

## Integration, Diversity, and Affirmative Action

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Orlando Patterson, *The Ordeal of Integration: Progress and Resentment in America's "Racial" Crisis*. Washington: Civitas/Counterpoint, 1997. Pp. xi & 231. \$24.00.

Bill Ong Hing, *To Be an American: Cultural Pluralism and the Rhetoric of Assimilation*. New York: New York University Press, 1997. Pp. xv+205. \$29.95.

The revelation that the Black Leadership Forum, a coalition of liberal civil rights groups, played a major role in the settlement in November 1997 of *Piscataway Township Board of Education v. Taxman*, just weeks before arguments were scheduled to begin before the U.S. Supreme Court is one of the most visible signs that the retrenchment of affirmative action is reaching a crisis point. At issue in the *Piscataway* case was the policy of the local board of education to prefer minority teachers over nonminority teachers in layoff decisions in circumstances where the teachers had the same qualifications and seniority. The principal justification the board of education provided for this policy is that it serves the goal of promoting racial diversity. The Third Circuit Court ruled in 1996 that this policy violated Title VII in the case of a laid-off white teacher, Sharon Taxman. The Supreme Court in June 1997 agreed to hear the appeal. The settlement involved a payment of \$433,500 in back pay, damages, and legal fees to Taxman. Significantly, the Black Leadership Forum agreed to raise \$308,500 of that amount in order to avoid the Supreme Court's making a ruling based on this case, even though the Forum was not a party in the case (*New York Times*, 23 Nov. 1997, p. 1).

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Although the idea of a third party paying 70% of a settlement is practically unheard of, the motives behind the Black Leadership Forum's actions are not difficult to discern. The first stems from the perception that the school board's case in *Piscataway* was extremely weak. The fear of civil rights groups was not simply that the decision of the Third Circuit would be upheld but that the Supreme Court would provide a general ruling against affirmative action programs based on the goal of diversity except when employers admitted to prior discriminatory practices. If the Supreme Court is going to consider such a move and, in effect, overturn the legal standards set in *Regents of the University of California v. Bakke* (1978), it would be better for civil rights groups if the case before the Court is a very strong one. The second motive is to buy time. Putting off a major ruling on affirmative action by the Supreme Court is significant in two important respects. First of all, it allows for the possibility of a change in personnel on the Supreme Court. Chief Justice Rehnquist will retire by 1999, creating the possibility for President Clinton or his successor to appoint a new justice as well as a new Chief Justice who may be more favorably inclined to rule in favor of affirmative action. Second, time allows civil rights groups and others to rethink the theoretical basis for affirmative action. The point, as settlement of the *Piscataway* case makes vividly clear, is that the next little while is critical in an effort to reestablish in the mind of the public why social justice requires the presence of affirmative action programs for visible minorities, especially African Americans, in the contemporary United States and how those programs conform to prevailing standards of fairness.

What the settlement in *Piscataway* bought, in other words, is a narrow window of opportunity to influence in a positive way how the Supreme Court justices view affirmative action. For the purposes of this review, I shall understand affirmative action to mean the following: "An affirmative action program seeks to remedy the significant underrepresentation of members of certain racial, ethnic, or other groups through measures that take group membership or identity into account" (Brest & Oshige 1995:856). The broader intellectual context is that conservative critics of affirmative action have achieved significant legal and political victories. Despite these victories, however, "the conservative line on race," to use Glenn Loury's (1997) pejorative phrase, which advocates rigid color-blind social policy is proving to be stale and reactionary, engaging straw-man views and fighting principled battles settled a decade ago. Leading theoretical architects of the conservative critique of affirmative action in the 1970s and 1980s, most notably Loury and Nathan Glazer, have in the past year come to the defense of affirmative action, despite its color-conscious character, in very public forums. Glazer now argues that dismantling affirmative action would be "bad for the country" (Glazer 1998:

24). Likewise, Loury (1998:38) claims, "there are circumstances where the ability of a public policy to advance the general interest of all persons is enhanced by taking cognizance of the racial identities of particular persons." This back-pedaling suggests to me that this is indeed a most opportune moment to reinvigorate the debate around affirmative action.

It is also worth emphasizing the relevance of a debate among the general public about the fairness of affirmative action to future rulings by the Supreme Court. Two points are particularly noteworthy. The first is that detailed recent polling evidence indicates that the strong white opposition to affirmative action is based primarily on perceptions of unfairness and injustice, not self-interest or racial prejudice (Fredrickson 1997:74). It follows, logically, that by engaging those perceptions, it may be possible to shift white opposition to affirmative action. The second point is that broader public support for affirmative action will probably influence the Supreme Court's decision. Although the Court is often represented as a counter-majoritarian institution, social scientists studying its decisions have long argued that popular opinion has a significant influence on its behavior.<sup>1</sup> Others have argued that in the case of race, in particular, the decisions of the Supreme Court track majoritarian preferences (Spann 1993). While the precise impact of popular opinion on rulings of the Court remains unclear, the claim that it has some impact seems indisputable.

It is within the context of this rethinking affirmative action that I propose to discuss the significance of two new books, Orlando Patterson's *The Ordeal of Integration: Progress and Resentment in America's "Racial" Crisis* and Bill Ong Hing's *To Be an American: Cultural Pluralism and the Rhetoric of Assimilation*. Both books are extended responses to the "conservative line on race" and include discussions of a wide range of issues. Neither book adopts a doctrinal approach to legal issues. Each is, I think, representative of the two broad camps of current defenders of affirmative action in the United States, although only Patterson's contains an extended defense of affirmative action.

While there are many different philosophical arguments for affirmative action, in the public forum and in legal circles two rationales have dominated. Patterson embraces the first, Hing the second. The first (which I call the integration rationale) views affirmative action programs as a means of including members of racial, ethnic, or other groups who historically have been excluded, intentionally or otherwise, from privileged positions or opportunities in American society. Affirmative action in this rationale is one policy instrument among many designed to bring about greater integration of various racial and ethnic segments

<sup>1</sup> The classic article is Dahl 1957. For a recent study, see George & Epstein 1992.

of society. It has its origins in the civil rights movement of the 1950s and 1960s.<sup>2</sup> The second rationale (which I call the diversity rationale) justifies affirmative action as a means to achieving diversity in the racial, ethnic, and gender makeup of social, economic, and political institutions that historically have been marked by rigid homogeneity. The goal is not that through integration members from diverse backgrounds will be absorbed and assimilated into mainstream institutions but rather that the institutions themselves will be transformed to reflect the diversity in American society. The diversity rationale has achieved considerable prominence since the declaration by Justice Powell in his opinion in *Regent of the University of California v. Bakke* that “the attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education” (1978:311–12).

Although Patterson and Hing have written books that are very different in style—Patterson’s is a careful impersonal review of scholarship, Hing’s places an extended personal narrative at the center of his analysis—both help to place these two distinct rationales for affirmative action within a much broader framework. This broader framework is valuable and rich in its details. My intention here is to show that each book displays a major weakness of pursuing solely either the integration rationale or the diversity rationale for affirmative action and, inadvertently, helps make the case for conjoining the two rationales. While Hing’s book offers some ideas about how to achieve this conjunction, Patterson’s book is invaluable.

### Diversity of What? Diversity for Whom?

Although Justice Powell’s opinion in *Bakke* is now 20 years old, it continues to determine the legal standard for affirmative action programs. In effect, this standard makes it permissible for institutions to treat the race or ethnicity of a candidate as a plus in the admissions process. The explicit link to the diversity rationale has made this the most compelling strategy to pursue for those concerned with successfully defending affirmative action programs in the courts. But it is noticeable that few who pursue this strategy dwell on the broader vision of society that underpins the diversity rationale. Christopher Edley (1996), for example, in his careful presentation (ch. 5) of the diversity rationale gives it no careful attention. Hing’s book is the exception.

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<sup>2</sup> Martin Luther King Jr. wrote, for example, in *Why We Can’t Wait* (1964): “Whenever this issue of compensatory or preferential treatment for the Negro is raised, some of our friends recoil in horror. The Negro should be granted equality, they agree; but he should ask nothing more. On the surface, this appears reasonable, but it is not realistic. For it is obvious that if a man is entered at the starting line in a race three hundred years after another man, the first man would have to perform some impossible feat in order to catch up with his fellow runner.” Quoted in Frederickson 1997:70.

The motivation for Hing's book is the anti-immigration sentiment exemplified in California by Proposition 187, which sought to exclude illegal immigrants and their children from such benefits as public education and medical care.<sup>3</sup> Like other books defending immigration, Hing's provides a wide array of statistics and details designed to show that immigration constitutes a net gain for American society. This includes an interesting discussion about the extent to which low-wage immigrants displace other disadvantaged groups, especially African Americans. Ultimately, though, Hing's target is not simply anti-immigration sentiment but the view that American immigration policy should give a preference to "white" immigrants from Europe. Those who hold this view typically argue not that there is no benefit of immigration but rather that because the difficulties of assimilation are considerably less, the net benefits of focusing on "white" immigrants are so compelling as to justify such a preference. Hing imagines instead a country that welcomes a steady stream of immigrants who exemplify not homogeneity but diversity, who engage in very different cultural practices and religions, speak any of the many different languages in the world, and are judged by the benefits this diversity brings to the United States.

The response Hing develops to the "white" immigration stance has many strands. He challenges in particular the "misguided claim that immigrants of color fail to acculturate" (p. 147). He distinguishes between acculturation and structural assimilation. The former is "the change of immigrant cultural patterns to those of the host society" (p. 167). The latter is "the immigrants' large-scale entry into the general civic life of the receiving society, exemplified by social cliques, clubs, and institutions" (p. 167). Acculturation is largely in the hands of immigrants and their capacity to adapt, whereas structural assimilation is a reflection of the willingness of the receiving society to be inclusive. The upshot is that whereas failure to acculturate is the responsibility of immigrants, the lack of structural assimilation is the responsibility of the receiving society. Immigrants of color, according to Hing, have no difficulty with acculturation (pp. 4, 152–53, 177). They have, for instance, no difficulty adjusting their behavior to legal norms and American labor markets. The

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<sup>3</sup> The success in 1998 of Proposition 227, which ends bilingual education in California, is trickier to describe as an anti-immigration proposal because it enjoyed considerable support among the immigrant community including, most notably, Hispanics. See, e.g., *N.Y. Times*, 28 April 1998, p. A15; Pedalino Porter 1998. Many critics of bilingual education challenge it as an instrument of acculturation but leave it open whether the state should promote in other ways the culture and language of immigrant groups. In other countries such as Canada, positive measures developed over the past 25 years such as after-school heritage language programs, funding support for cultural activities, and so on have been found to improve both acculturation and structural assimilation of immigrants. See Kymlicka 1998:ch. 1.

principal obstacles they face are in terms of structural assimilation.

Not surprisingly, Hing also attacks “the normative premise that America has a strictly white, Christian, European heritage” (p. 147). He points out in effect that this is simply a mistaken understanding of America’s history, reflecting a neglect of the role of indigenous peoples, African Americans, Mexico’s historical territorial claims, etc. (p. 152). Aside from this distortion of collective memory, Hing also identifies at the core of this premise the belief that there is some set definition of what it means to be an American. He rejects this essentialism and quotes approvingly President Clinton’s comment in his 1993 Inauguration Speech, “Each generation of Americans must define what it means to be an American” (p. 174). He offers instead a less tidy, more complex understanding of social citizenship:

[T]he definition of what an American is must be expanded. The concept must be one of addition rather than omission. It must embrace differences rather than attack them. It must respect diversity rather than disregard it. It must appeal to a sense of unity that incorporates multiculturalism rather than the illusion of Eurocentric unity, which often serves as a pretext or mask for ostracizing other cultures. . . . Concepts of what it means to be an American must include the diversity of new generations of Americans—foreign-born, native-born, white, and of color—and be cognizant of the tension that accompanies diversity. Catch phrases like *melting pot* or *salad bowl* fail to describe our complex society in a useful way. (Pp. 177, 176)

Hing provides the familiar instrumental reasons for why this sort of diversity in citizenship is significant both in terms of adapting to a globalizing economy and changing ethnic makeup and demographics in the domestic markets (pp. 156–57). “Immigrant labor and cultural diversity have,” says Hing elsewhere, “maximized the interests of all of us” (Hing 1998:182).

He also provides a less instrumental justification of diversity that appeals to what he calls cultural pluralism. Cultural pluralism has its origins in the 1920s social philosophy of Horace Kallen (p. 217 n. 9). It involves the belief that

each nationality and ethnic group should retain its own individuality in language, religion, and culture. . . . [B]oth immigrants and minority groups had a right to preserve their primary identities, and . . . each ethnic group should be permitted a communal life, “preserving and developing its cultural heritage while at the same time participating effectively in the broader life of the nation as a whole.” (Pp. 154–55)

What Hing imagines is a nation composed of a plurality of diverse cultural communities but all sharing a commitment to a core set of principles and institutions including “respect for the nation’s laws, for its democratic political and economic system, and for equal opportunity” (p. 180). The reason for wanting a



core set of shared principles is obvious, namely, that these are necessary to keep the peace. But why is it also so important to preserve and protect diverse cultural communities?

Hing provides an answer in his limited defense of what he calls “sociological separatism,” which he distinguishes from “ideological separatism.” The latter is, he suggests, an angry reaction to barriers faced by immigrants to structural assimilation. It is thus a consequence of the exclusion from mainstream society and can be remedied by the willingness of that society to be more inclusive. Sociological separatism, he writes,

arises from those who find comfort in a neighborhood with people of the same cultural and linguistic backgrounds. Many people in these neighborhoods want to retain their cultural identity for themselves and for their children. A sense of safety might also be a factor for those who feel physically threatened by the dominant culture. (P. 164)

Barriers to structural assimilation also encourage sociological separatism. But Hing appears to believe that preserving and promoting cultural identity in this way reflects the importance of culture, presumably because of the function cultural identity performs for us. This function is to provide the context for the choices we make in our lives. As Will Kymlicka (1989:165) puts it,

[T]he range of options is determined by our cultural heritage. Different ways of life are not simply different patterns of physical movements. The physical movements only have meaning to us because they are identified as having significance by our culture, because they fit into some pattern of activities which is culturally recognized as a way of leading one’s life.

The point is that when cultural diversity is threatened and people are overwhelmed by a foreign dominant culture, they lose control over the meaning of their lives, and in effect, the life choices they make cease to be autonomous.

Although this defense of diversity is in certain respects compelling, it has important shortcomings as a rationale for affirmative action. For it is unclear what kind of diversity should be promoted and for whom. Consider, for example, the situation in the University of California law schools since the end of affirmative action in admissions policies. It is now commonplace to describe the trend as the “whitening” of these schools.<sup>4</sup> The fact that only one African American enrolled for first year in 1997 at Boalt Hall Law School (Berkeley) is often used to illustrate vividly the trend. But critics of affirmative action have seized on an aspect of the changes in admission in California to highlight an ambiguity in the diversity rationale. Stephan Thernstrom points out that while at Boalt Hall African American and Latino enrollment dropped considerable in 1997, this was offset partially by a marked in-

<sup>4</sup> This description is often used by the *N.Y. Times* education correspondent Brent Staples, e.g., in his editorial observation on 12 April 1998.

crease in Asian American enrollment. At UCLA Law School, African American and Latino enrollment also dropped, but Asian American enrollment increased significantly. "In fact," says Thernstrom (1998:42), "minority enrollment at the UCLA Law School has not gone down at all; instead, *it is up 18 percent.*" The trend, in other words, is not toward a "whitening" of California's universities but rather the displacement of one racial minority by another. How, on the diversity rationale, can a preference be given for one over the other?

A similar problem arises with regard to the beneficiaries of affirmative action. It is well known that *middle-class*, as opposed to poor, African Americans are the principal beneficiaries of affirmative action programs. As William Julius Wilson (1987:115) has pointed out,

minority individuals from the most advantaged families are likely to be disproportionately represented among the minority members most qualified for preferred positions—such as higher-paying jobs, college admissions, promotions and so forth. . . . Affirmative action . . . applied merely according to racial or ethnic group membership tend to benefit the relatively advantaged segments of the designated groups. The truly deprived members may not be helped by such programs.

The middle-class bias of affirmative action is problematic in the diversity rationale because if the objective of affirmative action is the promotion and protection of diversity, it would seem to follow that programs should be designed to benefit proportionately members from diverse socioeconomic backgrounds. What the diversity rationale seems incapable of explaining is why affirmative action targets the black and Latino middle-class as opposed to either poorer African Americans and Latinos or poorer whites.

There is a very plausible way to respond to these objections to the diversity rationale. While diversity matters (it might be said), affirmative action also reflects a concern with more orthodox views of economic inequalities. As Deborah Malamud (1997:941) puts it, "the diversity rationale is unconvincing unless it is coupled with an understanding that race-based economic inequality stands in the way of achieving diversity without affirmative action." The reason why the enrollment trends at University of California law schools are troublesome is that, regardless of who is replacing them, the displaced groups—African Americans and Latinos—are the least advantaged in American society. Likewise, targeting the black middle class makes sense if the concern of affirmative action is also with economic inequality because based on standard socioeconomic measures such as housing, work, and income security, the black middle class in the United States is "systematically worse off than the white middle class, and is thus systematically at a competitive disadvantage in a white-dominated economy and society" (*ibid.*, p. 967). The attraction of the inte-



gration rationale for affirmative action is precisely that it places socioeconomic inequalities at the forefront of its concern.

### Taking Integration Seriously Again

Until recently in the United States, there was no serious alternative to the integration model of race relations as a bedrock for the civil rights movement. But integration has fallen on hard times, subject in particular to powerful critiques by critical race theorists. The context is, of course, one where racial tensions seem to be heightening, housing segregation in urban areas is on the rise, and the federal courts have made a series of decisions that indicate little sympathy for civil rights complaints. Perhaps the best known expression of this view has been made by Derrick Bell, who writes in *Faces at the Bottom of the Well*,

For years I believed law was the answer. . . . Now, though, I'm convinced that racism is a permanent part of the American landscape. . . . [Integration] is just another instance that black folks work for and white folks grant when they realize—long before we do—that it is mostly a symbol that won't cost them much and will keep us blacks pacified. It is an updated version of the glass trinkets and combs they used in Africa a few centuries ago to trick some tribes into selling off their brothers and sisters captured from neighboring tribes. (Bell 1992:18, 92)

Orlando Patterson remains, in contrast, strongly committed to the ideal of integration, more or less, as it was originally imagined in the 1940s and 1950s civil rights movement.

Much of the criticism of integration has in fact been historically based to the extent that it involves the claim that the United States has pursued that integration route for 40 years now and there has not been much progress for African Americans. Significantly, this is a point of convergence between conservatives and critical race theorists. Patterson offers two lines of argument in response. The first line emphasizes that much of the problem is in “perception” (p. 16). For him, integration is characterized by numerous paradoxes which suggest that very little about it is straightforward and clear; the prevalent perception, even among social scientists, is predominantly to make simple inferences from perceived phenomena. One perception he focuses on is the common one that racial tensions are on a rise. It is often inferred from this observation that integration is therefore a failure. Patterson turns it around; increased tension is, he thinks, an inevitable outcome of increased integration. His reasoning is, “as individuals in both groups meet more and more, the possibility for conflict is bound to increase” (p. 51). Racial tensions in everyday life are, to adapt a famous quip from Marx, the “birth pangs” of the journey toward a desegregated society. Likewise, while Patterson concedes that spatial segregation on racial lines persists in

urban areas, he highlights the dramatic increase in the satisfaction with their housing among African Americans from 45% in 1973 to 74% in 1997 (p. 47).

The second line of argument Patterson offers is more empirical in nature. More than one-third of *The Ordeal of Integration* is devoted to showing how much progress, relative to whites, African Americans have made in their standards of living over the past 40 years. Patterson's discussion gushes with superlatives: "the achievements of the American people over the past half century in reducing racial prejudice and discrimination and in improving the socioeconomic and political condition of Afro-Americans are nothing short of astonishing" (p. 15). In this respect, Patterson's position is much like that of a number of recent opponents of affirmative action, most notably, Stephan and Abigail Thernstrom in their recent book, *America in Black and White: One Nation, Indivisible* (1997). (Patterson 1997 himself has noted the parallel in a recent article in the *New York Times*.)

For many, it may seem that by emphasizing how much progress African Americans have made, it is logical to infer that there is no longer a need for affirmative action (see, e.g., Wilson 1997:10). But such an inference misconstrues a vital step in a successful defense of affirmative action at the general level of public policy. Patterson's explicit targets are those analysts of race relations who paint a very bleak picture of the socioeconomic improvements for African Americans.<sup>5</sup> What those pessimistic analysts in effect do is play into the hands of neoconservative critics of affirmative action. It is not a coincidence that many of the most influential neoconservative critics of affirmative action also challenge the cogency of most of the welfare state programs that were integral to the vision of the Great Society of the late 1960s. Charles Murray (1984) is probably the leading example of such a critic. His book *Losing Ground* famously called for the federal government to scrap its entire welfare and income-support structure for people of working age on the grounds that although such programs were intended to help the poor, they had in fact made them worse off. The broader policy implication is that ambitious "liberal" programs targeted to improve the conditions of disadvantaged groups are ultimately self-defeating and hence should not be undertaken. The upshot of Murray's argument is, of course, that programs like welfare are misconceived, but so too is affirmative action, which, despite its lofty ambitions, will make racial minorities worse off. At the core of his argument is the claim that the poor were worse off in terms of standard of

<sup>5</sup> Patterson singles out in particular (on pp. ix and 85–86) Andrew Hacker's (1992) influential book *Two Nations: Black and White, Separate, Hostile, Unequal*. The charge that Hacker fails to appreciate the improvements Patterson cites is slightly off-target because Hacker is not making a historical claim but rather is offering a description of the status quo.

living after the expansion of Aid to Families with Dependent Children (AFDC) and the spending of billions of dollars by governments than before this expenditure. When analysts of race relations paint a bleak picture, they are ironically supporting Murray's claim. AFDC has now been abolished, even though social policy analysts have systematically and, I think, conclusively challenged Murray's findings.<sup>6</sup> Patterson in the first part of *The Ordeal of Integration* is contributing further to the refutation of this neoconservative interpretation of recent American social policy history.

The broader point is this. Affirmative action is an ambitious social policy that presupposes that it is possible to undertake large-scale interventions in the way social and economic decisions are made to the benefit of a particular targeted group.<sup>7</sup> Whilst most critics directly attack affirmative action on the grounds of unfairness, neoconservatives are also challenging that presupposition. At issue here, then, is the "possibility" of politics, to use Stein Ringen's (1987) apt phrase. Most of us agree that commencing in the 1960s, the United States experimented with a large-scale intervention of this sort designed to improve the circumstances of African Americans. If we conclude that this experiment was a disaster, then any effort to renew a commitment to affirmative action would be undermined because the presupposition on which such a social policy is based would, given the historical record, seem misconceived. In other words, any serious effort to rethink the basis for affirmative action must embrace, as Patterson has, the historical legacy of government intervention to improve the circumstances of disadvantaged groups.

## The Paradoxes of Race

Patterson, like many others, views the idea of race as a social construction and argues that it should be abandoned. In his view, "Afro-Americans are not a 'race' in any meaningful sense, but an aggregate of 33 million people that is better described as an ethnic group if one must speak of an entire collectivity" (pp. x–xi). For him, racial classifications have their origins in long-refuted 19th-century views of human biology. Modern genetics has shown conclusively that the belief that groups of individuals share a certain genetic essence that corresponds to racial classification is mistaken. Instead, if African Americans can be said to

<sup>6</sup> Several of the most important studies are Danziger & Weinberg 1986; Wilson 1987; Ellwood 1988; Jencks 1992.

<sup>7</sup> My brief synopsis here is an oversimplification. Although neoconservatives couch their challenges in terms of all welfare state-type policies, the specific character of their challenges are directed principally at so-called targeted as opposed to universal benefits. This means that if social policies provide universal access, they sidestep the neoconservative objections. I have argued this at length in Jacobs 1993:ch. 8.

share something in common, it must be understood not in biological terms but in cultural ones. In this respect, as a group they are similar to Irish Americans or Italian Americans, groups that are ordinarily not understood to be signifiers of biological classifications. Indeed, Patterson prefers the term “Afro-American” to “African American” because he thinks that the relevant cultural ties that bind them have their origins in American society, not in Africa. Likewise, he rejects the term “whites” in favor of “Euro-Americans” because it clearly denotes cultural ties, not biological ones.

Although Patterson finds in integration numerous paradoxes, for race he appears to find none. It seems to me that those such as Hing who defend diversity provide an important corrective on this idea of abolishing race. While racial classification has undeniably been used insidiously and race itself is a social construction, it is also paradoxically an important aspect of the identity of African Americans; race is in this respect part of their cultural heritage which functions to give meaning to the choices they make about their lives. “[T]his country’s history of slavery” is not, for example, as Derrick Bell (1992:12) stresses, “an insuperable racial barrier to blacks, but . . . a legacy of enlightenment from our enslaved forebears reminding us that . . . they survived the ultimate form of racism.” Racial identity serves to unite the group suffering from the racism in their struggle against it.<sup>8</sup> This function, because of the potential for collective action it generates, seems very valuable on the road toward a nonracist society or at least for dealing with the continued presence of racism. Patterson acknowledges this:

For nearly three centuries [Afro-Americans] were held in chains here, during which time the social category of “blackness” was constructed and imposed upon them. Eventually, the logic of their situation dictated that they accept and invert the “racial” status forced upon them in their heroic struggles to overcome the centuries of enslavement and victimization. (P. 163)

What I find lacking in *The Ordeal of Integration* is an account of how an ethnic identity can be similarly imposed and “inverted” to motivate the collective action necessary for a social revolution.<sup>9</sup>

The importance of racial identity to African Americans contrasts sharply to its importance to “whites” in the United States. As Patricia Williams (1997:7) puts it, “Whiteness is unnamed, suppressed, beyond the realm of race. Exnomination permits whites to entertain the notion that race lives ‘over there’ on the

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<sup>8</sup> For recent reworkings of this aspect of racial identity, see, e.g., Appiah 1996; Spinner 1994; Fiscus 1992.

<sup>9</sup> I do not mean to suggest here that ethnic identity cannot motivate collective action. Certainly, so-called ethnic nationalism seems capable of this. But what is hard to imagine is the “inversion” of status.

other side of the tracks.” The important point is this. Abolishing race will mean little to the identity of whites since their identity is not bound up with it, or at least, not to a comparable degree.

Despite his abandonment of race, Patterson paradoxically still retains as useful the charge of racism, saying, “The term *racist* is still a meaningful one, but should be used only to designate persons who believe in the existence of ranked, genetically separate ‘races’ and who explain human behavioral differences primarily in genetic or somatic terms” (p. 173). He asserts without hesitation that we live in a racist society, writing: “it is reasonable to estimate that about a quarter of the Euro-American population harbors at least mildly racist feelings towards Afro-Americans and that one in five is a hard-core racist” (p. 61). Frankly, the position that it is possible to make reference to racism without a concept of race seems misconceived (see, e.g., Appiah 1996:82). Patterson seems to think that in the same way that it is feasible (but I suspect unhelpful) to have a concept of race that does not make racism central, likewise it is feasible to have a concept of racism without a notion of race. But this inversion is misleading since race seems to be the primary idea underpinning racism. By analogy, it is like talking about a sailboat without mentioning the word *boat*.

Aside from the paradox of racism without race, it is also important to note the severe limitations of Patterson’s understanding of racism, in particular, the emphasis on the idea that racism is reduced to a view based on a mistaken theory of genetics. For someone to be a racist in Patterson’s definition, two conditions must be met: the person must believe (1) that there is a genetic basis to racial classification and (2) that there is a racial hierarchy. It is important that condition (1) is not a sufficient condition for being a racist since many people, because they lack knowledge about advances in genetics over the past 30 years, hold that belief. But the insistence on condition (2) is counterintuitive in numerous easy cases of racism. Consider, for example, the groups organized around the principle of “racial integrity” that sprang up in a number of southern states during the 1950s and 1960s to counteract desegregation. Surely, these groups are exemplars of racism in America. Yet, their central objection to desegregation and the “mixing” of races did not necessarily require a claim about racial hierarchy, only one about the biological basis for racial distinctions. An illustrative analogy of the claims made by these groups is that mixing “races” is like mixing orange juice and milk; the alleged curdling effect does not presuppose that milk is better than orange juice.

Abandoning racial identity immediately, as Patterson recommends, also makes the design of affirmative action programs very tricky. He seems committed to color-conscious affirmative action without racial identity, and ridicules a “color-blind” approach (p.

163). Yet, in countries other than the United States where ethnicity rather than race have been the focus of affirmative action programs, those programs have taken on a color-blind character. For example, in the early 1970s, the federal government of Canada sought to increase the representation of French Canadians in the federal civil service. They did this by making French-language fluency a requirement for many of the positions. This indirectly increased the percentage of French Canadians employed by the government. However, it was significant that English Canadians could readily meet this requirement if they acquired fluency in French. Over the past 25 years, the number of English Canadians who have acquired this fluency is so high that the language requirement no longer functions as an affirmative action policy. For ethnic differences that track language, it is still quite easy to imagine how to design programs that target indirectly one group. For African Americans, it is hard to see any parallel requirement that would work in the same way.

### **Color-Conscious Policies as Representational Interactions**

Although I think that Patterson is mistaken and maybe even incoherent in his call for the immediate abandonment of racial identity, the approach he takes to defending color-conscious policies is original and insightful. What Patterson values most is what he calls moral autonomy. For him, this means having control over one's life. Why having that control is so important needs little elaboration. But Patterson thinks that there is a tendency in the context of discussions of racism to neglect the burdens moral autonomy imposes on us. Moral autonomy means not only that we have control over our lives but also that we are responsible for the choices we make and for ensuring that everyone else also enjoys moral autonomy. He finds among many African American political leaders and intellectuals a tendency to not hold African Americans responsible for actions like violent crime and drug use.

At the core of his analysis is a distinction he takes from Kant between the intelligible world and the sensible world (pp. 113–15).<sup>10</sup> The intelligible world is the context in which we exercise our moral autonomy. We are human agents who make choices and decisions that have consequences and for which we are held responsible. The assumption in the intelligible world is that we have some dimension of control over our lives and what we do makes a difference to what happens to us and others. The sensible world, in contrast, focuses on understanding how things have come about without reference to moral autonomy. Instead,

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<sup>10</sup> I am skeptical that in fact Kant held to the dualism Patterson attributes to him. The classic reading of Kant in this way is Strawson 1966. For a persuasive argument that Kant held to a unified view of the world, see Allison 1984.



the emphasis is on cause and effect, social structures, and physical determinism. In the sensible world, the explanations are couched in terms of genetics, capitalism, and so on, rather than from the perspective of an individual agent and what is in his or her control. Crimes are often viewed from these two distinct perspectives. In the intelligible world, the explanation involves the criminal making choices and decisions that have particular consequences. Criminal justice involves holding him or her responsible for those choices and decisions. In the sensible world, the criminal's behavior is viewed like a billiard ball where the task is to identify what other balls hit it to cause it to move in the way it did, for example, socioeconomic background, IQ, racism, and so on.

This distinction between the intelligible and sensible worlds corresponds to two distinct types of interactions between people. In a modern complex society, we are obliged to interact with people in . . . two distinct ways . . . as individuals in face-to-face interactions and as representatives in corporate, communal, civic, and governmental roles. . . . [P]eople in their roles as corporate, or representative, agents are expected to behave differently in their relations with people from the way they behave as individuals in relations with these same people. (P. 115)

Face-to-face interactions should be situated in the intelligible world. You should treat everyone alike, each as an agent exercising moral autonomy. Representational interactions, on the other hand, should reflect the sensible world. This means that even when dealing with individuals, representative agents should be sensitive to the deterministic effects of social constructions like race, class, and gender (p. 116).

Critics of color-conscious policies fail to recognize this distinction between types of interactions and therefore mistakenly apply the normative standard of one type of interaction to the other type. Face-to-face interactions should indeed be color-blind in the sense that each person we interact with face to face should be treated as a morally autonomous agent and not as a billiard ball with a deterministic future. In this type of interaction, it is wrong to let the racial identity of the person you are interacting with influence how you treat him or her. In my personal interactions with students, it might be said to be wrong for me to treat individual students differently because of racial considerations, for this would be a failure to acknowledge each individual as an autonomous agent (Kennedy 1997:60). This doesn't mean that I shouldn't be sensitive to differences in their individual needs and concerns but that remedial solutions for societal racism do not rely on face-to-face interactions. Addressing societal racism is rather in the domain of representational interactions. Representatives in corporate, communal, civic and governmental roles should not therefore be color-blind but instead must be sensitive

to those circumstances that warrant affording some people special treatment, in particular, in those circumstances where some people faced harsh social conditions such as racism that have impeded control over important areas of their lives.

The important upshot is that what is at stake in affirmative action are representational interactions, not face-to-face interactions. Affirmative action is a policy designed to guide the decisions of institutions and their representatives. It has a color-conscious character precisely because it is designed to address the effects of societal racism. When critics object to this color-conscious character and maintain instead that social policy should be color-blind, they are appealing to the norm for guiding face-to-face interactions and, hence, committing a kind of category mistake.

Conservative skeptics may respond by rejecting the idea of collective agency presupposed by representational interactions. They may maintain instead that the only kinds of interactions in society are face-to-face ones between individuals. But Patterson thinks that this would undermine much of the core of conservative economic and social theory.

The truth . . . is . . . that human agency exists on several levels, of which the individual is one, albeit the most fundamental. Not only do human beings act responsibly, and morally, as individuals, they act jointly as collective agents. The family is such an agent. The community is another. The state or its governmental arm is yet another. Nor is such agency confined to nonformal or noneconomic activities. Collective agency is an essential part of the capitalist system. Indeed, the most important example of such agency is the firm, that organizational foundation of capitalism. (P. 114)

The example of the firm is especially poignant since representational interactions with individuals from different firms is at the core of much of the business practices and legal standards that govern them in our society. When, for instance, I interact with an employee at McDonald's in the course of buying a hamburger, I assume that this is a representational interaction where the employee is a representative of the restaurant and not a face-to-face interaction between autonomous individuals.

It is worth contrasting, in the context of rethinking affirmative action, the usefulness of the idea of representational interactions to a more familiar idea of how institutions should function proposed by the influential philosopher Thomas Nagel. Nagel in his book *Equality and Partiality* argues that it is possible to distinguish two standpoints (1991:ch. 2). The personal standpoint is the perspective each one of us has on the world, that is to say, how things affect us, what we care about, the particular personal relationships we are in, and so on. The impersonal standpoint does not focus on a particular individual but rather aspires to an

objective perspective that reflects reality. What matters on an impersonal standpoint is impartiality. Ethics demands that we adopt both standpoints. In our everyday lives, Nagel believes that it is extremely hard to be impartial. All of us hold dearly our personal standpoint. In Nagel's (ch. 6) view, the significant potential of social institutions and the state in a democracy is that they can meet the demands of impartiality on our behalf. If they do, we as individuals can concentrate on our own partial views and living our lives principally from that perspective, knowing that the state is meeting the requirements of the impersonal standpoint. This very brief gloss on Nagel's position is sufficient to note the contrast to Patterson. It follows logically from Nagel's account of social institutions that they should be color-blind since this is a demand of impartiality and that if there should be color-conscious interaction, it should be from the partial personal standpoint of an individual. In effect, then, Nagel's position makes it hard to defend the color-conscious character of affirmative action policies.

### The Rationale for Affirmative Action

Above, I have shown the usefulness of Patterson's idea of representational interactions for making sense of the color-conscious character of affirmative action. Patterson also provides a very succinct rationale for the continued existence of affirmative action, especially for African Americans. Above, when discussing the paradoxes of race, I emphasized the importance of the diversity rationale for explaining the continued reference to racial identity. Patterson's rationale for affirmative action, therefore, implicitly combines the diversity and integration rationale for affirmative action.

We have just seen that in representational interactions, color-conscious treatment is warranted when certain circumstances arise that have a disparate impact on a particular group of individuals. Patterson distinguishes between three categories of such circumstances—Acts of Man, Acts of Degradation, Acts of History—when the state should intervene on behalf of that group. *Acts of Man* are “the wholly unanticipated disasters that individuals are forced to confront as a result of some sudden devastating change in their environment brought about by the acts of powerful individuals and corporate agents” (p. 118). An example of this type of circumstance is a plant closing in a town where that plant is the main employer. *Acts of Degradation* are threats to the moral and social fabric of community. Crime is the most vivid example Patterson gives of this type of circumstance. Although he disagrees with how the government currently responds to crime, he thinks that it is a fundamental responsibility of the state to address it. *Acts of History* are “the accumulated patterns of

discrimination over long periods of time against particular groups of people that create not only generalized disabilities of a collective nature but also generalized advantages to those who benefit from the discrimination" (p. 121). Affirmative action, as a form of representational interaction, is a response to Acts of History.

African Americans have, like other groups, suffered from class exploitation. They also had the unique experience of slavery and the Jim Crow laws. But for Patterson the principal reason for having affirmative action stems from something else also unique to the African American experience. He says, "Most important of all, only they were systematically shut out of the emerging industrial revolution at the end of the nineteenth century, preventing them from developing those critical patterns of behavior and cultural tools necessary for keeping in phase with the nation's changing economy" (p. 121). In particular, the long-term consequence of this exclusion is that in the language of human capital, African Americans have been disabled in their access to two key ingredients: the valuable capital of personal and family networks and the almost immeasurable cultural capital that they were "denied as a result of their segregation from the mainstream of the industrial culture" (p. 121).

For Patterson, affirmative action is "the single most important factor accounting for the rise of a significant Afro-American middle class" (p. 147). What affirmative action has done, and continues to do, is break down the barriers of access to the forms of human capital that African Americans had been excluded from in the industrialization of the United States. He states:

The most important way in which affirmative action helps those who are on the outside is to provide them with access to circles and networks that they would otherwise almost never penetrate. For Afro-Americans, one of the most egregious effects of past ethnic exclusion has been their isolation from cultural capital and performed networks that are essential for success in America. (P. 160)

This defense of affirmative action has two important virtues.<sup>11</sup> First of all, because of the way it characterizes the problem to be remedied, it gives a succinct explanation for why affirmative action, as opposed to some other initiative, is appropriate. That problem is the exclusion of African Americans from certain forms of human capital, in particular, cultural capital and social networks. The reason why the government and other social insti-

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<sup>11</sup> Patterson seems to believe that affirmative action for women can be based on an identical argument about the exclusion from human capital. Here, unlike in the case of African Americans, I think he is mistaken. A much more compelling justification for affirmative action for women can be made by reference to the unfair burden of domestic labor carried by women in American society and the effects this injustice within families has on women's opportunities in the labor market. I have argued this at length in a number of places, including Jacobs 1994.

tutions should be concerned as a matter of fairness with this exclusion stems from its historical context.<sup>12</sup> Affirmative action is especially effective at redressing these forms of human capital. Second, it provides a compelling explanation for what I described above as the fact that *middle-class*, as opposed to poor, African Americans are the principal beneficiaries of affirmative action programs. In effect, the focus on these particular forms of human capital presupposes that the target of affirmative action is necessarily those African Americans in the middle class. As Patterson puts it,

[A]ffirmative action was never intended to help the poorest and least able members of the minority classes and women. It is, by its nature, a top-down strategy, meant to level the field for those middle- and working-class persons who are capable of taking advantage of opportunities denied them because of their gender or ethnic status. For the underclass and working but chronically poor, an entirely different set of bottom-up strategies are called for. (P. 155)

In these two ways, the defense of affirmative action in terms of exclusion from particular forms of human capital neatly explains both the design of affirmative action and the demonstrated effects of implementation.

Patterson maintains that there is an added bonus of affirmative action. He argues that the gains provided by affirmative action have very little cost. Significantly, he provides data intended to show that the perception that there are many innocent persons hurt by affirmative action is misleading. If this is the case, what I above called “the innocent persons objection” is off base. Based on opinion polls, he found that although 70% of Euro-Americans thought that other Euro-Americans were being hurt by affirmative action, only 7% reported to have been hurt and only 16% knew someone well who had been hurt (p. 148). He finds these results “remarkable” and concludes from this “that Euro-American fears about affirmative action are a largely invented problem” (p. 149). While Patterson may be right that it is an invented problem, I don’t think that this can be inferred from the polling he presents. The relevant question is how many Euro-Americans would have to report being hurt by affirmative action before it would be a genuine problem. The numbers involved in affirmative action suggest that it is unlikely that more than 10% would be hurt by even the most ambitious affirmative action scheme for African Americans. Let us assume that 25% of indi-

<sup>12</sup> Recent immigrants might also have difficulties with these forms of human capital but the reasons for these difficulties make it tricky, unlike in the case of African Americans, to argue that it is the responsibility of the government to address them. More recently, Patterson (1998) has organized his argument for affirmative action around the idea of social networks. His claim is that African Americans lack networks that Euro-Americans take for granted. Presumably, this logic for affirmative action justifies extending it to other marginalized groups including many immigrant groups.

vidual African Americans were to benefit from affirmative action. (This seems like an incredibly high figure since it would mean that the majority of African American households would benefit.) Based on Patterson's population figures of 33,865,000 African Americans, this would amount to 8,464,000 people. Currently, there are 220,976,000 Euro-Americans in the United States (p. 60). If each African American who benefited from affirmative action displaced one Euro-American, this would mean that 8,464,000 people would have been hurt. This would amount to a mere 3.8% of the total Euro-American population. Suppose that the ratio of beneficiary to displaced person were one to two. In that case, the total displaced would double to 7.6%. In other words, the 7% reported in the polling data cited by Patterson is neither remarkable nor surprising once the total numbers are put in perspective. Ultimately, I think that Patterson misses the force of the innocent person objection to affirmative action. This objection challenges not the aggregate cost of affirmative action but the way that among Euro-Americans the cost is shouldered disproportionately by a small group of individuals rather than spread evenly among all Euro-Americans.

## Conclusion

At the outset, I pointed out how the out-of-court settlement of *Piscataway Township Board of Education v. Taxman* just weeks before the case was to be argued before the Supreme Court indicated the importance of rethinking the basis for affirmative action. The civil rights groups that were instrumental in achieving this settlement viewed the case as an extremely weak one to test the Court's views on affirmative action. I have argued in this review that the rationale for affirmative action must involve a combination of the diversity rationale and the integration rationale. Neither is sufficient on its own to ground the distinctive features of color-conscious affirmative action. The difficulty of resting a policy exclusively on the diversity rationale is exemplified in *Piscataway Township Board of Education v. Taxman*. The principal reason the board of education gave for preferring minority teachers over nonminority teachers when there were layoffs was that such preference promoted diversity among the teaching staff. If the argument I presented above is sound, it follows that more needs to be done to justify racial preferences in the situation of layoff decisions between otherwise identically qualified individuals. This can, I think, be done by reference to human capital-type considerations like the importance of promoting social networks for African Americans, networks in which high school teachers can play a very significant role, and the responsibility school boards and other social institutions have in the promotion of a significant African American middle class.



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