

Is Racial Discrimination Special?

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“Reverse discrimination” is the policy of favoring members of certain groups (usually racial), in situations in which merit has been at least ideally the criterion, on the grounds that *past* members of these groups have suffered discrimination. Giving someone a job he was denied because *he* was discriminated against does not come under this heading, since such redress is justified by ordinary canons of justice, in particular that of giving someone what he is owed.¹ I am referring, rather, to the practice of hiring or admitting a preset number of (e.g.) blacks regardless of whether the blacks so hired have been wronged, and regardless of the qualifications of competing whites. The difference between the two policies is the difference between restoring a robbery victim’s property to him, and hunting up the descendants of robbery victims and giving them goods at the expense of people who robbed no one. I have no quarrel with the former, many quarrels with the latter: reverse discrimination is as ill-advised a course of action as any undertaken by this country in at least a century. It cannot be justified by its social benefits, since experience suggests that this policy is proving disastrous.² It cannot be justified as giving particular

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1. At least this is current public policy, as reflected in the Civil Rights Act’s ban on racial discrimination in employment. I will not challenge it here. It is, however, arguable, that employers do not *owe* anyone jobs. An employer, on this argument, is *choosing* whom to give his job to, and is entitled to choose on criteria that most people would find objectionable. His right to liberty overrides his obligation not to indulge prejudice. If so, the Civil Rights Act curtails freedom impermissibly.

2. David Kahn’s *Hitler’s Spies* (New York: Macmillan, 1978) provides a good account of what happens when a society replaces merit standards by racial ones. The primary qualification for the SD (the Nazi party intelligence organ) was “German or similar blood.” Mr. Kahn notes acidly, “Never mentioned was objectivity in evaluating information” (p. 254). Data in this country are rare, since concerned parties, such as the Medical School of the University of California at Davis, have kept no records of the performance of its affirmative action admittees. So, apart from the interesting but incomplete work of the sociologists

members of the chosen group what they would have gotten if they had not been discriminated against, since by stipulation “affirmative action” (bureaucratized for reverse discrimination) goes beyond such an appeal to ordinary ideas of justice and compensation. It penalizes a group of present-day whites—those who are at least as well qualified but passed over—without proof that they have discriminated or directly benefitted from discrimination: whites no more responsible for past discrimination than anyone else. Lately, as the harmfulness and unfairness of reverse discrimination have become more evident, its proponents have taken to arguing that reverse discrimination is needed to prevent future discrimination. Such “preventive discrimination” has all the disadvantages of preventive detention and none of the advantages, such as the elimination of clear and present danger to life and limb.

But such frontal assaults on reverse discrimination usually accomplish nothing, so I will not attempt one here. I will instead focus on a clear-cut issue which is central to the debate but which has, surprisingly, been almost completely ignored. It is this: what is so special about racial discrimination? Let me put the question more exactly. I will be arguing shortly that the only possible defense of reverse discrimination represents it as an attempt to rectify the consequences of past racial discrimination. But why has society selected one kind of wrong—discrimination—as particularly deserving or demanding rectification? Other past wrongs have left their traces—acts of theft, despoliation, fraud, anti-Semitism—yet society has no organized policy of rectifying those wrongs. It surely seems that if the consequences of one kind of wrong should not be allowed to unfold, neither should those of any other. And this is what I want to establish: acts of racial discrimination have no morally special status. Important consequences flow from this. For reasons I will propose, it is fairly clear that society—in particular the employer—has no general standing obligation to block the consequences of past wrongs. So if discriminatory acts are no more deserving of rectification than wrong acts generally, no one is under any obligation at all to rectify them, or to be deprived so that these acts may be rectified.

Nathan Glazer, Thomas Sowell, and Pierre van den Burgh, one must rely on personal impressions and the common sense presumption that abandoning merit is unlikely to improve the quality of employees. The question remains—would you fly in an airplane whose pilot was admitted to an affirmative action training program?

Righting the Wrong

With these preliminary points as background, let us look at the issue again. I noted that reverse discrimination discriminates against whites in a way that cannot be justified by ordinary notions of justice. Thus, if it is justifiable at all, it must be because we owe something to present-day blacks in some extraordinary sense. And the standard reason offered for saying that we do is that the blacks to be hired today bear the burdens of past discrimination. Had there been no racial discrimination, they would have been able to get those jobs; their qualifications would have been as good as those of the better-qualified whites they are displacing. It is sometimes added that all whites benefit in some way from past discrimination, so all whites owe blacks something, namely a more advantageous position. Affirmative action is supposed to rectify the consequences of past discrimination, to draw the sting from acts so bad that their consequences cannot be permitted to unfold.

Given this conception of what they are advocating, a word is in order about just what to call what proponents of affirmative action seek to accomplish. "Rectification" is the best word I can think of. It is better than "annulment," which carries no implication that the annulled act is wrong *in se*. "Extraordinary compensation" is not only prolix, it would not sit well with the many defenders of affirmative action I have encountered who disavow any compensatory aims. For similar reasons I will avoid "compensatory discrimination," the phrase Jimmy Carter used during the 1976 presidential campaign. "Favoritism" or "visiting the sins of the fathers on the sons" might be viewed as tendentious. Statements of particular affirmative action programs—that such-and-such percentage of so-and-so's be taken on—generally do not carry any statement of justification, and government officials may settle for arguments *ad baculum*. For instance, when Eleanor Holmes Norton, then head of the Office of Economic Opportunity, was asked on *60 Minutes* about the fairness issue, she replied: "White males will just have to bite the bullet." I suspect no English word quite captures what reverse discrimination is supposed to do—which says something about the deep confusion underlying this policy and its rationales.

Whatever we call it, the aim of affirmative action is to undo the consequences of past discrimination. But then the issue I raised becomes pressing. If there is nothing morally special about dis-

crimination, nothing which makes it especially deserving of rectification, any policy that treats discrimination as if it were morally special is arbitrary and irrational. Consider: Mr. X, a black of today, is supposedly owed special treatment. But surely if you owe Mr. X special treatment because his ancestors were the target of one wrong—discrimination—it would seem you owe Mr. Y special treatment if his ancestors were the target of some other wrong—theft, say. Racial discrimination is not the *only* wrong that can be committed against someone, and it is far from the worst. I would rather be denied a job because I am Jewish than be murdered. My murderer violates my rights and handicaps my children much more seriously than someone who keeps me out of medical school. So the question is: if I owe Mr. X a job because his ancestors were discriminated against, don't I owe Mr. Y the same if his ancestors were defrauded? I believe the answer must be yes: there is nothing special about acts of discrimination. And even if you think I have misrepresented affirmative action or its rationale, the question and its answer are important. Other justifications for reverse discrimination also tend to treat racial discrimination as somehow special, as do such judicial and legislative initiatives as busing and "fair housing." Indeed, three decades' preoccupation with race has created a sense that racial prejudice is not just a wrong but a sin, an inextinguishable blot on the soul. It is worth considering whether this attitude is rational.

Let me start with a truism. Discrimination deserves to be halted where it exists, and redressed where it can be, because it is *wrong*. Discrimination is worth doing something about because *wrongs* are worth doing something about and discrimination is wrong. Once we grant this, we start to see that there is nothing *sui generis* about discrimination. It competes with other wrongs for righting. And I take it as obvious that some wrongs demand righting more urgently than others. If I pass a negative comment on Jones's tie in private but defame Robinson's ancestry on national television, I had better apologize to Robinson before I do so to Jones. And if I have embezzled funds from an orphanage, top priority goes to seeing that I give the money back. Finally, if Smith is destitute because I defrauded Smith's father, I had better make amends to Smith before I worry about the sons of men I insulted. So: denying a man a job on grounds of color is evidently just one among many ways of wronging him. It is far less egregious than assault or murder.

It is frequently but mistakenly claimed that racial discrimina-

tion is special because it involves a group. Certainly, an act of racial discrimination involves a whole group in the sense that it involves treating an individual not in his own right but insofar as he belongs to a group. But racial discrimination is not the only kind of act that is thus group-related. Many wrongs having nothing to do with race are discriminatory in the precise sense that they base the treatment of an individual on membership in a morally irrelevant group. Nepotism is discrimination against nonrelatives. When I make my lazy nephew district manager, I am disqualifying more able competitors because they belong to a group—non-family—membership in which should not count in the matter at hand. Discrimination need not be racial: any time you make a moral distinction on morally irrelevant grounds, you discriminate invidiously. In a society in which racial discrimination was unknown but capricious nepotism common, denial of due process on grounds of family would provoke as much indignation as racial discrimination does now.

It is sheer confusion to argue that acts of racial discrimination are special because they insult a whole race as well as wrong an individual. When I assault you, I assault no one else—and when I discriminate against you, I discriminate against no one else. True, my discrimination may indicate a readiness to discriminate against others and may create widespread anxiety—but my assaulting you may indicate a readiness to assault others and create even greater general anxiety. If I bypass Mr. X because he is black, only Mr. X and his dependents suffer thereby. Perhaps because color is so salient a trait, we tend in uncritical moments to think of the black race (as indeed the white race) as an entity existing in and of itself, above and beyond the particular blacks who make it up. Philosophers call this conversion of an abstraction into a real entity “the fallacy of reification.” Having reified the race, we then think that an insult to this entity is particularly malign, either in itself or because this entity somehow transmits to all blacks the harm done by single acts of discrimination. Some such reasoning must underlie the oft-heard ideas that the harm done to a single black man “hurts blacks everywhere” and that the appointment of a black to the Supreme Court is “a victory for blacks everywhere,” remarks which make no literal sense. This tendency to reify is especially pernicious in the context of compensation. Why are we willing to contemplate special treatment for blacks now, when we would not contemplate special treatment for someone whose ancestors were defrauded by a man who left no

descendants? Because, I suspect, we think that by benefitting today's black we apologize for the long-ago insult to the race, and that this apology and benefit will somehow be transmitted back to the blacks who endured the original discrimination. Were this picture accurate, it might justify supposing that past discriminatory acts cast longer shadows than other wrongs. But it is just a myth. A racial grouping no more deserves reification than does the class of people whose ancestors were defrauded. We resist the impulse to reify in the latter case only because the trait in question is not visually salient and has no especially coherent history.

(Some slight sense can be made of "injury to a group," as when we say that a traitor endangers the security of a nation. But even here the harm done is to individuals, the particular citizens. The traitor deserves punishment because he has harmed each citizen, not "the nation" as a thing apart.)

Patterned Wrongs

Perhaps the main reason for thinking of acts of racial discrimination as morally distinctive is that each is an instance of a pattern. My discriminating against Mr. X is part of a self-sustaining pattern of wrongs. And, indeed, we do find wrong acts that together form a pattern more disturbing than each wrong act taken singly: Jack the Ripper's legacy is more appalling than eleven isolated murders. Wrongs seem like notes, which have different musical values when part of a melody than when heard in isolation. But this intuition must be carefully assessed. A single wrong act cannot be made *more wrong* because there is some other wrong act which it resembles. If I discriminate against you, my act has a certain amount of wrongness. If I then discriminate against someone else, my previous act against you does not take on more wrongness. This is so even with Jack the Ripper. His murder of the first prostitute did not become *more wrong* when he murdered his second. If he had died before committing his second murder, his first murder would still have been as bad as it actually was. If, say, he owed the family of the first prostitute some compensation for his misdeed, he did not suddenly owe them more after his second. So the fact that acts of discrimination come in groups does not show that a single act of discrimination is any worse, any more deserving of rectification, than it would have been had it occurred alone.

Two factors account for our feeling that patterned wrongs are worse than isolated ones. The first is that the *perpetrator* of a patterned wrong is worse. Jack the Ripper is worse than a man who

kills once, even brutally, from passion. But this does not mean that what he did, in each case, is worse than a single act of murder. Similarly, the most we can say of bigotry is that a habitual bigot is worse than a one-shot bigot, not that an act of bigotry is in itself worse than an act of caprice. The second reason patterned wrongs seem especially malign is that they create anxiety through their promise of repetition. Jack the Ripper's actions create more anxiety than eleven unconnected murders because we believe he will strike again. But this shows only that it is especially important to *halt patterns*, be they of murder or discrimination. It does not mean that a particular act in a discriminatory pattern is worse than it would have been in isolation. And it is worth stressing that antidiscrimination laws, without benefit of affirmative action, suffice to halt patterns of discrimination.

Granted, racial wrongs have gone beyond discrimination in hiring or the use of public facilities, extending all the way to lynching. But to acknowledge this is to bring racial wrongs under independent headings—denial of due process, assault, murder. Lynching Emmet Till was wrong not because Emmet Till was black, but because lynching is murder. So if blacks deserve special treatment because of (say) this country's history of lynching, it is because descendants of murder victims deserve special treatment. But this concedes my point: what was wrong about especially egregious acts of racial discrimination is what is wrong about parallel nonracial acts; if we treat the former as special, we must treat the latter as special as well. Were past discriminations special because they were state-approved and in some cases state-mandated? I do not think so. State sanction in itself can make no difference. Even if "the state" is an entity over and above its citizens and their legal relations, the wrongness of an act—although not the blameworthiness of an agent—remains independent of who performs it. So if discriminating is wrong, it is wrong, and to the same extent, no matter who performs it. State-sanctioned past discrimination, therefore, is no stronger a candidate for rectification than any other discrimination. In any case, even if we *did* consider state sanction to be morally significant, to be consistent we would have to apply this standard to all other state-sanctioned wrongs. We would, for example, have to give special treatment now to descendants of people who were harmed under the terms of a statute repealed decades ago. But I take it that no one would support affirmative action for the grandchildren of brewmasters bankrupted by the Volstead Act.

Finally, it has been suggested that grave discriminatory wrongs, such as the lynching of blacks, were special because they were done with the intention of intimidating other members of the terrorized group. Quite so: but again this makes my very point. To call an act of lynching wrong for this reason is to bring it under the umbrella of *intimidation*: a precisely parallel nonracial act of intimidation is just as wrong, even if we have reason to think the perpetrator is not as vicious. Many years ago, unions were in the habit of wrecking restaurants that refused to be unionized as a warning to other restaurants. Even today, mob enforcers kill informers, or retailers who refuse to pay protection, in order to intimidate other potential informers or defaulters. So if we treat blacks as special because they belong to a class other members of which were terrorized, so must we treat restaurateurs as special, and indeed all small businessmen in businesses once victimized by the protection racket. But I take it that no one would suggest affirmative action for restaurateurs. Nor will it do to say that this is because today no restaurateur need fear union or mob goons. In fact, a restaurateur is in considerably more danger than a black. The last lynching occurred in 1954, while union vandalism and criminal extortion are the stuff of today's sensational press.

Special Compensation

A subsidiary point. I have so far let pass one peculiarity of affirmative action programs: they award jobs or placement to rectify past wrongs. Yet normally when we compensate someone for wrongful deprivation, we give him the equivalent of what he lost, giving him the thing itself only when feasible. If your negligence costs a pianist his hands, you are not obliged to hire him to give a concert. The whole thrust of his complaint, after all, is that he is no longer competent to undertake such an enterprise. You owe him the money he would have made from concertizing, plus some monetary equivalent of the satisfaction he has lost through your negligence. So *even if* past racial discrimination has wrongfully cost Mr. X a job, it does not follow that proper compensation is a job. What he is owed is the job or the monetary equivalent thereof. If the job is unavailable—where this normally includes Mr. X's not being the best-qualified applicant—all he is owed is its monetary equivalent. Why, then, is it assumed without question in so many quarters that if past discrimination has cost present-day blacks jobs, they deserve *jobs* rather than the monetary equivalent of the jobs they would have gotten? Only, I

believe, because we think there is something *special* about discrimination, that its consequences deserve amelioration in a way that the consequences of other wrongs do not. Discrimination is so bad that not only must we compensate for it, we must make the world as if the wrong had never been. Only by attributing such reasoning to its proponents can I make sense of the special form “affirmative action” programs invariably take. And if indeed racial discrimination is not especially wrong, such special compensation starts to look morally arbitrary and even bizarre.

It is obvious that no employer has a general obligation to rectify wrongful acts, to offer extraordinary compensation. I am not speaking, again, of righting wrongs he perpetrates or directly benefits from. I mean that if, as a result of some wrong once done—not necessarily to an ancestor—I am worse off than I would have been, you, an arbitrarily chosen employer, have no obligation whatever to neutralize the consequences of that wrong. No one has any obligation to make me as well off as I would have been had that wrong not been committed. Why? Basically because it is *impossible* to rectify the consequences of all past wrongs. Consider how we might decide on compensatory payments. We trace the world back to the moment at which the wrong was done, suppose the wrong not done, and hypothetically trace forward the new history of the world. Where I end up under this hypothetical reconstruction is where I deserve to be. I am owed the net difference between where I am now and where I would have been had the wrong not been done.

So far, so good—this is a relatively uncontroversial description of what compensation is, and of the reasoning juries run through when they award an accident victim on the basis of what he would have done had he not suffered the accident.³ But outside of such

3. *Relatively* uncontroversial. Robert Nozick’s casual endorsement of it in *Anarchy, State and Utopia* (New York: Basic Books, 1974) drew impassioned reproach from the philosophical community. David Lyons (“Rights Against Humanity,” *The Philosophical Review* (1976): pp. 208–215) complained that Professor Nozick ignores “the enormous debt due blacks and Native Americans in our own country” (p. 214). This remark and the passage in which it appears exhibit a disproportionate number of the fallacies I am discussing. Lawrence Davis (“Comments on Nozick’s Entitlement Theory,” *Journal of Philosophy* (1976): pp. 836–844) recognizes that on the present account “full-scale rectification of the injustices in our society [in the] past. . . 200 years” is impossible, and concludes that this is a weakness of the account. But, as I argue below, common sense does not demand that an account of rectification guide us through the Sisyphean task of righting 200 years of wrongs.

very limited contexts as accident compensation—for most wrongs that have occurred—it would take omniscience to say how the world would have turned out had the wrong not been done. If you wanted to make up to me for the theft of my grandfather's watch in 1900, how on earth do you propose to reckon the position I would have been in had my grandfather's watch not been stolen? I might have been richer by a watch. I might have been poorer, since, being deprived of a watch, I might have worked harder than I otherwise would have. My grandfather might have met my grandmother while searching for his stolen watch; so if it were not for the theft of the watch, I might not have existed at all. Indeed, if you place yourself under a general ameliorative obligation, you will have to calculate simultaneously how well off each and every one of us would have been had all past wrongs not occurred. There is more: I am supposedly owed a certain something because of past wrongs, but who owes it to me? Surely not you—you don't owe me *all* of it. Do all employers owe me an equal portion? Or does their portion depend on how much they have benefitted from the initial theft? If the latter, how is one to calculate the debt, if the theft was in another country and another century?

Suppose I take it on myself to yield to Mr. X if I am better off than he is because of some past wrong—not to him, necessarily, since I am offering extraordinary compensation. Now surely there is some *other* past wrong which has made *me* worse off than I would otherwise have been, worse off than (say) Mr. Y. So I must drop myself down to make way for Mr. X, but I also deserve a push up beyond Mr. Y. If each of us tried to put himself just where he would be if there had been no past wrongs, we would all be caught in a mad whirl of exchanging positions and privileges with one another. If a full reckoning were in, those who now seem as if they would end up in a better position might end up in a worse one. Take Mr. X, an American black, who we think is worse off than he would have been had there been no slavery. Yet he may now be better off than he would have been had his African ancestors not conquered a neighboring tribe that was then raided by slave traders; had Mr. X's ancestors respected territorial boundaries, he might now be a sickly native of Uganda. (More likely, he would not have existed at all.) So unless we quite arbitrarily decide to rectify only some wrongs, we are undertaking a quite impossible task.

What about limiting ourselves to rectifying wrongs we know about? But then we should surely try, indeed try as hard as possi-

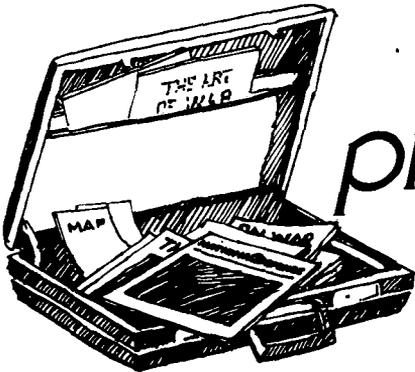
ble, to find out about other wrongs, to trace their consequences, and rectify them. Once again, if we set out on that path, we will find ourselves with obligations that cannot be discharged. And an unmeetable obligation is no obligation at all. Indeed, it is far from obvious that the consequences of discrimination are easier to trace than those of other wrongs. I know victims of theft who have nothing to show for it. Why not benefit them? It is clearer that they are worse off from a past wrong than that an arbitrarily chosen black is.

We must remember that we are all where we are in the competitive and distributional scheme of things because of past wrongs. It may be that we got something in a wrongful way, but those from whom we took it may have gotten it wrongfully in turn. Who knows but that you are reading this because of some dirty Hellenic trick on the plains of Marathon. Perhaps we should award Western Civilization to the descendants of Xerxes, or give them its dollar equivalent! Each of us lies on a "competition curve," which graphs jobs against our chances of getting them. These curves are connected: I can't move to a better one without bumping someone else down to a worse. If we try to put each person on the curve he would have occupied had there been no relevant wrongdoing, we will be raising and lowering everybody, sometimes at the same time, with no end in sight.⁴ Perhaps God is sufficiently powerful, well-intentioned, and well-informed to put each of us on his proper curve. But no lesser power—not ITT and not the Department of Labor—can undertake the task without absurdity.

Since, then, no one has any general rectificatory obligation, and since—as I argued earlier—past discrimination does not stand out from other wrongs as especially demanding rectification, I can see no justification at all for reverse discrimination.

I have embedded my main point in a somewhat complex context. Let me end by highlighting it. While racial discrimination is wrong, it is only one wrong among many and has no special claim on our moral attention. Past discrimination no more deserves extraordinary compensation than many other wrongs. And so any employment policy which does treat racial discrimination as special is arbitrary and irrational.

4. For more on "competition curves," and the idea that job opportunities are property, see my "Equality of Opportunity," *Philosophical Quarterly*, April 1981.



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NATO'S Nuclear Dilemma

COLIN S. GRAY

Speaking on June 15, 1982 on behalf of his absent and ailing chief, Soviet Foreign Minister Andrei Gromyko informed the U.N. General Assembly's special session on disarmament that "The Union of Soviet Socialist Republics assumes an obligation not to be the first to use nuclear weapons."¹

This declaratory policy, of course, cost nothing and had a solely propaganda import, and was appropriately derided by U.S. and U.S.-allied official spokesmen. Nonetheless, it provided another example wherein the Reagan administration was placed on the defensive, seeking to explain why superficially attractive sounding ideas with an apparent disarmament connection were nothing more than a snare and a delusion. In part for reason of ill chance, but also because of political insensitivity, muddled thinking and declaratory indiscipline, the Reagan administration has suffered a veritable "time of troubles" with respect to the role of nuclear weapons in U.S. military policy. "No first use" of nuclear weapons, as a possible policy position, is a small though symbolically significant element in the current debate over the nuclear question.

Sadly for balance in defense debate, "no first use" has long been tainted fatally by its clear association with Soviet propaganda. Even had NATO been toying seriously with the idea of a "no first use" declaration in the summer of 1982, which was not the case, President Brezhnev's statement before the U.N. General Assembly special session would have served to inter it indefinitely. Somewhat uncharacteristically, the Reagan administration has betrayed an undue sensitivity to potential political peril with regard to the idea of "no first use." That undue sensitivity was shown in the ill-judged preemptive assault that former Secretary of State Alexander Haig launched against the idea in a speech delivered on April 6, 1982.² Mr. Haig was endeavoring to discredit in advance an article that was about to appear in *Foreign Affairs*

1. John M. Goshko, "Soviet Chief Renounces First Use of A-Weapons," *The Washington Post*, June 16, 1982, p. 1.

2. "Haig's Speech on American Nuclear Strategy and the Role of Arms Control," *The New York Times*, April 7, 1982, p. A-8.