed to counterarguments to their original positions: 23 percent of white respondents shift from a negative to a positive position on affirmative action compared to 17 percent who shift in the opposite direction.⁴²

Moral argument and political leadership, as this study vividly indicates, make a significant difference in public opinion on race

⁴¹ *Ibid.*, pp. 131-32.

⁴² *Ibid.*, p. 148.

matters. This is potentially good news for deliberative democracy. Were we to make our politics more deliberative, we would also — in all likelihood — increase the potential for bringing public policy and race consciousness more in line with the force of moral arguments. There are no guarantees, of course, about where the force of argument will lead citizens and public officials on these complex issues. But as long as the potential exists for changing minds through deliberation, citizens and public officials alike have good reason — moral as well as prudential — not to endorse public policies merely because they conform to public opinion polls. “New majorities can be made — and unmade,” Paul Sniderman and Thomas Piazza conclude. “The future is not foreordained. It is the business of politics to decide it.”⁴³

All the more reason to approach the political morality of race with renewed openness, at least as much openness as ordinary citizens evince in extended discussions of racially charged issues, which — as Toni Morrison reminds us — include most issues of our public life. Unless we keep the aim of overcoming racial injustice at the front of our minds and at the center of our democratic deliberations, we shall not arrive at an adequate response to racial injustice. I do not pretend to have provided that response, or even anything close to it, in this lecture. But I hope to have helped keep the door open to exploring new possibilities and changing minds, including my own, as our deliberations on these issues continue. Only if we keep the aim of overcoming racial injustice at the center of our deliberations about social justice can we realistically hope to develop into a democracy with liberty and justice not only for whites but for all.

⁴³ *Ibid.*, p. 165. Sniderman and Piazza are far less certain about this conclusion vis-à-vis what they call the “race conscious agenda,” but their findings appear to hold for affirmative action as well as what they call social welfare and fair housing issues. The minority set-aside program certainly counts as preferential treatment, which is part of what Sniderman and Piazza are calling affirmative action. The positive shift in white support of a minority set-aside program upon learning that it has the sanction of law turns out to be among the more striking shifts in opinion that Sniderman and Piazza report.

II. WHAT'S RIGHT ABOUT RACE CONSCIOUSNESS?

1. *Why Not Race Proportionality?*

Black voters in North Carolina constitute approximately 20 percent of the state's electorate. Until the recent redistricting plan was put into effect, they had not elected a black representative to the United States Congress since Reconstruction, and not for lack of trying. The vast majority of white voters voted as a bloc and handily defeated the candidates supported by most black citizens, who also tend to vote as a bloc. The new redistricting plan changed this situation, critics say, for the worse because it tries to ensure race proportionate representation. The plan is morally defensible, I shall argue, but not because it ensures race proportionality in representation.

Facing the need to redistrict after the 1990 census, having gained a twelfth seat in the United States House of Representatives, the North Carolina state legislature approved a reapportionment plan with one majority-black district. When the U.S. attorney general found that plan in violation of the Voting Rights Act, the legislature approved a revised plan with a second majority-black district in a way that preserved as many districts of incumbents as possible. The most widely publicized feature of the plan was its newly created Twelfth District with a 53.34 percent black voting age population. The Twelfth District stretches for 160 miles through ten counties in a band often no wider than the Interstate Highway 85, linking the historically black parts of Durham, Greensboro, Winston-Salem, and Charlotte.⁴⁴

The Twelfth District's shape is famous largely because it features in the Supreme Court's 5 to 4 decision in *Shaw v. Reno*. Writing for the majority, Justice Sandra Day O'Connor remanded the decision back to the district court, on grounds that a "bizarrely" shaped majority-black district should be subject to stricter consti-

⁴⁴ *Shaw v. Hunt*, United States District Court for the Eastern District of North Carolina, Raleigh Division, 1994 U.S. Dist. LEXIS 11102 (August 1, 1994).

tutional scrutiny than a merely “irregularly” shaped majority-black district. O’Connor’s opinion is at least as convoluted as the district that it subjects to strict scrutiny. The extraordinary shape of the district, O’Connor suggests, calls attention to its race proportionality rationale, which is morally and constitutionally suspect.⁴⁵ The plan and its race proportionality rationale, she argues, assume that “members of the same racial group . . . think alike, share the same political interests, and will prefer the same candidates at the polls.”⁴⁶ If a government assumes that the political interests of its citizens are given by their racial identities, then my interests and yours can be virtually represented by anyone who shares our racial characteristics since my being white and your being black (by assumption) determines our different political interests. This denies each of us our individuality along with our civic freedom as citizens.

The logic of race-proportional representation says that if 20 percent of the North Carolina electorate is black, then 20 percent of the legislature should be elected by blacks, no more, no less. One problem with race proportionality is that it virtually guarantees majority tyranny in the United States, even as it seeks to lessen its force by reducing the monopoly that white citizens once had on political power. Critics like O’Connor neglect to mention, however, that race proportionality is better than the greater preponderance of white power that preceded it. But the greater preponderance of white power or race proportionality are not our only options, nor is achieving race proportionality in representation the best defense of the North Carolina plan.

⁴⁵ O’Connor also suggests that the “irrational” shape of the second majority-black district signals the intent to “*segregate* voters into separate voting districts because of their race [emphasis added].” Yet the Twelfth District is not segregated. In fact, it is more integrated than many electoral districts that have passed moral and constitutional muster. The redistricting plan also conforms to one person—one vote, and it does not deny white citizens a fair opportunity to elect the representatives of their choice. See *Shaw v. Reno*, 509 U.S. (1993), 125 L Ed 2d 511.

⁴⁶ *Ibid.*

The North Carolina plan gives black citizens greater prospects of electoral success than they have had in the past. This is a good reason to recommend it over what existed before, not because blacks “think alike, share the same political interests, and will prefer the same candidates at the polls,” but because all blacks are more likely (as a matter of contingent, historical fact) to place the interest of overcoming racial injustice near the top of their political agenda. A defense of the North Carolina redistricting plan assumes only that blacks are on average more aware than whites of our mutual (moral) interest in overcoming racial injustice; they are more disadvantaged by the persistence of racial injustice, and (therefore) more likely to give this interest the priority that it warrants. This defense of the North Carolina plan does not even assume that black citizens will support the same candidates at the polls. It assumes only that, in light of the urgency of overcoming racial injustice and the greater perception of that urgency among black citizens, black citizens should have greater prospects of electoral success than they have had in the past or than they now have.

Black citizens —although as varied in their political views and interests as whites —tend to support programs that improve opportunities in education, employment, health care, housing, and childcare for individuals in need far more than do whites. Black citizens also distrust government more than do white citizens, perceiving it to be “white-run” in a way that neglects their basic interests in overcoming massive “unemployment, poverty, inferior educational opportunities, poor health care, and the scourge of drugs.”⁴⁷ Expanding the electoral influence of black citizens is a way to keep the aim of overcoming racial injustice at the front of our political minds and at the center of our democratic deliberations.

The electoral influence of black citizens is most effectively expanded by reforms that encourage cross-racial coalitions. Cross-racial coalitions are typically formed when black citizens have an

⁴⁷ Carol M. Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress* (Cambridge: Harvard University Press, 1993), pp. 7-11.

effective chance of swinging close elections and when political processes are structured to encourage deliberation across racial lines. Increasing the effective voice of black citizens in this way does not presuppose that black citizens share the same comprehensive perspective on politics. But it does recognize that blacks on average tend to give greater political primacy than white citizens to overcoming the ongoing effects of racial injustice.⁴⁸ There is nothing illiberal or undemocratic about this recognition.

The North Carolina plan gave greater influence to black voters than was previously the case. The redistricting plan would have been even better had it given black voters a greater than proportionate influence over electoral outcomes in an effort to overcome racial injustice in legislative outcomes in the future. As long as racial injustice in legislative results remains a problem, we cannot claim that equalizing the capacity of black citizens to cast an equally weighted vote succeeds in treating individuals as civic equals.⁴⁹ The equalization of voting power *publicly expresses* the idea of civic equality, but it does not go as far as electoral reform can legitimately go to protect black Americans against unjust results in legislation.⁵⁰ In choosing among alternative ways of equalizing voting power, all of which publicly express the idea of civic equality, we may invoke the aim of protecting against racial injustice in legislative outcomes.⁵¹ This aim leads us to favor redis-

⁴⁸ For a useful summary of the empirical evidence that supports these presuppositions, see Swain, *Black Faces, Black Interests*, ch. 1. Swain's important study also lends solid empirical support to the beneficial results that can come from building cross-racial coalitions.

⁴⁹ See Charles Beitz, *Political Equality* (Princeton: Princeton University Press, 1989), p. 9.

⁵⁰ See *ibid.*, esp. pp. 8–11; and Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991), pp. 25–62.

⁵¹ “One person—one vote” may not be the best voting rule if we take into account the aim of reducing racial injustice in electoral outcomes. Among the many legitimate ways of equally distributing the power to vote, any number of votes equally distributed among citizens satisfies the equal power requirement for vote distribution. In a multimember district with an at-large election for seven city-council positions, for example, “one person—seven votes” recognizes citizens as civic

tricting plans that increase the effective influence of black voters while preserving everyone's equal voting power.

A critic might argue that what counts as racially unjust results in legislation is a matter of partisan politics and therefore cannot be a legitimate consideration in redistricting. The critic is half right. There are many partisan disagreements about counts as racially unjust results in legislation, but these partisan disagreements do not discredit the aim of reducing racially unjust results by redistricting. All parties can agree that they have a responsibility to avoid racially unjust results in legislation, and all can deliberate about what electoral designs best protect against such results just as they deliberate about whether and how to protect incumbents, which is a far less urgent—and no less partisan—consideration.

We cannot of course create electoral schemes that *guarantee* just results in legislation, but we can still distinguish between better and worse electoral systems by judging (as best we can) which are more likely to help overcome racial injustice in electoral outcomes. Relative to the status quo ante, the North Carolina plan moved in this direction.⁶² Relative to other possible alternatives, which would help build cross-racial coalitions in more electoral

equals and satisfies the standard of equal voting power. This voting scheme is what Lani Guinier calls "one-vote, one-value." For her far more detailed and somewhat different defense, see "Groups, Representation, and Race Conscious Districting: A Case of the Emperor's Clothes," *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: Free Press, 1994), pp. 119–56.

⁶² It also conforms to a credible interpretation of the Voting Rights Act of 1965 and the Voting Rights Amendments of 1982, the legal bases on which the attorney general rejected the first plan, which had only one majority black district. The Voting Rights Act explicitly aims to protect against *racial discrimination* in voting and representation. The act requires, for example, that black citizens not have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." It does not require that black citizens have descriptive representation in Congress that is proportional to their percentage in the population. Quite the contrary, a 1982 provision added by Congress to the original section 2 reads that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." See *Public Law 97-205, 97th Congress* ("The Voting Rights Act Amendments of 1982").

districts, the plan was far from perfect. The major shortcoming of the North Carolina plan is not the “bizarre” shape of the Twelfth District, but the ordinary scheme of protecting incumbents at (almost) any cost, which Justice O’Connor’s opinion apparently took for granted.⁵³

The Supreme Court has just recently handed down another hotly contested 5-to-4 decision in a redistricting case, *Miller v. Johnson*.⁵⁴ This case comes from Georgia and features a new Eleventh District, which spans a 260-mile long corridor from the outskirts of Atlanta to Savannah.⁵⁵ Writing for the majority, Justice Anthony Kennedy explicitly denied that it is the bizarre shape of a majority-black district that triggers the need for strict scrutiny. The distinction on which the majority decision now relies is not between the bizarrely and (merely) irregularly shaped districts that may result from the redistricting process, but rather between a partisan process that uses race as a “predominant” factor and one that uses race as merely one important factor among others in creating new district lines. The majority decision found that the Georgia legislature had used race impermissibly because it was the predominant factor in creating the Eleventh District.

The majority’s reasoning in *Miller v. Johnson* is somewhat clearer than it was in *Shaw v. Reno*, but it still falls short of making the moral case against race-conscious redistricting. “Just as the

⁵³ During its 1995–96 term, the Supreme Court will hear another redistricting case, this one from Texas — *Bush v. Vera* (No. 94–805) — which questions the legitimacy of drawing districts along racial lines in order to protect incumbents. Although our discussion focuses on the political morality rather than the constitutionality of redistricting along racial lines, the two sets of considerations are closely related in light of the fact that the constitutional language of the Fourteenth Amendment that governs these redistricting decisions consists of a relatively abstract moral principle. The Voting Rights Act is also cast in principled terms.

During its 1995–96 term, the Court will also hear *Shaw v. Hunt* (No. 94–923), the son of *Shaw v. Reno*. After the district court upheld the redistricting plan under the Court’s compelling state interest standard, the same white citizens who had brought the original challenge to the Court appealed the decision, and the Court has agreed to hear their appeal in *Shaw v. Hunt*.

⁵⁴ No. 94-631, 1995 U.S. LEXIS 4462 (June 29, 1995).

⁵⁵ Linda Greenhouse, “Justices, in 5-4 Vote, Reject Districts Drawn with Race the ‘Predominant Factor,’” *New York Times*, June 30, 1995, pp. A1, A23.

state may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools,” Justice Kennedy writes, so it “may not separate its citizens into differing voting districts on the basis of race.”⁵⁶ But the analogy with segregated facilities is misleading since Georgia’s redistricting plan does not prevent black and white citizens from living, playing, traveling, and learning together, however they see fit. Segregated public parks, buses, golf courses, beaches, and schools curtail the basic liberties of citizens and deny their equal standing as citizens. Race-conscious redistricting does not curtail any citizen’s basic liberty to cast an equally weighted vote in an election or deny any citizen’s civic equality or equal standing before the law. The new, majority-black Eleventh District —unlike segregated parks, buses, golf courses, beaches, and schools —includes both black and white citizens on strictly equal terms. It denies no one the equal status and voting power of a democratic citizen. Its defensible aim is not segregation, but greater concentration of the voting strength of black citizens than previously existed in Georgia so as to give black citizens a more effective voice in legislative politics. This may be a political mistake, but it does not violate anyone’s basic rights to due process or equal protection.

Like the North Carolina plan, the Georgia redistricting plan may not be optimally designed to achieve the aim of increasing the influence of black voters, but the aim itself is legitimate. The aim cannot meaningfully be said to be the segregation of races, any more (or less) than a redistricting plan that concentrates Republicans (or WASPs) in some districts and Democrats (or recent immigrant groups) in others can be meaningfully said to segregate Americans. In her concurring opinion in *Miller v. Johnson*, Justice O’Connor expresses a concern that her opinion in *Shaw v. Reno* not be taken to treat race-based redistricting “less favorably than

⁵⁰ *Miller v. Johnson*, No. 94-631, U.S. LEXIS 4462, at 21.

similar efforts on behalf of other groups” (such as ethnic minorities).⁵⁷ Taking O’Connor’s concern seriously should lead us to a more favorable assessment of race-based redistricting that increases the influence of black voters in legislative politics. As long as we approve of redistricting efforts that aim to increase the influence of other groups, we cannot consistently (or fairly) stop short of recognizing the legitimacy of race-based redistricting, even if its results are not ideal from our political perspective. If we are committed to get rid of race-based redistricting, then we should begin by getting rid of all previous districting efforts whose aim and effect has been to give groups concentrated political influence. We should not single out blacks as a group whose electoral influence may not be increased by redistricting. If we do, we are treating them unfairly.

Race-conscious redistricting that does its best to encourage the building of cross-racial coalitions would be better than the more typical plans, such as those of North Carolina, Georgia, and Texas, that concentrate blacks very heavily in only a very few districts, often in an unannounced effort to protect as many incumbents as possible. Race-conscious redistricting, at its best, can help overcome racial injustice in a democracy.⁵⁸ At its worst, it will increase the descriptive representation of blacks in the legislature but decrease the effective legislative influence of black voters. The best redistricting plans, designed in a way that helps overcome racial injustice in legislative outcomes, may sometimes coincidentally also achieve race proportionality in representation by black legislators, but this is not the ultimate, or most defensible, aim of race-conscious

⁵⁷ Ibid. at 52.

⁵⁸ I have not argued that overcoming racial injustice in legislation is *the only critical aim of electoral reform*, only that it is one critical aim, and perhaps the dominant one. Had the Court or the North Carolina legislature made a case for another aim (such as overcoming poverty or unemployment for all citizens) being dominant and conflicting with the redistricting scheme that increases the effectiveness of black citizens, then we would have to consider the relative moral urgency of the other aim. But making the votes of black citizens more effective would probably also support most other morally urgent aims.

redistricting.⁵⁹ The aim most worthy of our support is to help overcome racial injustice by increasing the prospects of electoral success for black citizens and by encouraging cross-racial alliances.⁶⁰

2. What Is Morally Relevant about Racial Identity?

I have saved the deepest challenge for last. It is the worry that race-conscious policies perpetuate a troubling kind of race consciousness, which it should be their purpose to destroy. Even if this worry does not lead us all the way back to the color-blind perspective, it does introduce a sobering note into any call for race-conscious policies. “The harm of perpetuating race consciousness,” as David Wilkins puts it, “must be balanced against the harm of ignoring reality.”⁶¹

Before we begin the balancing, however, we need to be clear about the harm of perpetuating race consciousness. Not all kinds

⁵⁹ I should emphasize that the argument for increasing representation of black citizens is specifically addressed to overcoming the problems of racism in the United States. Group representation schemes that are designed primarily for black Americans may be justified even if group representation for every disadvantaged group would be impracticable. The critic’s slippery slope argument against race-conscious redistricting that claims a consequent need to increase the electoral prospects of every other ascriptive group in the United States is a non sequitur. No other ascriptive group with the exception of American Indians (for whom truly exceptional electoral arrangements have been made) is as greatly disadvantaged by virtue of an ongoing legacy of racism in this country.

⁶⁰ This argument connects a concern for overcoming racial injustice with a call for more effective representation of blacks in American politics. It rests on liberal democratic ideals and rejects any essentialist conception of race. Compare Iris Marion Young’s more general call to provide “mechanisms for the effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed or disadvantaged” in *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), p. 184. The claim that a close connection obtains between greater representation of a disadvantaged group and better legislative outcomes is open to reasonable democratic disagreement, but it is not (as many critics charge) implausible on its face. See also Lani Guinier, “The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success,” *Michigan Law Review* 89, no. 5 (March 1991), 1077–1154; and “No Two Seats: The Elusive Quest for Political Equality,” *Virginia Law Review* 77, no. 8 (November 1991), 1461–1513.

⁶¹ David B. Wilkins, “Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers,” *Stanford Law Review* 45 (July 1993), 2004.

of race consciousness are equally troubling. The more common kind of race consciousness is troubling, exceedingly so. This is the kind of consciousness that identifies race with essential, morally relevant differences between human beings. Either phenotypical differences such as facial features and skin color are accorded moral significance in themselves or, more often, they are considered indicative of some deeper, morally significant differences between blacks and whites. I call this kind of race consciousness “essentialist.” A second kind of race consciousness, which I call “contingent” or “color consciousness” to indicate its rejection of race as an essential division among human beings, entails an awareness of the way in which individuals are identified by superficial phenotypical differences — such as skin color and facial features — that serve as the bases for invidious discriminations and other injustices associated with race. Were we to lack race consciousness of this contingent kind, we would be blind to a basic source of social injustice. Just as some kinds of race-conscious policies are better than others from a moral point of view, so too are some kinds of race consciousness.

We can distinguish these two kinds of consciousness more clearly by returning to the idea of race as it is commonly understood, as a correlate of a larger cluster of genetically based distinctions among human beings. So understood, race is not merely a fiction functioning as scientific fact. Race consciousness of the essentialist sort has repeatedly been used to rationalize all sorts of injustice, including some of the worst atrocities known to humankind. The rationalization — these people are members of a different race, therefore we need not treat them simply as fellow human beings — does not rely either on logic or on science. The belief that black and white Americans are genetically distinguishable races of human beings, even were it true, could not by itself justify depriving a single human being of a single liberty or opportunity available to other human beings.

In principle, the dignity of human beings and their civic equality does not depend on our exposing the fiction of essentialist racial identification. But essentialist race consciousness has repeatedly *rationalized* evil and injustice. The rationalization, worth repeating because its moral bankruptcy is most striking when exposed — these people are members of a different race, therefore we need not treat them as equals, as our fellow human beings — does not rely on logic, but on human weakness, maybe the most profound human weakness other than our mortality, and certainly one of our gravest moral weaknesses. Unlike our mortality, our tendency to associate ourselves as distinct races among human beings and to care only, or even primarily, for people who live with us and look like us is our responsibility to control.

The very act of identifying with people of “one’s own race” — perhaps because the essentialist identification itself is assumed to be naturally driven rather than a matter of human will — has the psychological effect of undermining mutual identification among individual human beings. Absent our mutual identification, we are likely to be less motivated to ensure that justice is done for people who look and act differently from ourselves.⁶² Defying logic but catering to human weakness, racial identification has the capacity to rationalize injustice by a process of transference analogous to the one described by Frederick Douglass over a century ago:

The evils most fostered by slavery and oppression are precisely those which slaveholders and oppressors would transfer from their system to the inherent character of their victims. Thus the very crimes of slavery become slavery’s best defense. By making the enslaved a character fit only for slavery, they excuse themselves for refusing to make the slave a free man. A whole-

⁶² Quite apart from the loss in moral motivation that is the likely outcome of identification by race, the lack of identification itself is troubling, especially (but not only) for people who share a society together. Adrian Piper writes illuminatingly that “[t]he ultimate test of a person’s repudiation of racism is not what she can contemplate *doing* for or on behalf of black people, but whether she herself can contemplate calmly the likelihood of *being* black. If racial hatred has not manifested itself in any other context, it will do so here if it exists, in hatred of self as

sale method of accomplishing this result is to overthrow the instinctive consciousness of the common brotherhood of man.⁶³

Moral matters become more complicated, as critics like Douglass also recognized, because even an essentialist race consciousness can be double-edged. When essentialist race consciousness flows from the experience of identification as a member of an oppressed group, it often serves to unite members of the group to struggle against their oppression and it also leads to the creation of vibrant and valuable cultures that are associated with the experience of oppression but take on a life of their own. These positive values of race consciousness, however, can be dissociated from race consciousness of the essentialist sort. I return to consider these positive values as they accompany the contingent kind of race consciousness.

First we need to address another feature of any kind of race (or color) consciousness, which many critics take to be morally problematic. Race consciousness, whether essentialist or contingent, binds individuals to a group identity regardless of their will, regardless of whether they reflectively accept the identity attributed to them. Because of the visible features by which Americans identify each other with one or another racial group, we cannot reflectively choose our racial identity any more than we can choose the language by which we communicate with our fellow citizens.

An involuntary attribution of identity in itself need not be troubling: we are all identified by characteristics and cultural affiliations beyond our control, some of which we may even wish were

identified with the other —that is, as self-hatred projected onto the other.” Whether or not the psychological explanation of this projection is correct, the manifestation of racial identification in the aversion of white Americans to the idea of being black themselves is very troubling quite apart from the moral motivation to do something to help black people. See Adrian Piper, “Passing for White, Passing for Black,” *Transition Issue* 58 (new series 2, no. 4, 1992). 19. See also M. C. Dawson, *Behind the Mule* (Princeton: Princeton University Press, 1994).

⁶³ *The Life and Writings of Frederick Douglass*, vol. 2, ed. Philip S. Foner (New York: International Publishers, 1950), p. 295.

otherwise.⁶⁴ The fact that we are not free to choose our language is not cause for great moral concern. The involuntary attribution of a racial identity is morally troubling not simply, or primarily, because it is involuntary but because it divides us in the cause of social justice. As long as the vast majority of Americans care little about racial injustice because they are not identified as black, and they therefore do less about it, racial identification serves to carry on the cause of racial injustice, undermining the constitutional right of all individuals to be treated as civic equals and obscuring our obligation to treat each other as equals. Treating people as members of different racial groups rather than as civic equals is another troubling consequence of the essentialist kind of race consciousness, which must also be overcome if we are effectively to address racial injustice.

The contingent kind of race consciousness is no more voluntaristic than the essentialist sort, but it does not serve to divide us in the cause of social justice. Contingent race consciousness—the term “color consciousness” may help distinguish it from any view that accepts the existence of distinct human races—recognizes that race is a fiction functioning as scientifically significant fact, and it is also an ongoing source of social injustice. Color consciousness does not get white Americans off the moral hook as does essentialism. But it does raise some challenging questions about the obligations of both black and white Americans. Do black Americans have any special obligations—to further the well-being of their oppressed group—that white Americans do not have? If we think that they do, then should we not be troubled by the fact that these obligations—like those associated with the

⁶⁴ If we are not completely unfortunate, we will reflectively accept and appreciate many characteristics and affiliations that we are not free to choose. Our families and our citizenship are affiliations that we are typically not free to choose. When we reflectively accept the role of being our parents' child, for example, we also accept the obligations that attach to this role, ideally interpreting the obligations according to our own best moral lights. For an insightful discussion of reflective acceptance of role obligations, see Michael O. Hardimon, “Role Obligations,” *Journal of Philosophy* 91 (July 1994), 333–63.

essentialist kind of race consciousness — are not always what individual blacks reflectively accept as consistent with their own self-understanding?⁶⁵

The most common way of attributing special obligations to black Americans is parasitic on the essentialist kind of race consciousness that I have just criticized. On this view, group membership is taken to be the primary source of individual obligations, and greater obligations to fight racial injustice are therefore attributed to black Americans than to other Americans. This is the racial equivalent of the rich getting richer and the poor getting poorer. Not only are more advantaged Americans largely let off the moral hook, but black Americans who reflectively reject their special obligations are labeled inauthentic, untrue to their group identity as black Americans.

If we accept only the contingent kind of race consciousness, we should reject this notion of authenticity and the way in which it attributes special obligations to black Americans. This notion of authenticity imports the spurious idea of racial essence back into the idea of individual identity. Suppose we begin instead with a color-blind principle of obligation, based on fairness: Everyone should do his or her fair share to overcome racial injustice. This is a general obligation that applies to all of us. Yet some special obligations for black and white Americans flow from it. The special obligations of black Americans are different from, but by no means greater than, those of white Americans.

Faced with the troubling fact that other Americans are not doing their fair share, black Americans need to unite in order to combat racial injustice. (Members of other ascriptive groups who need to unite to combat racial, ethnic, class, or gender injustices may have similarly special obligations, but my focus here is on the special obligations generated by racial injustice directed toward

⁶⁵ I am indebted here to the far more extensive discussion of ethical identity in Anthony Appiah, “‘But Would That Still Be Me?’ Notes on Gender, ‘Race,’ Ethnicity, as Sources of ‘Identity,’” 493-99.

black Americans.) Many of the public policies and individual practices that would effectively address racial injustice are collective goods: if they benefit some black Americans, they will in some significant way benefit (almost) all. Examples of such collective goods include affirmative action policies whose net effect is to reduce the racial stereotyping of high-status jobs and to increase the civic standing of blacks. Examples of individual practices include pro bono legal and medical services rendered by black professionals to inner city communities that, in addition to helping less advantaged blacks, also help dispel the stereotype of the black middle-class abandoning their brethren.⁶⁶ Preferential hiring and pro bono work not only deliver individualized benefits to select people, they are also collective goods to the extent that they increase the general social standing of all black Americans. Particular examples of promising policies are less important than the general point: Policies and practices that increase the social standing of black Americans as a group are likely to benefit almost all blacks as individuals because increasing the group's general status in society tends also to increase the opportunities of individual blacks (by decreasing the prejudicial denial of opportunities to individuals by virtue of their being identified as black).

The common, color-blind ideal of fairness provides a basis for blacks to criticize other blacks who benefit from their efforts to combat racial injustice but who do nothing to aid this cause or an equally urgent one. The same ideal of fairness frees individual blacks from being bound by the dominant understanding of how they should respond to racial injustice. Fairness suggests that more advantaged blacks have greater obligations than less advantaged blacks, but not that they must fulfill their obligations in the way in which the majority deems appropriate. There are multiple ways in which blacks can reciprocate the beneficial acts of others. Fairness demands that individuals not be tied to the way chosen by

⁶⁶ For a far-ranging and insightful defense of a special obligation of black professionals to serve black communities, and the legal education appropriate to encourage such service, see Wilkins, "Two Paths to the Mountaintop?" pp. 1981–2026.

others without their consent. Fairness also warns white Americans not to criticize from the sidelines. The fewer burdens of race we have to bear, the greater our obligations are to overcome racial injustice. Few of us come close to doing our fair share. Our moral standing on this particular matter is therefore suspect.

The moral standing of white Americans is not suspect, however, when it comes to another special obligation, which like the special obligation of blacks is color-conscious even though it flows from the color-blind ideal of fairness. White Americans (along with most other nonblack Americans) have a special obligation to fight racial injustice so as to decrease the likelihood that they will be the beneficiaries of unfair advantages that stem from the racial stereotyping of social offices and other forms of institutionalized injustices that unfairly disadvantage blacks. In addition to this special obligation to combat racial injustice, each of us also has general obligations, which as fairness suggests increase in proportion to our individual capacity to help others.

Whatever our color or the racial identification attributed to us, we are generally obligated to promote justice by virtue of what others have done (and are doing) to improve our lives and by virtue of our own capacity to help others. These general obligations increase in proportion to how much people have done to help us and how much we can do to help others. Fairness does not require that we fulfill our obligations by helping people of the same race, ethnicity, gender, or class of the people who helped improve the conditions of our lives, assuming that we can figure out which group that was. Fairness obligates us to help disadvantaged individuals as we and others have been helped before, are being helped, and are capable of helping in the future (without undue sacrifice). The obligations of the average white American therefore are more demanding in absolute terms than those of the average black American. Similarly, the obligations of middle-class blacks are more demanding in absolute terms than those of less advantaged blacks.

What's right about color consciousness (and class consciousness) flows in this way from the truth in color-blindness. The fundamental principle of justice as fairness is color-blind. Its implications for public policy and the obligations of individuals, however, are not. Because our capacity, here and now, to help others without undue sacrifice varies by race (and class), the color-blind principle of fairness leads to race consciousness (and class consciousness). To be committed to the color-blind principle of fairness, therefore, entails a commitment to race consciousness of the second, contingent kind —what I have also been calling color consciousness.

Those of us who have unfairly benefited in the past, or will unfairly benefit in the future, if we do not act to change things, have special obligations, which flow from the general obligation to do our fair share to help others. We have these special obligations not because we asked to be unfairly advantaged, but because we *have been* and *are* unfairly advantaged. Because being white and affluent has been a source of unfair benefits in this country, fairness generates special obligations that are color- and class-conscious.

I have also suggested that fairness generates special obligations among black Americans, for historically contingent reasons. When some blacks go out of their way to improve the lot of all blacks, other blacks may become free-riders on these efforts if they do not either join the just cause or do something else, consistent with their own understanding of justice, to improve the lot of blacks (or less advantaged individuals). The source of this special obligation has nothing to do with an essentialist understanding of racial identity. It rests on the color-blind ideal of fairness, which is also the general source of obligations for all individuals. Our obligations are on the whole greater to the extent that we are less oppressed.

Just as the color-blind standard of fairness reveals what's right about race consciousness, so too what's right about race consciousness reveals the truth about color-blindness. Color-conscious obligations are contingently based on racial injustice. They do not de-

rive from a notion of racial essence or authenticity, and they therefore stand opposed to the troubling kind of race consciousness.

I have suggested a principled way of recognizing the special obligations of black Americans without attributing the source of obligations ultimately to our group identity, and without losing sight of the greater obligations of other Americans. The general principle is to help others who are disadvantaged, regardless of group identity. The special obligation of those who have benefited from racial injustice is to help undo the wrongs that perpetuate racial injustice. The special obligation of members of oppressed minorities is to do their fair share so they are not free-riders on the efforts of others who are at least as oppressed. Each of these obligations admits the moral freedom of every individual to interpret what justice demands in our nonideal world and to act on that interpretation. We should give to others according to our capacity, and we should not be free-riders on the moral efforts of others.⁶⁷ Our obligations are race-conscious, but their source is the principle of fairness, which is color-blind.

Some critics may worry that this kind of color consciousness, which is practical and contingent, exacts a high price for its rejection of any fundamental obligation of the form: "First and foremost, aid your own racial or cultural group." The high price, these critics fear, is that by viewing racial identity as contingent rather than essential, we threaten to undermine the rich cultural heritage of black Americans that has been historically connected to a more essentialist kind of race consciousness. Were the contingent kind of race consciousness incompatible with the perpetuation of the cultural heritage of black Americans, this would be an enormous loss not only to black Americans but to civilization and social life as we know it. The cultural heritage of black Americans—consisting of customs, history, language, literature, music, and

⁶⁷ For a defense of the "reasonable to reject" standard as the core of social contract theory, see T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 103-28.

art — is an integral part of the cultural heritage of this country. Its contingency does nothing to undercut its value. Every major part of our cultural heritage is similarly contingent. The cultural heritage of black Americans is inseparable from every American's heritage. Its dominant contributions may be differentially valued by individuals, and differently connected to personal identities, but neither its value nor its survival depends on an essentialist view of racial identity. Quite the contrary, once we recognize the historically contingent nature of race and race consciousness, we can look forward to a time — and help bring about the time — when the cultural experiences associated with black Americans are more widely appreciated and more broadly accessible because our society has become more openly multicultural.

In an open, multicultural society, your cultural affiliations and mine need not be universally shared or evenly distributed among all individuals. Nor would our cultural identities be publicly insignificant, but they would be disengaged from the pernicious fiction of racial identification. What I am suggesting is that the cultural identifications that have accompanied a history of racial oppression can be disengaged from the day-to-day experience of racial injustice. Were they so disengaged and racial injustice overcome, there would no longer be any need for racial identifications, as distinct from cultural identities that have a contingent historical connection to past racial identifications.⁶⁸ To an extent some of our cultural identifications — with the culture of jazz, for ex-

⁶⁸ Compare Jorge L. A. Garcia, "African-American Perspectives, Cultural Relativism, and Normative Issues: Some Conceptual Questions," in *African-American Perspectives on Biomedical Ethnics*, ed. Harley E. Flack and Edmund D. Pellegrino (Washington, D.C.: Georgetown University Press, 1992), p. 47: "A culture, however, must be the culture of some community and . . . communities exist only when people are tied one to another in common pursuits and a shared vision of what they wish to become." I am using culture in a more common and fluid but no less meaningful way here. Individuals who identify with most aspects of black American culture need not be (and generally are not) part of a single community whose members share a vision of what they wish to become. Rich and valuable cultures, including those associated as African-American, do not require a commitment to a particular "set of values, principles, or other beliefs," nor need they "constitute" their members' identities in any strong sense of the term (Garcia, p. 28).

ample —have already been so disengaged from our present racial identifications. Racial identification, by contrast, cannot be disengaged from the recognition of ongoing racial oppression and still retain its value. Were the struggle against racial injustice to succeed in this country, part of its success would be evidenced in the triumph of cultural over racial identification.

Whereas *racial* identification is a dangerous fiction, the cultural identifications that have accompanied struggles against racial injustice are valued and enduringly valuable. They not only support struggles to overcome racial justice —no mean feat in itself —but they also enrich individual lives with extraordinary (as well as ordinary) expressions of human talent, imagination, and historical experience, and with the pleasures and satisfactions of particularistic associations. These pleasures and satisfactions, like those of families, are not universally shared or equally accessible, but they are nonetheless valuable.

The response to racial injustice that I have developed in these two lectures, although more inclusive than many, is still sorely incomplete. It reflects one person's inadequate efforts to chart a publicly justifiable course for overcoming racial injustice by a multiplicity of means, only a few of which I could discuss in detail here. The political morality on which I base my response begins from where we now stand, in a society still beset by racial injustice, and looks for morally defensible ways of moving closer to a just society for all Americans. The color-conscious policies that this political morality defends are based on a color-blind principle of fairness, but I have argued, against advocates of color-blind policies, that fairness in our society demands color consciousness (as well as class consciousness). What's right about race consciousness is also the truth about color-blindness, and vice versa. Those (and only those) color-consciousness policies are justified that are both instrumentally valuable in overcoming racial injustice and consistent with counting all persons, whatever their skin color or ancestry, as civic equals.

When color-conscious policies are no longer instrumental to overcoming racial injustice, our political morality should prepare us to leave these policies behind. Unlike affirmative action, which entails taking special steps to ensure nondiscrimination among all individuals, preferential treatment policies entail doing something regrettable (preferring a less qualified individual over a more qualified one) in order to do what is (arguably) on the whole right. I have tried to explain why this regret, in our social context, is not a sufficient reason for insisting that all our public policies be color-blind. Were we to resort to color-blindness in our public policies, we would have even greater cause for regret because we would not be acting in ways that benefit the least advantaged and that bring our society closer to the time when color-blindness can be fair to everyone, regardless of color.

But color-conscious policies are not nearly enough. We should embrace a multiplicity of means, including educational and economic reforms, such as making work pay and providing an adequate education for every child, that are not color-conscious. We should also welcome the discovery of other policies — whether they be color-blind or color-conscious — that can bring us closer to a society in which color-conscious policies will no longer be necessary.

The distinction between aspiration and accomplishment — which is central to Baldwin's recognition that "my inheritance was particular, specifically limited and limiting; [but] my birthright was vast, connecting me to all that lives, and to everyone, forever" — is also central to my defense of some color-conscious policies. We are related to all human beings regardless of color, and we should seek liberty and equality not for some, but for all. When we face up to our inheritance — of a society still beset by racial injustice — we find that some color-conscious policies and some kinds of color consciousness may minimize injustice today and make it possible to be both fair and color-blind in the future.