

noticeably closer to the overriding objective of providing all citizens with a truly equal opportunity to compete on merit for the benefits that our society has to offer. The use of race or sex in an effort to restructure society along lines that better represent someone's preconceived notions of how our limited educational and economic resources should be allocated among the many groups in our pluralistic society necessarily forecloses opportunities to those having the misfortune — solely by reason of gender or skin color — to be members of a group whose allotment has already been filled. Those so denied, such as the more senior white Memphis firefighters laid off to achieve a

more perfect racial balance in the fire department, are discriminated against every bit as much as the black Memphis firefighters originally excluded from employment. In our zeal to eradicate discrimination from society, we must be ever vigilant not to allow considerations of race or sex to intrude upon the decisional processes of government. The simple fact remains that, in the words of Judge Rehnquist, wherever it occurs, and however explained, "no discrimination based on race [or sex] is benign. . . . no action disadvantaging a person because of color [or gender] is affirmative."

— Wm. Bradford Reynolds

II.

I take programs of preferential treatment to be ones that make relevant the race or sex of individuals in the sense that the fact that an applicant for admission, a job, or a promotion is nonwhite or female constitutes a relevant, although not a decisive, reason for preferring such an applicant over one who is white or male. Here I will consider only programs concerned with racial preferences, but I take what I have to say to be applicable to comparable programs where members of other ethnic or minority groups, or women, are concerned.

The positive case for such programs begins with the following claim, namely, that we are still living in a society in which a person's race is a socially significant and important category. To be black is to be at a disadvantage in terms of most of the measures of success or satisfaction — be they economic, vocational, political, or social. If this claim about the existing social reality of race is correct, then two further claims seem plausible. The first is that there is in place what can correctly be described as a system of racial oppression. It is one both in virtue of the systemic nature of the unequal and maldistributed array of social benefits, opportunities, and burdens, and in virtue of the way things are linked together so as to constitute an interlocking, mutually reinforcing system of social benefits, burdens, ideology, and the like, which, when tied to race as they are, make it a system of racial disadvantage and oppression. Second, even if the intentions and motivations of those occupying positions of relative power and opportunity are wholly benign and proper, it is likely that the system will perpetuate itself unless blacks come to occupy substantially more positions of power and authority within the major social institutions.

The case for programs of preferential treatment can thus be seen to rest upon the claim that they do succeed in introducing more blacks into these kinds of vocations, careers, and institutional positions than would have otherwise been present. The programs have worked and do work to produce, for example, black judges, lawyers, and business executives where few if any existed before. And changes of this sort in the racial composition of these institutions have mutually reinforcing consequences that play an important role in dismantling the existing system of racial disadvantage.

The main ground of principled opposition to such programs has to do with the charge that they are themselves substantially unjust. The first argument commonly raised against these programs is this: if it was wrong to take race into account when blacks were the objects of racial policies of exclusion, then it is wrong to take race into account when the objects of the policies differ only in their race. Intellectual consistency requires that what was a good reason then be a good reason now.

The right way to answer this objection is, I think, to agree that the practices of racial exclusion that were an integral part of the fabric of our culture, and which are still to some degree a part of it, were and are pernicious. Yet, one can grant this and also believe that the kinds of racial preferences and quotas that are a part of contemporary preferential treatment programs are commendable and right. There is no inconsistency involved in holding both views. A fundamental feature of programs that discriminated against blacks was that these programs were a part of a larger social universe in which power, authority, and goods were concentrated in the hands of white individuals. The complex system of racial oppression and superiority that was constituted by these institutions and the ideology that accompanied them severely and unjustifiably restricted the autonomy and happiness of members of the less favored category.

Whatever may be wrong with today's programs of preferential treatment, the evil, if any, is simply not the same. Blacks do not constitute the dominant social group. Programs that give a preference to blacks do not add to an already comparatively overabundant supply of resources and opportunities at the disposal of members of the dominant racial group in the way in which exclusionary practices of the past added to the already overabundant supply of resources and opportunities at the disposal of whites.

A related objection that fares no better has to do with the identification of what exactly was wrong with the system of racial discrimination in the South, or with what is wrong with any system of racial discrimination. One very common way to think about the essential wrongness of racial discrimination is to see it as consisting in the use of an irrelevant characteristic, namely race, to allocate social benefits and burdens.

I am far from certain that that is the central flaw at all. Consider, for instance, the most hideous of the practices, human slavery. The primary thing that was wrong with that institution was not that the particular individuals who were assigned the place of slaves were assigned there arbitrarily in virtue of an irrelevant characteristic, i.e., their race. Rather, the fundamental thing that was wrong with slavery was the practice itself — the fact that some human beings were able to own other human beings. And a comparable criticism can be made of many of the other practices and institutions that comprised the system of racial discrimination even after human slavery was abolished. The fundamental wrongness in taking race into account in the way these practices did has to do, perhaps, with arbitrariness, but it is the special arbitrariness attendant upon using race in the constitution and maintenance of a system of oppression so as to make that system a system of racial oppression. Whatever may be true of contemporary programs of preferential treatment, they can hardly be construed as consigning whites to the kind of oppressive status systematically bestowed upon blacks by the dominant social institutions.

A third very common objection is that the category of race is too broad in scope for programs designed to promote equality of opportunity and of political and social status. The relevant characteristic, instead, is disadvantaged socio-economic status. This objection, too, rests on a mistaken conception of the social realities. While socio-economic status unquestionably affects in deep and pervasive ways the kinds of lives persons are able to fashion and live, in our society it is not the sole, or even the primary, locus of systemic oppression. Blackness is as much a primary locus of oppression as is socio-economic status. Socio-economic status is an indirect, imperfect, and overly broad category by which to deal with the phenomenon of racial disadvantage, in precisely the same way in which race is an indirect, imperfect, and overly broad category to take on the phenomenon of socio-economic disadvantage.

A final objection concerns the claim that these programs are wrong because they take race into account rather than the only thing that does and should matter, namely, an individual's qualifications. And qualifications, it is further claimed, have nothing whatsoever to do with race.

The primary thing that was wrong with [slavery] was not that the particular individuals who were assigned the place of slaves were assigned there arbitrarily in virtue of an irrelevant characteristic, i.e., their color. Rather, the fundamental thing that was wrong with slavery was the practice itself. . . .

First, it is important to establish what the argument is for basing selections solely on qualifications. One argument is that the most qualified persons should always be selected for a position because the tasks connected with that position will then be done in the most efficient man-

ner. Now, there is nothing wrong in principle with appealing to the good results that will be produced by selecting applicants solely on the basis of their qualifications. But it may be impermissible for opponents of preferential treatment programs to use *this* argument, if it was an analogous appeal to the good results likely to be produced by programs of preferential treatment that they thought was wrong in the first place with justifying these programs in this way.



THE undersigned wishes to purchase a large lot of NEGROES for the New Orleans market. I will pay \$1200 to \$1250 for No. 1 young men, and \$850 to \$1000 for No. 1 young women. In fact I will pay more for likely

NEGROES,

Than any other trader in Kentucky. My office is adjoining the Broadway Hotel, on Broadway, Lexington, Ky., where I or my Agent can always be found.

WM. F. TALBOTT.

LEXINGTON, JULY 2, 1853.

1853 sale poster

But there is still the argument that the most qualified deserve to be selected because they are the most qualified. If they do, then to refuse to select them is to treat them unjustly. I am skeptical, however, that a connection of the right sort can be made out between being the most qualified in this sense and deserving to be selected. The problem is that being the best at something does not, by itself, seem readily convertible into a claim about what someone thereby genuinely deserves, given the difficulty of connecting the mere possession of abilities with things that the possessor can claim any credit or responsibility for, and given the alternative plausibility of claims of desert founded upon attributes such as effort or need.

In sum, therefore, preferential treatment programs are presumptively justifiable in so far as they work to dismantle the system of racial oppression that is still in place, and their justifiability is rendered more secure once it is seen that they are not unjust either in themselves or as constitutive elements of any larger system of racial oppression.

— Richard Wasserstrom