

makes opportunities unequal. Consequently, an advocate of color-blindness cannot consistently oppose color-conscious policies on the grounds that they contravene equal opportunity and at the same time support talent-conscious policies. Nor, finally, does my concession raise any further difficulty with the issue of equal opportunity. As I argue later, equal opportunity is not a fundamental principle of justice, but is derived from its basic principles. Often these basic principles require that opportunities be made more equal. Invariably, however, these same principles require that the process of equalization stop before a condition of perfect equality of opportunity is reached.

To conclude, adopting a color-blind principle entails adopting a talent-blind principle, and since the latter is absurd, so also is the former. Or, in other words, differences in talent, and differences in color, are, from the point of view of justice, on a par. Either, with equal propriety, can be the basis of a just discrimination. Consequently, the color-blind principle is not as simple, straightforward, or self-evident as many of its advocates seem to feel it is. Color-conscious policies can conceivably be just, just as talent-conscious policies can conceivably be—and often are—just. It depends on the circumstances.

2

Black Progress and the Free Market

The Legacy of Booker T. Washington

Booker T. Washington once told the story of an old colored doctor who employed somewhat peculiar methods of treatment. One of the doctor's patients was a rich old lady who thought she had cancer, and who for twenty years had enjoyed the luxury of being treated by the doctor. As the doctor became—mainly thanks to the cancer—pretty rich himself, he decided to send one of his boys to medical school. After graduating the young doctor returned home, and his father took a vacation. While he was away, the old lady called in the young doctor. He treated her, and within a few weeks the "cancer" was cured. When the old doctor returned and found his patient well, he was outraged. He reminded his son that he had put him through high school, college, and medical school on that cancer. "Let me tell you, son," the old man concluded, "you have started all wrong. How do you expect to make a living practicing medicine in that way?"¹

Now Booker T. was not in the habit of telling amusing stories just for the fun of it. He always told them to make a point. The point he was making in this case was, as he went on to put it, "there is a certain class of race-problem solvers who don't want the patient to get well, because as long as the disease holds out they have not only an easy means of making a living, but also an easy medium through which to make themselves prominent before the public."² The worst offenders, Washington thought, were certain colored people. These people, he

charged, make "a business of keeping the troubles, the wrongs and the hardships of the Negro race before the public . . . partly because they want sympathy, and partly because it pays. [They] do not want the Negro to lose his grievances because they do not want to lose their jobs."³

This barbed observation, the result of Washington's philosophy of stoicism and self-help, suitably coarsened for late 20th-century wrangles, continues to be the weapon of choice in the armory of his contemporary representatives. Walter E. Williams, one-time student of Thomas Sowell's and now professor of economics at George Mason University, recently swung this roundhouse: ". . . a whole lot of people have their livelihoods staked on the existence of a so-called 'disadvantaged' class of people. I'm not only talking about the 'poverty pimps' who administer and manage these programs. I'm also talking about professors who get federal grants to study poverty, and then meet in Miami in the winter to discuss the problems of the poor."⁴

This outburst was ignited by a theory about racial subordination and racial progress, shared by Sowell and Williams, that is virtually identical to Washington's. The centerpiece of that theory is the proposition that the free market system is the only sure road to black elevation, and correspondingly, that governmental interference in the free market is the chief cause of black subordination. Williams puts this most clearly: The "basic problem of blacks in America," he writes, is "severe government-imposed restraints on voluntary exchange. Or put another way: the diminution of free markets in the United States."⁵

Surrounding this fundamental proposition are various other propositions of a consequential, ancillary, and supportive nature. Perhaps the most provocative of these is that racial discrimination does not explain, and is not even an important part of the explanation, of black subordination; according to this theory, after governmental interference in the economy, the most important explanation of black subordination is that black people lack those valuable personal qualities the economy demands. This has the corollary that, if blacks are subordinated, it is because of their own inadequacies. While this inference does not blame the victim, as some have misleadingly charged, it does succeed in absolving everyone from blame. Washington expressed his allegiance to this view as well as his faith in the free market eloquently, if obliquely, in his famous "Atlanta Exposition Address": "No race that has anything to contribute to the markets of the world," he declared, "is long in any degree ostracized."⁶ And even Thomas Sowell, who is not noted for his delicacy, hides the unpleasant truth in a bland generality: "What determines how rapidly a group moves ahead," he writes, "is not discrimination but the

fit between the elements of its culture and the requirements of the economy."⁷

If this proposition is true, it follows at once that an essential condition of black progress is that blacks acquire what the market demands. When he wanted to, Washington could strip away the frills as well as anybody: "Harmony will come," he observed, "in proportion as the black man gets something the white man wants."⁸ Sowell, the professional economist, makes the same point less trenchantly: "To get ahead," he writes, "you have to have some ability to work, some ability at entrepreneurship or something else that the society values."⁹

Now, among the things the "white man wants," or, if you will, "the society values," will be certain skills, and accordingly, Washington and Sowell both stress the need for blacks to acquire such skills.¹⁰ But, they explicitly deny that blacks must have a *high level* of skills in order to progress. According to them, even a low level of saleable skills—or incompetence—cannot explain black unemployment. Competence and incompetence are relative matters. Hardly anyone is so incompetent that there is no work he can do, and no one ready to pay him to do it. Consequently, even assuming black incompetence, black advocates of the free market must still explain the disproportionately high rate of black unemployment. Part of their explanation is that it is the fault of government interference. For example, Williams accuses the government, through its minimum-wage laws (and these are, perhaps, the chief bugbear of black free market supporters), of interfering with the freedom of blacks to work for wages employers are prepared to pay for the use of their skills. They admit, of course, that these wages will be low. But this dovetails neatly with their partiality for the rags-to-riches approach to life. Low-paying jobs, they argue, are the bottom rung of the ladder on which countless European and Asian immigrants have climbed out of poverty.

Washington first outlined the essentials of this theory of progress. It was one of his favorite themes that the acquisition of basic, humble skills would be sufficient to start blacks on the road to elevation. Black radicals, usually from a relatively safe berth in the North, accused him of "accommodating" his theory to white prejudice, but the fact that Sowell, who accommodates no one, makes the same claim shows that they were mistaken. While Washington evidently arrived at this view intuitively, Sowell comes to it via the study of history. According to Sowell, history reveals that a high level of education is not a necessary condition of progress. Even the immigrant Jews, he argues, who did arrive in the country with a long tradition of learning, did not rise from poverty because of that learning.¹¹ And, he continues, education, past a basic minimum, being unnecessary to social elevation, much

compulsory education is unjustified. "Everyone recognizes," he writes, "the need for literacy and other educational basics. But compulsory attendance laws have been applied to keep youths in school long past the time necessary to learn these things."¹² Their effect, he asserts, is simply to keep black youths out of the labor force, and blacks as a whole from starting the long march to affluence.

But although higher education and greater skills may not be necessary to advancement, it does not follow that they cannot accelerate it. Why then, the skeptic may ask, cannot black youths use compulsory secondary education and the opportunities for higher education, to acquire skills which will enable them to steal a march on history? Sowell's negative response to this idea reveals the most dismaying aspect of his theory. Most black youths, he argues, do not and cannot use their years in school to acquire exceptional skills and learning. They simply lack the discipline for it. Learning "many of the most valuable intellectual skills," he writes, is "dry, tedious, frustrating" and a cause of "headaches." "How many black students are prepared to accept headaches after twelve years of coasting through inferior public schools?" he asks, and he thinks that the question "answers itself."¹³ Moreover, he believes, the universities know this very well. They recruit black students only to "keep government money coming in" and with no real hope of educating them. At many universities which have drives to recruit more minority students, those students "are flunking out in droves," or else special easy courses are cooked up for them. The result: "Never has it been easier to graduate from college as a complete ignoramus." Moreover, he opines, basically the same process occurs during secondary education.¹⁴

Sowell believes that this problem of attitude and discipline has hampered black education since emancipation. Though the newly-freed slaves eagerly sought education, teaching them was a "trial." They were convinced that "education was a good thing" but they had no conception of the "disciplined work" it required.¹⁵ If Sowell's theory of what hinders black progress is sound, there is no question of their stealing a march on history. Blacks as a group must start at the bottom. As Washington had warned prophetically: "it is at the bottom of life we must begin and not at the top."¹⁶ Opportunities for education can speed a group's progress, but education cannot allow them to skip a stage of that progression. What a generation can learn in school is limited by the attitude to education it has absorbed from its parents. There is hope, for the "first generation to break out of the vicious cycle of undereducation tends to raise the next generation to still higher levels," but the process, which is thus cumulative, is also gradual.¹⁷ Sowell aptly describes it as an "intergenerational relay race," and, like a die-hard Marxist denying

that the "stages of society" can be skipped, he is consistently emphatic about his law of history.¹⁸

But as Sowell realizes, minimum wage laws, compulsory school attendance, and other policies through which do-gooders in government try, and predictably fail, to circumvent history, cannot explain black backwardness. Since these laws did not always exist, why, unlike other groups, did not blacks climb the free market ladder when it was there? Part of Sowell's answer is that many blacks *did* climb the ladder when it was there. Their descendants are most of the middle-class blacks of today. The majority of blacks did not climb the ladder because they lived in the rural South, and only relatively recently migrated to the great urban centers in the North. The chance to get on the ladder used to be found there, but after the great wave of European immigrants the government had taken away the ladder. The rest of Sowell's answer is, however, at a more fundamental level and involves blacks' attitudes to menial jobs.

And, as always, Washington said it first. Because of two hundred years of slavery, he lamented, for generations the "Negro's idea of freedom" was "freedom from restraint and work."¹⁹ We must learn, he resolved, "to dignify and glorify common labor."²⁰ Sowell adds little to Washington's diagnosis: ". . . blacks who suffered from slavery," he writes, "also suffered from its aftermath in that many became hypersensitized against menial jobs. That's tragic because most of the groups in America that started out destitute and rose to affluence began in menial jobs."²¹

Black Libertarianism

There are, of course, differences between Washington and his disciples. The one which emerges most clearly in Sowell's work is his belief that it is wrong for government to interfere in the liberties of its citizens, even when this may seem the way to secure some valuable end. This fundamental view is obscured because Sowell usually advances empirically based arguments to the effect that the end in question will best be secured by policies which do not interfere with citizens' liberties. But when these empirical arguments are challenged, he invariably falls back on the moral argument that it is morally wrong to interfere with citizens' liberties. For example, Sowell is a strong advocate of the voucher system, an idea originally popularized by economist Milton Friedman, one of Sowell's mentors.²² The system is one whereby, for each school-age child, parents receive a voucher worth the average cost to the taxpayer of educating a child, and use these vouchers to pay for the education of their children at any school that is willing to accept them, public or private, and at any location. Advocates of this scheme defend

it both on the moral ground that it breaks the monopoly of the public school system, thus widening the range of choices open to parents and increasing their liberty, and on the empirical ground that it makes schooling more effective. Sowell, at least, seems to feel that the moral justification alone is sufficient. Thus, when Hugh Price of the *New York Times* opposed the voucher system, arguing that management improvements could make public schools more effective, Sowell conceded the point, but fell back on the idea of liberty as the basis of his defense of the system. "I am not sure," he responded to Price, "whether that's an argument against vouchers versus compelling people to go to a particular monopoly."²³

What is so controversial about this? It is part of conventional wisdom, seemingly enshrined, moreover, in the U.S. Constitution, that a government ought not to transgress on individual liberties for utilitarian advantages. But before anyone thinks of invoking this truism in order to render Sowell's view comfortably commonplace, he should be clear of the nature and extent of the individual liberties Sowell believes in.

These liberties are the liberties of a night watchman state. Walter Williams puts this clearly: "I would confine government to performing only its legitimate function," he notes, "namely defending us against foreign and domestic adversaries who would like to take our lives and our private property."²⁴ In this view, the right to private property, in particular the right to keep what one has, as Locke put it, "mixed one's labor with," becomes the main concern of justice. No one could have put this better than Williams, when, for all the world like Thrasymachus showing Socrates the plain truth about justice, he stunned a panel on social justice held in New York by the Manhattan Institute for Policy Research with this blunt definition of justice: "I keep what I produce, and you keep what you produce."²⁵

Given this account of the nature of individual rights, many of the functions people have become used to government performing, and ostensibly performing to secure their rights—to education and welfare, for example—are really instances of transgression, for utilitarian purposes, against individual liberties. Again I quote from Williams, who has, more than Sowell, inherited Washington's gift for the earthy example: "Here is a poor lady that needs teeth. I could walk up to you with a gun and say, 'Give me your money so I can give this old lady some teeth.' That is robbery and it's unjust. It doesn't change anything when, poof! the government comes to me and says, 'Mr. Williams that money you were going to spend to plant trees you will now give to me and it will go to that toothless old lady'—it's pretty callous to forcibly deprive me of the fruits of my labor for the benefit of some other individual who didn't sweat my sweat. I don't consider that social justice."²⁶

What is more, argue Sowell and Williams—and here both their moral and their economic arguments against governmental intervention in the economy happily coincide—even when government transgresses against individual rights from benevolent motives, it is usually not successful in delivering the utilitarian advantages it has transgressed against rights to secure. And, they remind us—who should not need reminding—as often as not government transgresses against rights, or permits transgression, from malevolent motives. "Black people were enslaved in the United States," Williams notes, "because government did not do its proper job of protecting their individual rights."²⁷ On these grounds Sowell and Williams echo what is perhaps the most characteristic aspect of Washington's social program—his opposition to political activism and to enlisting government help for black progress. "I would urge people not to look at government as the benefactor of blacks," Williams warns. But he cannot resist a dig at the "poverty pimps." Government, he allows, is "the benefactor of elite blacks who get jobs controlling other blacks." But, these opportunists apart: ". . . for blacks in particular, and Americans in general, what is needed is less government and more freedom."²⁸

Now, since governmental enforcement of color-conscious policies interferes with the free market, when Sowell and Williams attack governmental interference on the grounds that it transgresses rights and is counter-productive, they are, by inference, attacking the enforcement of color-conscious policies. And, indeed, they are among the most potent forces against special treatment for blacks. Their views have received enormous attention in newspapers and magazines and they have become pundits of race relations and racial policies. Sowell, in particular, has become the most quoted man in America on racial issues, with white conservatives using his candid words about black laziness and incompetence to tell the kind of harsh truth delicacy forbids them from telling themselves.

Of course, all this is part of an intellectual and popular revival of conservative and libertarian philosophies. The election of Ronald Reagan made unmistakable the fact that the revival was on a popular level, but more significant was the publication in 1975 of Robert Nozick's *Anarchy, State and Utopia*, which made the intellectual respectability of the revival equally unmistakable. In this book, Nozick, a professor of philosophy at Harvard, presents a series of brilliant and sophisticated arguments in defence of the once distained libertarian philosophy, of a minimal state—one in which government is limited to protecting its citizens from fraud, force, and violence, and to securing contracts—and by implication of Williams's "I keep what I produce and you keep what you produce" definition of social justice. As Randall Rothenberg observed in *Esquire*,

Nozick is "the intellectual bedrock behind latter-day libertarianism, a do-your-own-thing, laissez-faire capitalist darling of the Right."²⁹

However, there is a fundamental difference between Nozick's projects, on the one hand, and those of Sowell and Williams on the other. Nozick can respond to certain objections to his libertarianism with sangfroid. When, for example, opponents ask what his minimal state would do about poor people, Nozick answers comfortably, "charity." But Sowell and Williams cannot give this answer. They are proud men and they scorn the idea of charity for blacks. Indeed, their most vehement denunciations of color-conscious policies are based on the conviction that they are charity. Accordingly, the task they have set themselves is different, and in many ways more difficult, than the task Nozick set himself. Nozick is concerned with demonstrating that "the minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights."³⁰ He does not have to demonstrate that the minimal state provides the best opportunity for a subordinated minority like blacks to progress. Sowell and Williams, however, have to demonstrate just that. I believe that this task is too much for even their considerable powers. They are not able to prove their empirical claims, they do not adhere to their moral claims, and their moral claims—both those they hold ostensibly and those they retreat to—are unacceptable. My object, in this chapter, is to confute black conservatism and the whole Booker T. Washington philosophy of racial uplift, once and for all.

Discrimination and Black Subordination

As I noted earlier, perhaps the most provocative of the claims Sowell and Williams make in support of their theory that the free market system is the only sure path to black advancement, is that racial discrimination is not a decisive cause of black subordination. But although this is their official view, the one trumpeted to the press,³¹ it is not their real view. Their real view, at least the view for which they provide argument, is that *in a free market*, racial discrimination is not a decisive cause of black subordination. And this shows how careless—and misleading—their official view is. For since, as they frequently insist and lament, markets have rarely been free, their real view provides absolutely no support for their official view. On the contrary, it suggests that their official view is false.

Sowell and Williams imply that it is the absence of free markets that permits racial discrimination to have its effects, and, consequently, that it is the absence of a free market that is the real cause of black subordination in this country. But, even if it is true that a free market

tends to eliminate the effects of discrimination, as they say, it does not follow that the absence of a free market is the cause of black subordination since rigidly enforced equal opportunity laws might, equally, tend to eliminate the effects of discrimination. Ideology, not logic, seems to determine Sowell's and Williams's choice of the main cause of black subordination.

Consider the *piece de resistance* of their argument: the free market tends to eliminate the effects of discrimination. Sowell distinguishes two main kinds of discrimination. In the first—pure discrimination—"people are treated differently because of group membership as such."³² This is the kind of discrimination in which blacks are not hired because, although they are the most qualified, employers view them with "antipathy or hostility." Williams, in a more perspicuous discussion of the same phenomenon, calls it "racial preference."³³ In the second kind of discrimination Sowell distinguishes—perceptual discrimination—people are treated differently because "the group is perceived as less capable or less responsible by employers, landlords or other potential transactors."³⁴ This is the kind of discrimination which results in blacks not being hired because, although they may be the most qualified, and although employers may not view them with antipathy or hostility, they are considered generally less capable or less responsible than whites. Williams calls this kind of discrimination racial prejudice, using the word "prejudice" to stress that this kind of discrimination involves essentially an "attempt to minimize information costs,"³⁵ that is, to minimize the cost of actually obtaining information about individuals.

Sowell and Williams have no difficulty in demonstrating that the free market tends to eliminate pure discrimination and some kinds of perceptual discrimination. If an employer engages in these kinds of discrimination, he hires inferior workers for the same wage he would pay superior workers. If all employers do this, none gains an edge on the others. But if some don't, even if for no better reason than that their greed outweighs their prejudice, they, by hiring the superior workers other employers reject, gain a considerable edge over the others. These will either have to change their policies or drop out of business. Since few employers want to discriminate more than they want to stay in business, most come to their senses. In this way the competitive free market functions to remove the effects of discrimination.

This argument, as Sowell observes, "assumes that (1) employers are attracted by prospects of unusually high profits and that (2) there is no effective collusion against a particular group."³⁶ Objections can hardly be raised to either assumption. The first is obviously true, and the second is part of the definition of a free market. Moreover, Sowell argues, attempted collusions are not likely to be effective for long. It

is costly to police a hiring system so it is certain to exclude the unwanted group, though Sowell allows that these costs would be relatively low for blacks because their color makes them easy to identify; and there are temptations to break such agreements, for profits can be made by hiring the superior workers of the excluded group.³⁷

Sowell and Williams believe, however, that government interference in the free market, even with the best of intentions, is likely to be far more effective than collusion in suppressing the beneficial effect of the market in eliminating discrimination, and is for that reason much more to be feared. Their favorite example is a government-imposed minimum wage. "A higher wage rate," Sowell writes, "simultaneously attracts more job applicants and reduces the number of persons whom it is profitable to hire. . . . The net result is that the number of jobs decreases as the number of applicants increases. One consequence of this is that ethnic discrimination becomes less costly—perhaps free—to the employer, even in a profit-seeking business."³⁸

These arguments are supposed to have the sort of effect on common sense that so many arguments in physical science have. Common sense gives its verdict on a particular phenomenon, but science magisterially controverts that verdict, and, bowing before its logic, ordinary mortals must abandon their belief in common sense. However, unfortunately for Sowell and Williams we do not have to give up the commonsensical view that discrimination is an important cause of black subordination, because their logic is not the logic of science. There are instances and kinds of discrimination which are not likely to be cured by the panacea of the free market.

The first and most obvious is discrimination in the non-profit sector, which includes universities and government-regulated industries, and most important, government itself, both local and national. Sowell is, of course, aware of this case. For government, he observes, "racial discrimination is free."³⁹ Indeed this fact is his *coup de grace* against advocates of government regulation of industry and a more than minimal state. But it does not support his conclusion. There are reasons for expanding government regulation of industry and government itself, in particular reasons that stem from moral principles to which he ostensibly holds allegiance, for example, taking citizens' liberties seriously. I hope to demonstrate that, as a result, even if Sowell is right that discrimination is free in government, he still cannot consistently urge the abolishment of government regulation of industry and the idea of a minimal state. On the contrary, I will argue that the principles he ostensibly holds imply that there should be an increase in government regulation of industry, and a more than minimal state, and that we should depend

on methods other than those of the free market, perhaps even the hated color-conscious policies, to eliminate discrimination.

Another kind of discrimination that is resistant to the influence of the free market is discrimination—either pure or perceptual—against highly trained blacks. Sowell also acknowledges this. He writes, "In situations where long and costly preparations are necessary to be able to enter an excluded area [or] years of training to become a skilled craftsman or a classical musician—the very fact that the exclusion exists tends to prevent any backlog of qualified people from building up, and therefore reduces the cost of those who maintain the exclusion." What is more, he admits that this consideration, which gains in importance in "blue-collar skills which are highly specific," may also explain why "Negroes have had far less success in breaking into skilled blue-collar fields."⁴⁰ How anyone can make these admissions, and simultaneously proclaim that "culture, not discrimination decides who gets ahead," boggles the mind. One's equanimity returns only after one reminds oneself of the power of an ideology to confuse thought.

Sowell and Williams focus their gaze, unaccountably, on the tendency of the employer to discriminate. But what of the tendency of the public to discriminate? The idea that employers may be racially prejudiced but that the public is color-blind is perfectly ludicrous. As anyone knows, who has even the slightest acquaintance with the significance of race in America, the public is as prone to pure or perceptual discrimination as the employers. Because of this the employer may have to engage in a type of discrimination which has not, so far, been defined. An employer may decide that he had better not hire blacks, even if he neither dislikes them nor believes them to be incompetent, because he perceives that the public would rather not be served by blacks, either because *it* dislikes them (pure discrimination) or thinks them incompetent (perceptual discrimination). What is worse, precisely the same argument that Sowell and Williams use to show that the free market compels employers not to discriminate can be used to show instead that the free market compels employers to discriminate. For, just as there are situations in which the free market makes it costly to discriminate, in the situation cited the free market makes it costly not to discriminate.

It could be objected that discrimination is not as widespread among the public as this argument assumes. But, whether or not this is true, it is not an option available to Sowell and Williams, because they insist that discrimination is widespread. In fact, confusingly, they see its prevalence as the cornerstone of their case against the efficacy of discrimination. "Oxygen is so pervasive in the world," Williams observes, "that it alone cannot explain very much. Similarly with discrimination. Discrimination is so pervasive that it alone cannot explain much."⁴¹

Given the pervasiveness of discrimination—a point on which, as I noted, Sowell and Williams are consistently emphatic—the situation outlined above is more crucial to the issue than the cases of employer discrimination that Sowell focuses on. He ignores it in *Markets and Minorities*, but does note it in his earlier book, *Race and Economics*. “If a group is paid less, or employed or promoted less often, because it is disliked by employers, co-workers and customers,” he writes there, “then it may continue to suffer low wages and higher unemployment rates even if its current capabilities are equal to those of others.” And how does the champion of the free market deal with this most pertinent point? I will let him rebut his own views: “The functioning of the market,” Sowell admits, “will not tend to eliminate such differentials.”⁴²

Less ideologically laced arguments for the harmlessness of discrimination are no more persuasive. Consider for example the views of William Julius Wilson in his book *The Declining Significance of Race*, published in 1978, which, for a brief time, stole the limelight from Sowell.⁴³ According to Wilson, because of recent complex changes in government, the economy, and society, racial discrimination is not now an obstacle to black progress. His view must not be identified or confused with that of Sowell and Williams. Wilson does not share Sowell’s and Williams’s faith in the free market. In particular, he does not believe that the market eliminates discrimination, nor, accordingly, that government intervention in the market is always counter-productive. Indeed, he believes that sometimes government intervention in the market decisively enhances a group’s progress. Thus, while Wilson shares Sowell’s view that it is “class-related disabilities,” that is, lack of skills and poor attitudes to work, not race, which hold back blacks, and that special treatment for blacks is mistaken and wrong, he does not share Sowell’s view that the best policy is for the government to step back and let the market work its magic. On the contrary, he calls for massive government intervention in the market. Sowell is the darling of the color-blind right, and Wilson is the darling of the color-blind left.

What then are the arguments Wilson uses to support his view? He admits that racial discrimination persists unabated in the sociopolitical system—that is in the competition for “public schools, municipal political systems and residential areas”—but he thinks that it is harmless because it has virtually disappeared in the economic order, that is, in the competition for jobs, and discrimination in the sociopolitical order “has far less effect on individual or group access to those opportunities and resources that are centrally important to life survival than antagonism in the economic order.”⁴⁴

This is a terrible argument. From the assumption that discrimination in the sociopolitical order is less important than discrimination in the

economic order, it cannot be inferred that discrimination in the socio-political order is not important. Further, the implication that school and residential segregation, though persistent, is harmless is contradicted by Wilson’s own view. Even if he is right in his belief that job discrimination harms more than school or residential discrimination, if black children are restricted to poor schools and ghettos, where they are poorly educated and exposed to bad influences, they will not acquire the skills or attitudes which would enable them to get and hold jobs. Hence, if, as Wilson seems to believe, it is not having decent jobs which fundamentally destroys the black members of the underclass, then school and residential discrimination is—indirectly—just as harmful as job discrimination.

Justice and Discrimination

We have seen that there are numerous gaps, often admitted, as well as flaws and contradictions, in the arguments Sowell, Williams, and Wilson make in support of the claim that discrimination is not an important cause of black subordination. And a closer study of their account of discrimination reveals subtler confusions in their discussion of discrimination and the inconsistency of their moral position.

We recall that, in “perceptual discrimination,” or “prejudice” to use Williams’s preferred term, persons perceive the group discriminated against as “less capable or less responsible.” This perception could be mistaken. It might be that the group discriminated against is as capable and responsible as other groups. But we cannot assume that it is. As Sowell notes, “There is too much evidence of group differences . . . to arbitrarily assume that they are homogenous in all the relevant variables when they transact in labor, housing or other markets. It is an empirical question not an axiom.”⁴⁵

And we know, of course, how Sowell answers the empirical question about black group differences. Blacks, he maintains, are, as a group, not as capable and responsible as other groups. They earn low wages because “their share of the human capital of the country” is “desperately small,” not only in saleable skills and formal education, but, more importantly, in “basic traits” such as “punctuality, efficiency and long term planning” which are valued by the economy. Blacks lack these traits in the first place because of the effects of slavery, and second because of being “limited to menial jobs for generations.”⁴⁶ In many if not all cases of perceptual discrimination against blacks, therefore, the discrimination is based, as Williams puts it, on “the recognition of real differences.”⁴⁷

Much perceptual discrimination is immune to free market pressures. Indeed, according to the account of Sowell and Williams, it is the market

which often engenders this kind of discrimination. This is because of the cost, to a potential employer, of acquiring knowledge of any individual's productivity level. Since, by assumption, blacks are on the average less productive than whites, it may pay employers not to consider blacks for employment. As Williams observes, "physical attributes are easily observed and hence constitute a cheap form of information."⁴⁸ And, on the other hand, employers who take the trouble to acquire knowledge of individual productivity incur costs the others avoid, and put themselves at a competitive disadvantage. Hence, on precisely the same basis on which Sowell concludes that the market eliminates discrimination—the economic considerations of the employers—in this case, the market engenders discrimination.

Sowell tries to camouflage this further gap in his argument by maintaining that, although discrimination may be deleterious to exceptional blacks, it does not harm blacks as a group. "Where employment, renting, lending, or other transactions decisions are based on assessments that are accurate for the group average but inaccurate for the individual under consideration," he writes, "the windfall losses of those individuals underestimated by applying the group average are offset by windfall gains by those individuals over-estimated by applying the group average."⁴⁹ In this way Sowell hopes to bolster his claim that discrimination is not a barrier to black progress. But what of justice? Isn't the individual black who is excluded by this kind of discrimination unjustly treated? Significantly, Sowell agrees. "Choosing cost bearers on the basis of race or ethnicity," he concedes, "goes counter to general conceptions of justice."⁵⁰ Yet, he resists suggesting that employers bear the costs of acquiring the knowledge of individuals which would preclude this injustice. "No one does that in real life," he notes, "because costs of knowledge make it prohibitive."⁵¹

Now this is a fine thing for the senior partner of black libertarianism's dynamic duo to be saying! One would have expected Sowell to insist on the primacy of rights, and let efficiency go to the wall. But no, he insists on efficiency, and lets rights—black rights—go to the wall.⁵²

Consequently, Sowell's position on this issue is, simply, that utility outweighs justice, and sometimes he makes the point explicitly. Thus, he thinks that John Rawls, a professor of philosophy at Harvard and author of the influential book *A Theory of Justice*, exaggerates the importance of justice. The proper attitude to justice, Sowell believes, is that of Adam Smith, whose *Wealth of Nations* spawned modern economics. "To Smith," Sowell observes, "some amount of justice was a prerequisite for any of the other features of society to exist." But Smith did not, in Sowell's view, countenance the "doctrinaire" view suggested by Rawls that "all increments of justice invariably outweighed increments of other

things."⁵³ Sowell postulates an extreme case to show that sometimes utility outweighs justice and tries to use it to discredit Rawls. According to Rawls, he notes, "a policy that benefitted all of the human race except one person should not be adopted" because it would be unjust. But the extreme and farfetched nature of such arguments is their weakness. They cannot show that in less extreme cases utility outweighs justice. And the case of discrimination is among the less extreme cases. Surely, even if legislation compelling employers to be fairer does reduce efficiency, it does not spell disaster. On the contrary, by giving incentives to blacks to become productive—a possibility Sowell notes—it may in the long run increase efficiency.

It may be objected that since by assumption most blacks are unproductive relative to whites, perceptual discrimination only risks not employing the most productive, and so only risks being unfair. One response to this objection is that, in terms of decency, it is unfair not to treat a person as an individual. But Sowell's argument can be undone even if we concede that it is only unfair to deny the most productive employment. Let us look at how a fairly consistent libertarian treats the question of policies that risk unfairness of this kind.

Robert Nozick believes that it is not enough that those who engage in risky behavior compensate those whose rights they violate. A system which allows this still "has a cost in the uncompensated for fear of those potential victims who were not actual victims."⁵⁴ Because he takes rights seriously, as a libertarian should, Nozick thinks that people have a right to be free from fear that their rights will be transgressed against, and to protect that right Nozick argues that the state may prohibit behavior which risks violating rights. Now, employers who engage in the kind of discrimination which Sowell approves of on utilitarian grounds are certainly engaged in behavior which risks violating blacks' rights—even if we concede for the moment that no one can expect to be treated as an individual when he is looking for a job. For, since the correlation between blackness and low productivity is not exact, discrimination on those grounds risks violating the right of the black who happens to be the most productive person in a pool of applicants. Nor, since the average productivity of different pools of applicants varies, does it risk violating the rights only of truly "exceptional" blacks. Every black would be subject to the possibility that, no matter how poor his competition, his rights might be violated. And this means, in Nozick's terms, the right of every black not to fear that his rights are going to be violated would be traduced. This result doesn't even depend on the assumption that all employers practice discrimination. As Nozick acknowledges, for the general case the fact that society permits it at all is enough.⁵⁵ Every black person would have to live with the fear that

his rights might be violated. (However, as I point out later in this chapter, Nozick's libertarian conception of "rights" may still be invidious to the idea of justice for blacks.)

Now this fear, and the violation of rights it involves, are, of course, the sources of that loss of self-confidence which advocates of preferential treatment have noted and tried to combat.⁵⁶ To deal with these effects one of two alternative policies—both of which are suggested by Nozick—is necessary. On the one hand, discrimination could be prohibited. On the other hand, if discrimination results in great savings for employers and industry, it could be permitted if its beneficiaries pay compensation to those whose rights they have violated. A libertarian who takes rights seriously must adopt either one of these alternatives. But black libertarians adopt neither, and so we must conclude that they do not take rights—especially black rights—seriously. They are ready to sacrifice black rights on the altar of efficiency, and they do not even ask for compensation. Furthermore, if they did adopt one of the alternatives they would seriously undermine their position on free market efficacy. For either alternative would require government expansion, the first by increasing government's regulation of industry, and the second by requiring the creation of a government department to oversee the payment of compensation.⁵⁷ This would also mean that Sowell and Williams would have to withdraw their contention that discrimination in government is unimportant. Their support for this view was their thesis that, although discrimination in government is unchecked by the market, government ought, in any case, to be minimal. But we have seen that even if government sticks to the libertarian definition of its function as protector of rights it is still apt to expand.

However, it will surely be objected that the whole of my attempt to show black libertarianism as contradictory rests on the assumption that libertarianism allows that blacks—and people in general—have the right to be considered for positions on the basis of their individual merits, or that the best candidate has a right to a position. This, it may be pointed out, is utterly false. The libertarian view rejects the idea that applicants for jobs have rights to be considered. These merit-based rights are liberal rights. But they are not libertarian rights. They conflict with the rights libertarianism holds sacrosanct—property rights—and hence do not exist for libertarians. The property owner, and therefore the employer, says the libertarian, has a right to hire whom he pleases. In this particular case he has a right to hire—deliberately—unproductive whites instead of productive blacks if he so wishes. If Sowell is right, if he does this he will bankrupt himself. But this too, libertarians say, is his right. Thus, it may seem that what I have shown is that libertarianism

does not take liberal rights seriously but that I have not shown that libertarianism does not take libertarian rights seriously.

I admit that libertarianism gives the employer, or property owner, the right to hire whom he pleases, and specifically, if he desires, the right to discriminate invidiously against blacks. Although Sowell conceded that discrimination based on statistical generalizations was contrary to general "conceptions of justice," Williams, who is in many respects more consistent than Sowell, does say, quite explicitly, that if the employer is a property owner he can hire at his own discretion. "Trespassing across somebody else's lawn," he writes, "violates their property rights, but failing to hire a person, or failing to lend money to a person does not. I have every right not to lend you money if I don't want to, for whatever reason."⁵⁸

Now, the main source of the attractiveness of the libertarian principles of justice is that, as Nozick observes, they are rooted in historical principles—what is just depends on what has happened. For this reason libertarians must, and do, take the right to compensation very seriously. Paradoxically, these are precisely the rights black libertarians reject. Among the main targets of their attack on color-conscious policies is the idea that they can be justified as compensation for past transgressions against black rights.

If libertarianism is correct in its belief that employers should be able to hire whomever they please, the transgressions for which blacks should be compensated should not include pure and perceptual discrimination, as these are often the bases for employers' decisions. But pure and perceptual discrimination are not, and have not been, the only transgressions against black rights: slavery, and state-enforced discrimination against blacks—interferences in the free market according to libertarian principles—are also transgressions against black rights. And accordingly libertarians, including black libertarians, should insist that these are transgressions. As I have noted, Williams denounces government for not doing its job in protecting black rights during slavery, and goes on to point out that after emancipation government continued not to do its job. Similarly, as part of his polemic against government, Sowell reminds us that it has been "quite active in suppressing the advancement of blacks in the United States," and gives civil rights organizations some credit for "getting the government off the backs of blacks, notably in the South with the Jim Crow laws, but in other parts of the country with other kinds of laws and other kinds of practices."⁵⁹ In view of these observations, it is somewhat surprising that he and Williams so vehemently condemn the claims of advocates for compensation for blacks.

Evidently sensing the contradiction in his argument, Sowell tries to show that he opposes the idea of compensating blacks for the harmfulness

of slavery and the Jim Crow laws not because he opposes the idea of compensation, but because compensation is not owed in this case. One of the reasons for which blacks claim the right to compensation for slavery is that, since the property rights of slaves to "keep what they produce" were violated by the system of slavery to the general advantage of the white population, and, since the slaves would presumably have exercised their—libertarian—right to bequeath their property to their descendants, their descendants, the present black population, have rights to that part of the wealth of the present white population derived from violating black property rights during slavery. Against this reasoning Sowell argues that "much evidence" suggests that it is false to assume that the "white population as a whole derived economic benefits from the enslavement of blacks," and that it may even be false that slaveholders "actually profited by investing in slaves as compared to other investment opportunities available."⁶⁰

His first point is irrelevant. A thief cannot rebut claims for compensation by arguing that his thievery was unprofitable, and even less by arguing that he could have found more profitable things to do with his time. Whether or not the white population as a whole benefited from slavery, it did support slavery. And Sowell's second point, by implying that several generations of slaveholders might have persisted in incurring needless costs threatens the very foundation of his theory that considerations of cost-effectiveness tend to eliminate discrimination. In fact, all that remains of Sowell's appeal to history to undo claims for compensation is the possibility that these claims should be small because economic output was small under slavery. But even that may be false. As Sowell himself allows, some contemporary economists argue that "slavery achieved more output than other economic systems under comparable circumstances."⁶¹

Sowell's objections aside, the actual property the slaves might have bequeathed to their descendants if their rights to keep and dispose of what they produced had been respected is the most modest of the bases for the claims to black compensation. If I am kidnapped and forced to work for subsistence at a primitive machine, and my meager earnings are then confiscated, I am not only owed compensation for the confiscation of those earnings. Far more importantly, I am also owed compensation for what I would have produced had I not been kidnapped; and if I am not around to claim my compensation, my descendants, to whom I would have bequeathed it, can claim it as their right. And this is the case in relation to the slaves and their descendants.

Sowell is aware of this but thinks that the claim can be confuted because no suitable baseline exists from which to measure the losses of the descendants of slaves. "Is that baseline where these descendants

would be if their ancestors had never been enslaved?" he asks. If so, he writes, since the standard of living in black Africa is lower than that of black America, the "grotesque conclusion of this arithmetic might be that blacks pay whites compensation." On the other hand, he continues, if the "baseline is premised on the assumption that blacks would have voluntarily immigrated to the United States and would have earned the national average income in the absence of slavery and discrimination then it makes two highly unlikely assumptions:" Africans would have voluntarily immigrated to America, and, if they did, they would have earned at the national average income.⁶²

This argument is riddled with confusion. In the first place, even if contemporary American blacks might still be in Africa and have a lower standard of living had their ancestors never been enslaved, it does not follow that they might have to pay whites compensation. Compensation is owed those whose rights are transgressed. Whites' rights are not transgressed because blacks in America have a higher standard of living than blacks in Africa. Sowell's "grotesque conclusion" is based on his misunderstanding of the concept of compensation. Furthermore the premise of his argument—contemporary American blacks would still be in Africa except for slavery—is false too. Contemporary American blacks would not exist if their ancestors had never been enslaved. As James S. Fishkin has observed, "If Kunta Kinte, Alex Haley's ancestor portrayed in *Roots*, had not been brutally kidnapped and sold as a slave, there is virtually no likelihood that the author of *Roots* would have come to exist in the twentieth century."⁶³

But pointing out Sowell's error here seems, at first, to support his conclusion. Since—save, perhaps, for a few exceptions—it is better to exist than not to exist, those who would not have existed but for injustice enjoy a net profit from injustice. Consequently, if compensation requires that we use as a baseline what they would have been had the injustice never occurred, any demands they might make for compensation have been satisfied by the fact of their existence.

This is a vacuous conclusion which confounds the injustice but for which present-day blacks would not have existed with the injustice for which compensation is claimed. The injustice but for which present-day blacks would not have existed is the injustice committed against their ancestors by the slave trade and slavery. But the injustice for which present-day blacks claim compensation is the injustice committed against *present-day blacks*.

This does not imply that blacks deserve compensation only for present-day discrimination. The people who enslaved Kunta Kinte's children did not wrong them only by enslaving them. They also wronged them by depriving them of their inheritance—of what Kunta Kinte would have

provided them with, and passed on to them, had he been compensated—a stable home, education, income, and traditions. Similarly today's blacks deserve compensation not only for present-day discrimination, but also for being deprived of their just inheritance.

Returning to Sowell, what is the baseline from which to measure the losses of the descendants of slaves? Contrary to his belief, I argue that this baseline must be set at or near the national average income, and moreover, that this conclusion proceeds logically from Sowell's own position.

To suggest that we should calculate on the basis of some much lower standard could be supported by the momentous assumption that slavery did not hold back black progress. But Sowell does not make that assumption. He emphasizes the morbid "legacy of slavery," the "foot-dragging, work-avoiding patterns" of today's blacks, their "duplicity and theft," and their "tragic" hostility to "menial jobs."⁶⁴ Since these are among the main traits he blames for holding back blacks, his own theory suggests that the baseline from which to measure black losses should be much higher than blacks earn and perhaps near the national average.

And there is an even more obvious inconsistency in his argument. One of his most striking points is that middle-class blacks are in large majority the descendants of blacks who were freed before the Emancipation and who, therefore, gained a head start on other blacks. He has, indeed, instanced this to show how far removed, in tradition and condition, "elite blacks" are from the masses, singling out Andrew Young in particular as being out of touch with the problems of the black poor.⁶⁵ Moreover, this "head start" conception is central to his theory that progress is a cumulative process, an "intergenerational relay race." If so, it is difficult to see why he denies that, had the descendants of enslaved Africans been freed and given compensation, *their* descendants would not be earning income near the national average. Why would these blacks not have passed the baton?

Ultimately Sowell's arguments against blacks' right to compensation come to nought. His own theory of the causes of black backwardness entails the conclusion that blacks do have this right. Why, then, does he so strongly resist the idea? The answer seems to be that he thinks compensation, at least in the form of color-conscious policies, is counter to more financially and industrially oriented ideals of production. Taking this into account, and reviewing the other contradictions in Sowell's writing, the possibility begins to dawn that, despite his press coverage, behind his libertarian facade Sowell embraces that crude utilitarianism which proposes to maximize welfare by maximizing the production of goods and services.

Utilitarianism and Discrimination

On the face of it, the idea of Sowell being a utilitarian seems unlikely. Sowell opposes busing, minimum wage laws, preferential treatment, and welfare measures in general, all of which are often defended on utilitarian grounds, on the grounds that they invade individual liberties. It is for this reason that he is called conservative or libertarian. But it may be argued that Sowell's defense of individual liberties shows that, like John Stuart Mill, he is a utilitarian who takes the long view, and who conceives of utility "in the largest sense grounded on the permanent interests of man as a progressive being." Let us consider this possibility.

As a utilitarian who understood that utility in the largest sense required individual liberty, Mill set an important limit on how the state could pursue utilitarian ideals. This limit depended on his concept of self-regarding conduct. Self-regarding conduct he defined as conduct which "affects only" the agent, or "if it also affects others" does so "only with their free voluntary and undeviated consent and participation."⁶⁶ The state, Mill's thesis implies, is never justified in interfering with self-regarding conduct. "The only part of the conduct of any one, for which he is amenable to society," he wrote, "is that which concerns others. In the part which merely concerns himself, his independence is, of right absolute." Mill did not deny that self-regarding conduct could be immoral. His point was that even if it was, the liberty to engage in it conducted, ultimately, to utility in the largest sense.

If racial discrimination by private employers can be interpreted as self-regarding conduct, the argument above may appear to provide the grounds for a utilitarian defence of Sowell's toleration of racial discrimination. Sowell, it is true, gives no hint himself of such a defence, he gives only crude, short-term reasons for tolerating racial discrimination, for example, because it saves information costs. However, there may be reasons for toleration if racial discrimination, from the more sophisticated utilitarian point of view, is considered self-regarding conduct. This view was expounded by Williams in an address he gave in New York in 1982. Williams does not deny that racial discrimination is immoral. But he maintains that, just as it would not be justified to outlaw "certain forms of voluntary consenting sexual behavior among adults" on the grounds that they were immoral, it would not be justified to outlaw racial discrimination on the grounds that it is immoral.⁶⁷ "We do not need," he says, "laws that prohibit discrimination in private activities."⁶⁸ And to nail down his point, he implies that equal employment opportunity laws are as misguided as would be laws against individual discrimination in the matter of choosing a mate. "When I was choosing a wife," he reveals, "I discriminated against Chinese women, Japanese women, white

women, fat women, and women who did not bathe regularly. I'm quite sure none of my tests for choosing a wife would ever meet the Equal Opportunity Commission (EEOC) validation criteria.⁶⁹ However, it should be stressed that William's opposition to laws against racial discrimination applies only to discrimination in "private activities." It does not apply to discrimination in "public sector, taxpayer supported jobs." Williams is quite prepared to "eliminate racial discrimination in those kinds of jobs."⁷⁰

The most plausible argument that private discrimination is self-regarding depends on a distinction between causing harm and failing to prevent harm that can be illustrated by the example of the drowning person. A pushes B into a river. C sees B drowning and could throw him a line but doesn't. A caused B harm. C failed to prevent harm to B. In terms of discrimination, this argument claims that, although private acts of discrimination often fail to prevent harm, they do not necessarily cause it. A typical example of the argument would be something like the following: B is harmed because he needs but does not have an apartment. A has an apartment for rent but refuses to rent it to B because B is black. A has failed to prevent harm to B but he has not caused it. Or: Students attending all-black schools may be harmed because their schools are poorly funded and have no middle-class students. Whites refuse to allow integration. Whites have failed to prevent harm to black students but they have not caused it.

It can be argued that because discrimination and segregation offend and insult blacks they do cause harm and are thus other-regarding and liable to state intervention. But if the psychic toll of segregation on blacks can be weighed against the reasons for segregation, then by implication it seems that the psychic cost to racists of integration should also be weighed against the benefits of integration. In theory—and possibly in practice—this could tip the scales in favor of segregation.

However, Richard Wollheim, a professor of philosophy at London University, has proposed an interpretation of Mill's concept of self-regarding action which seems to promise a way out of these difficulties.⁷¹ Although there are ambiguities in his presentation, it can be summarized as follows: Self-regarding actions are actions which "affect either the agent alone or other people solely insofar as they believe such actions to be right or wrong."⁷² Therefore, the belief that a self-regarding action is wrong is always false because an action is wrong only if it causes pain and, by assumption, the only pain the action causes comes as a result of the belief that it is wrong and consequently cannot be grounds for the belief. For this reason, the weighing of pleasures and pains caused by an action to determine whether, in utilitarian terms, it is right or wrong must, Wollheim reasons, "be made as if in a world prior

to the adoption of moral attitudes."⁷³ Otherwise, any action could be right or wrong if enough people believed strongly that it was right or wrong. According to Wollheim, Mill offered two reasons why the pain caused as a result of such false moral beliefs should not be taken seriously. First, says Wollheim, he believed that "with the progress of intellectual inquiry false moral beliefs were likely to disappear;"⁷⁴ second, that they are not in any case moral beliefs at all, i.e., they are "not about what all should or ought to do," but are merely preferences, i.e., about what the individual himself "would like to do or be, or sees himself doing or being."⁷⁵ Wollheim recognizes that the first argument, as things stand, is weak, and he devotes far more space to developing the second.

According to Wollheim, this argument proceeds from the utilitarian view that a genuine moral belief about an action must be supported by reasons and the only thing that counts as a reason is a painful or pleasurable consequence of the action. But if so, if the only painful consequences of A's action stem from B's belief that it is wrong, the belief cannot be based on a genuine reason and so cannot be a moral belief. Consequently, it cannot be about A's actions—for moral beliefs are about everyone's actions—but must be only about how B prefers to act himself. Hence, A's action cannot "run counter to B's belief"⁷⁶ and thus cannot be "the cause of B's pain."⁷⁷

Although Wollheim himself does not do so, this argument might be adduced to show that discrimination is not self-regarding. Suppose that a utilitarian weighing of the pleasures, pains, and harms resulting from segregation and from integration were made as if in a world prior to the adoption of moral attitudes, and the result was that segregation caused harm and pain and integration did not. Then, by Wollheim's account, the belief that segregation is wrong would be true, and the belief that integration is wrong would be false, and indeed not a moral belief at all but a mere preference. Accordingly, to return to our original paradox, though integration may seem to impose psychic costs on the racist because he claims to believe it to be wrong, it does not really do so because his belief is not a moral belief at all but only a preference. Hence, the psychic costs of integration to the racist cannot be attributed to integration and cannot be held against it.

But this argument is highly suspect. First, it is not clear that the racists' beliefs about integration are really just preferences in Mill's and Wollheim's sense. For racists have, or claim to have, grounds—and often good utilitarian grounds—for condemning integration. Of course, these grounds are often not true, but that does not affect the nature of the objection. For what makes a belief a preference rather than a moral belief is not that the agent believes something on false grounds, but

that he believes something on no grounds at all. To counter this we must fall back either on Mill's optimistic view that false beliefs tend to be replaced eventually by true ones, or on Wollheim's observation that though reasons are often cited in support of a belief, such beliefs are often only "beliefs reinforced by rationalizations and such beliefs must count as preferences."⁷⁸

This last possibility is plausible because we know that racism is often supported by rationalization, but even if it can be substantiated difficulties remain. Wollheim argues that self-regarding conduct, as he defines it, does not cause pain to those other than the agent himself because it does not run counter to their beliefs. As C. L. Ten has pointed out, this assumes, groundlessly, that we cannot have moral beliefs about how others should act.⁷⁹

Nor is Wollheim on solid ground when he argues that as we learn more about the mind of someone pained by another's self-regarding action we come to see that it has a "larger part to play in the etiology of his pain" than does the action.⁸⁰ This is as faulty an argument as one that states that as we learn more about the nerves in the nose that we come to see that they have a larger part to play in the etiology of pain than a blow to the nose. Wollheim probably means that those other than the agent are pained by self-regarding actions only because they have incorrect, nonutilitarian attitudes. But even if we grant this questionable claim, his conclusion is still erroneous. Even if sick people in hospitals are pained by ordinary street noises only because their bodies are not functioning properly, it may still be justifiable—and on utilitarian grounds—to restrict ordinary street noises around hospitals.

However, racial discrimination is not self-regarding conduct. To understand why it isn't, we must go back to the suggestion made hypothetically earlier, that an inspection of the results of segregation and integration as if in a world without moral attitudes would reveal that segregation causes pain and harm and integration does not. If this is true, as I will attempt to prove, not only is racial discrimination not self-regarding, there are also good utilitarian reasons to weigh the psychic cost to blacks of segregation against it, and *not* to weigh the psychic cost to racists of integration against integration. For, from a utilitarian perspective, good utilitarian attitudes should be encouraged, and bad, nonutilitarian attitudes should be discouraged. The former help to produce happiness, the latter help to produce misery. Giving importance to the pain experienced by racists through their false belief that integration is wrong would encourage these nonutilitarian attitudes; giving credence to the pain segregation causes blacks through their true belief that segregation is wrong would encourage the good utilitarian attitudes.

Of course, this argument depends on the assumption that segregation causes harm independent of the belief that it is wrong, and we have seen that assumption can be challenged. I wish now to reconsider that challenge by focusing on a key philosophical point: the contention that private discrimination causes no harm, which depends on the belief that there is a distinction between causing harm and failing to prevent harm. Mill himself seemed to reject this distinction. He affirmed, for example, that "a person may cause evil to others not only by his actions, but by his inactions."⁸¹ Certain contemporary philosophers, such as John Harris and John Kleinig, appear to agree with Mill.⁸² Others, such as Eric Mack, appear to disagree with him.⁸³

Eric Mack maintains that failing to prevent harm is not causing harm, and demonstrates that, in many cases where we are tempted to speak of "nondoings being responsible" for harm, we can "reconstrue the case in a way that does not involve negative causation." Sometimes, he points out, we can say that it is the agent's prior actions, not his later inaction, which causes the harm. Other times we can say that ascribing responsibility of this kind is "just a way of ascribing blameworthiness and does not involve a genuine causal judgment at all."⁸⁴

Mack realizes, however, that he cannot prove his case in this way, and he therefore attempts a more positive argument against what he isolates as the key claim of his opponents—viz., that "refraining from an action which would have prevented a human harm causes that harm."⁸⁵ Suppose Smith is drowning, and Jones sees this and refrains from helping. Mack must prove false the possibility that Jones's inaction caused Smith to drown in the sense that it was a necessary condition for Smith's drowning. Mack rejects this possibility on the grounds that if Jones were 1,000 miles away from the beach where Smith drowned he could not be said to have refrained from helping Smith. Given that the tide and Smith's distance from shore are "jointly sufficient for Smith's aquatic demise," Smith would have drowned anyway and consequently Jones's refusal to help cannot be a necessary condition for Smith's drowning. The flaw in this argument is Mack's assumption that the tide and Smith's distance from shore are jointly sufficient for Smith's drowning. This may be true in the case where Jones is 1,000 miles away, but it is false in the case where Jones is on the beach and sees Smith drowning. For in that case, Jones could have helped Smith, and therefore the tide and distance could not have been jointly sufficient for Smith's drowning. If Mack were right, the tide and distance would also be jointly sufficient for Smith's drowning in a case where there is a floating spar which Smith seizes in order to save himself. But this is logically absurd because in that case Smith would not drown. The point in general is that, like the floating spar, Jones's presence makes a difference to the causal

conditions for Smith's drowning. Suppose Brown is in exactly the same situation as Smith but survives because he has throughout his life refrained from drinking, smoking, and debauchery and is therefore very physically fit. Mack's argument that Jones's refraining did not cause Smith to drown is as flawed as would be the argument that Brown's refraining did not cause Brown to survive.

If, as we seem to be able to prove, refusal to prevent harm causes harm, we can dismiss, without raising controversial empirical questions, the argument that private discrimination and segregation cause no harm. For clearly, private discrimination does not merely fail to prevent harm, but abstains from preventing harm. A does not discriminate against blacks if he fails to rent his apartment to blacks because no blacks apply. He discriminates only if blacks apply and he refuses to rent to them because they are black. Similarly, whites are not guilty of segregation simply because of the existence of all-white and all-black schools. They practice segregation only if they refuse to integrate.

Thus, the traditional interpretation of Mill's view of what causes harm does not, after all, support the view that only the state should be forbidden from acting in a discriminatory manner. Instead, it supplies us with considerable reasons for saying that individuals should also be forbidden from acting in a discriminatory manner. What is more, there is no utilitarian argument, based on the concept of utility in the larger sense, which justifies condoning private racial discrimination. Black libertarians, or utilitarians, are faced with a dilemma: If they are libertarians they cannot—though they do—dismiss compensation arguments. And if they are utilitarians they cannot—though they do—tolerate racial discrimination.

The Alleged Disutility of Color-conscious Policies

One of Sowell's deepest misgivings about color-conscious policies, and in this he is joined by Wilson, is that they will exacerbate racial conflict. Sowell, for example, has warned in the popular press that if the "government continues to hand out goodies on a racial or ethnic basis" it may not take long for "people to be at each others' throats—and for blood to be in the streets."⁸⁶ And Wilson writes that "if there is an imminent potential for racial conflict in the industrial order it would most probably be related to the affirmative action program."⁸⁷ However, even if these warnings are well-founded, they cannot, on Sowell's and Wilson's own accounts, be the basis of an independent argument against color-conscious policies. Suppose that color-conscious policies are just and useful to black progress. Then, if we refrain from implementing them because of fear of racial conflict, racism would be an important

barrier to justice and to black progress—contrary to the class theory to which Sowell and Wilson adhere. Consequently, they cannot, on pain of self-contradiction, use predictions about racial conflict as independent arguments against color-conscious policies. They must first prove such policies pernicious.

Wilson's argument, in brief, is this: There is no competition for jobs in the underclass. Jobs exist, but because they are low-paying and menial, blacks and whites don't compete for them. (They are taken by illegal aliens.) Consequently, since there is no racial competition for jobs, and therefore no opportunity for racial discrimination over jobs, racial discrimination cannot be the factor keeping blacks in the underclass from getting jobs. Finally, he concludes, because racial discrimination is not the factor keeping these blacks from getting jobs, color-conscious policies are irrelevant to their ability to get jobs, and hence irrelevant to their progress.⁸⁸

The final step in this argument is a giant non sequitur. From the claim that racial discrimination is not what keeps blacks in the underclass from getting jobs, it does not follow that color-conscious policies are not necessary for the progress of these blacks. The inference is as faulty as would be the argument that, since no one unfairly discriminates against the musically gifted, or the artistically or mathematically gifted, special programs for them are irrelevant to their progress. Yet, Wilson's opposition to color-conscious policies in this area is adamant. He concludes *The Declining Significance of Race* with the observation that the problems of the underclass must be tackled "on a broad class front" which goes "beyond the limits of ethnic and racial discrimination."⁸⁹

But, as I observed, not only is Wilson's dismissive attitude toward color-conscious policies unjustified, his own class theory suggests that his advocacy of color-blind policies is ill-considered.

Wilson suggests a color-blind policy which will make available to the black and white underclass "jobs that pay decent wages and that provide opportunities of advancement—jobs that will enhance an individual's self-respect and feelings of self-worth," and he properly stresses that this is in "sharp contrast" to Sowell's suggested policy which would create low-paying, menial jobs—jobs which already exist.⁹⁰ But if, as Wilson assumes, this kind of color-blind policy will solve the problems of the black and white underclass, there is a large gap in his argument—implied by his own theory. According to Wilson's theory "jobs that pay decent wages" already exist, just like low-paying, menial jobs. The problem is that these decently paying jobs are not within the reach of the underclass. As he himself repeatedly stresses, decently paying jobs "are decreasing in the central cities of our nation" and exist more in the suburbs. The solution to the problem then would seem to be to

move blacks to the suburbs. But Wilson also repeatedly stresses that opposition to residential integration in the country continues unabated. Consequently, given that residential integration would require a deliberate color-conscious policy, it would seem that if Wilson's proposal is to succeed, it cannot, after all, be color-blind.

This conclusion blunts the point of Wilson's version of Washington's attack on "race problem solvers." The black intelligentsia, Wilson charges, "has a vested interest in keeping race as the single most important issue in developing policies to promote black progress."⁹¹ This is because it achieves, and maintains, its present comfortable position largely through color-conscious policies like affirmative action which are based on the assumption that race is the most important issue. Consequently, in pursuit of what Wilson perceives as self-interest, the black middle class advertises the miseries of the black underclass while promoting and sustaining the illusion that these miseries are due to racism.⁹² In this way it hopes to expand color-conscious programs which create more opportunities for itself. Carl Gershman, a follower of Wilson's, takes this suggestion further. According to Gershman, not only does the black middle class falsely insist on race being the most important consideration in developing policies for black progress but, perceiving that its advantages depend on the deprivation of the black lower class, it actually blocks policies that would help the black lower class. Using Wilson's version of the class theory, Gershman, among other things, argues that black leaders at a national conference in Richmond, Virginia, in 1979 urged policies seriously opposed to the interests of the black lower class. But, this charge assumes precisely what Wilson's version of the class theory denies—that racial discrimination is an important impediment to black progress. Gershman concedes this point without realizing it. To illustrate his thesis about the self-serving and destructive nature of the policies urged by the new leadership of the black middle class, he relates how, at a hearing on urban policy conducted by the House Committee on Banking Currency and Housing, Paul R. Porter, an urban specialist, proposed that poor blacks wishing to relocate to areas of industrial growth be assisted by the government. According to Gershman, Representative Parren J. Mitchell (a Democrat from Maryland) opposed this proposal on the grounds that by relocating blacks—moving them out of the central cities—such a policy would "destroy the political base that we blacks have begun to develop in this country."⁹³ Gershman presents this as evidence of the way in which the black middle class blocks the progress of the black lower class to selfish advantage. But if, as Wilson says, opposition to residential integration has not declined, the exchange is also evidence for the importance of racial discrimination—a view that Gershman, as Wilson's disciple, rejects.

Sowell's argument about the counter-productiveness of color-conscious policies has two phases. First, there is a frontal attack on the effectiveness of those policies. Second, there is a rearguard action in which he concludes that in the long run government intervention creates social and political instabilities.

The frontal attack is simply the accusation that, in Sowell's words, color-conscious policies like affirmative action "have produced little overall pay or employment changes for blacks relative to whites."⁹⁴ He backs up this claim with the argument that affirmative action makes it difficult for employers to fire incompetent blacks and so discourages them from hiring blacks in the first place.

But, there is a gap in Sowell's argument. He has completely overlooked another effect of affirmative action. Because the policy carries penalties for noncompliance, affirmative action also makes it costly for an employer to hire no blacks at all. Therefore, a fairer assessment of the net effect of affirmative action is that it forces employers to intensify their search for the "right" blacks, that is, as Christopher Jencks notes, "young blacks with educational credentials and mature blacks with steady work histories."⁹⁵ Empirical studies suggest that in this respect affirmative action has been productive. Jencks reports that three of the four studies conducted to estimate the effect of affirmative action on employment concluded that it "increased minority employment by 6 to 13 percent," and, while he allows that the effect of affirmative action on income is "less clear cut," he also demonstrates that in this case too the evidence makes it difficult to deny, as Sowell does with assurance, that affirmative action "increased black workers' earnings." The most that Sowell can say, Jencks concludes, is that while affirmative action improved black workers wages, "it also may have made it harder for some blacks to find jobs."⁹⁶

The Attack on Politics and Protest

Sensing, perhaps, the weakness of his frontal attack on the effectiveness of affirmative action, and by extension of all government interference in the free market on behalf of blacks, Sowell invariably falls back on his rearguard argument—that government interference in the market creates instabilities. At this point he admits that this interference is sometimes effective. "At particular historic junctures," he writes, "governmental policy may be beneficial to particular ethnic groups." But he goes on to object that it is unreliable in the long run. "It is the long-run reliance on political action" he warns, "that is questionable in view of the unpredictability of political trends in general."⁹⁷ And to drive home his point about the "sheer volatility of governmental policy toward ethnic groups" he reminds us not only of the shifts in U.S. government

attitude toward blacks, but of Idi Amin's "brutal mass expulsions of East Indians" from Uganda, "the slaughter of the Ibos in Nigeria," "the severe current official discrimination against the Chinese in Indonesia," and, of course, "Hitler and the Holocaust."⁹⁸

Of Thomas Sowell's many strange arguments, this one is the most bizarre and perverse. The evidence he cites to support his conclusion in fact supports the very opposite. Consider his claim that political activity does not help a minority's progress. His reasons for this are that although political activity may help enact favorable government policy, there are usually economic incentives tempting individuals to "behave at variance with government policy."⁹⁹ And Sowell thinks that history proves him right. "The high tide of black political power during Reconstruction," he reminds us, "was not a period of notable economic advance, and in fact included some important retrogressions."¹⁰⁰ And more generally he maintains that "political success is not only relatively unrelated to economic advance, those minorities that have pinned their greatest hopes on political action—the Irish and the Negroes, for example—have made some of the slowest economic advances. This is in sharp contrast to the Japanese-Americans, whose political powerlessness may have been a blessing in disguise, by preventing the expenditure of much energy in that direction."¹⁰¹ Here, of course, he is following Booker T. Washington, whose opposition to engaging in politics to achieve advancement is legendary: "The best course to pursue in regard to the civil rights bills in the South," Washington advised, "is to let it alone."¹⁰²

The most curious property of tunnel vision is not that it blinds. It is that it distorts. Weaknesses appear to be strengths. Washington and Sowell both have a bad case of tunnel vision. Consider again the examples Sowell cites to prove the volatility of government policy in relation to minorities—the Indians in East Africa, the Ibos in Nigeria, the Chinese in Indonesia, and the Jews in Germany. To support Sowell's belief in the ineffectiveness of political power and political action these groups should have been groups with political power and a history of political activity. But the very opposite is true. The Indians in East Africa kept a low political profile, as do the Chinese in Indonesia, and by Sowell's own account the Jews only slowly became involved in politics in this country because they were apolitical in the European countries from which they came originally. Of the groups Sowell mentions, only the Ibos were politically active, and their problems would have been worse had they been less politically involved. Furthermore, these groups were or are doing exactly what Sowell recommends black America do. They kept or keep out of politics, and made or make a lot of money. So if their fate is anything to go by, this is what Sowell

plans for us: keep out of politics and make a lot of money, and one day we'll be "brutally expelled," "slaughtered," or suffer a "Holocaust"!

The obvious point to be made here, is, if a person plans to acquire something of value, he had better also plan to acquire a way to keep it, or others will take it away from him. That Washington and Sowell overlook this is amazing. Why else are there locks on doors and guards in banks? And that they overlook it is more amazing still when we recall that their policies are based on the assumption that man is self-interested. For if man is self-interested, what can protect the valuables of the weak from others so motivated? Their oversight literally boggles the mind when we recall that they claim to be examining the experience of black people. I confess that my mind was boggled when I first read Washington's pronouncement that "Harmony will come in proportion that the black man gets something the white man wants." For there was a time when the black man had something the white man wanted. And it did not bring harmony, or even less, justice. It brought the death of 100 million black people—the number estimated to have died as a result of the slave trade—and two hundred years of slavery.¹⁰³ Washington knew this. After noting that the country's immigration laws were framed to keep out people who "might prove a burden upon the tax-payers, because of their poverty and inability to sustain themselves," he boasts that "for two centuries or more it was the policy of the United States to bring in the Negro at almost any cost," concluding rhetorically, "Would any individual or any country have gone to the expense during so many years to import a people that had no economic value?"¹⁰⁴

Now this boast completely demolishes, of course, the centerpiece of Washington's, and Sowell's, theory—their conviction that all you need to get ahead is to get "something the white man wants" or "something the society values." This really stupid and dangerous idea, which is of a piece with their admonition to eschew politics, does not even state a necessary condition for getting ahead. If you have enough weapons, as kings and conquerors have proved throughout history, you do not need to have something the society values to get ahead. Unless, of course, it is the power to refrain from killing when you can kill.

Every black political thinker worth his salt, with the exception of Washington and his disciples, has acknowledged these elementary truths and has correspondingly concluded that the problem for blacks in America is and has been the problem of the vulnerability of the weak and inarticulate—especially the weak and inarticulate with something the strong want. For example, Martin Delany, the first and wisest of the black nationalists was acutely aware of this. It is the basis of his analysis of black subordination and enslavement. Blacks were subordinated and enslaved, he argued, first because they were weak. They were "least

potent in urging their claims."¹⁰⁵ Added to and exacerbating this weakness was the fact that blacks had something whites wanted. Blacks were enslaved, Delany argued, because of their "superior skill and industry."¹⁰⁶ And there was a final factor that determined the enslavement of blacks and made those who practiced it almost immune to moral dissuasion. He observed that those who proscribe others select those who "differ as much as possible . . . from themselves" for this "ensures the greater success" of their proscription as "it engenders the greater prejudice, or in other words, elicits less interest on the part of the oppressing class."¹⁰⁷ And because he supposed that only one of these causes of black subordination could or should be altered—the lack of power—Delany argued that the future of black elevation lay in blacks acquiring power by emigrating to Africa and establishing a great black nation there. A long line of black thinkers, from Marcus Garvey to Stokely Carmichael and Charles V. Hamilton, have endorsed his Black Power solution to the problem of subordination, though they have not always endorsed his idea that emigration was the way to get it.

Assimilationists, for example Delany's great contemporary Frederick Douglass, have, of course, proposed a different solution to the problem of black subordination. But Douglass did not analyse the causes of black subordination any differently than Delany. In particular, he did not deny that part of the cause of their subordination was their powerlessness, and their inability to arouse the whites' sense of justice. He refused to endorse Delany's solution of emigration because he thought it was unrealistic and an evasion of a duty to expose, protest, and combat injustice, and his followers today reject the idea of Black Power for similar reasons. Accordingly, Douglass and his contemporary representatives propose to solve the problem of black subordination by attacking another of its causes, viz., the white majority's belief that blacks differ in some fundamental way from whites. Thus, on the grounds that congregation made blacks more noticeable, and accentuated their difference from whites, Douglass at one time condemned the idea that unity is strength, at least in every circumstance, and urged blacks to disperse themselves among whites.¹⁰⁸ And to back up the effects of this dispersal, since it alone would not solve the problem, Douglass mounted a relentless attack on the idea that prejudice is "natural" and that there is a moral difference between blacks and whites. He employed all his enormous intellectual and oratorical powers to prove and persuade people that "it is all false this talk about the invincibility of prejudice against color," and that despite obvious physical differences, and even differences in origin, "a man's a man for a' that."¹⁰⁹

It is difficult to say which strategy, that of Black Power, or that of the assimilationists, is superior. Both have advantages and both have

disadvantages. The advantages of the Black Power approach include the well-established efficacy of power. Its disadvantages include its tendency to degenerate into cultural chauvinism, to strike poses and to become infected with the racism of black racial superiority. Finally, of course, its goals may simply be impossible to achieve. Many of these disadvantages are precisely the advantages of assimilation. Assimilation utterly rejects racism and concedes nothing to injustice. However, it too has disadvantages. With some advocates, it tends to involve a depreciation of those characteristics which distinguish blacks from whites, and in this way may undermine black self-esteem. Also, it may lead to a preoccupation with protesting injustice and a corresponding disregard for the importance of achievement—there is this much foundation to Washington's fears about political involvement. Finally, of course, like those of Black Power, its aims, too, may be unachievable. Neither strategy is guaranteed to succeed, and each has dangers. Perhaps the best policy would be a judicious combination of the best parts of both. Certainly the worst policy would be to eschew both power and protest. To urge black people to make money, or to acquire skills that will enable them to make money, while at the same time urging them to avoid all means of self-defence, as Washington and Sowell do, is a prescription for disaster.

As I have observed, their recommendations are especially perverse because they are based on a theory which assumes that self-interest is the prime motivation for human beings. Here it should be noted that Washington comes off as less confused than Sowell. For he at least allows that the self-interest of human beings includes an interest in their moral betterment. Thus he could, and did, urge justice by reminding whites of their interest in their souls.¹¹⁰ But Sowell will have none of this "higher," though still prudential, reasoning. For him, bewildered by his own "causal analysis," it is all "dollars and cents." His saying this, and his urging of policies for blacks of enrichment without self-defence—and this among a people whose history demonstrates the lengths they will go to get dollars and cents—is not mere intellectual blunder. It is reprehensible folly.