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Steve Ross

*Hunter College*, [sonokal@earthlink.net](mailto:sonokal@earthlink.net)

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## *Book Review*

# Black Rights/White Wrongs: The Critique of Racial Liberalism

Steven Ross

*Hunter College and the Graduate Center/CUNY*

*Black Rights/White Wrongs: The Critique of Racial Liberalism*

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Correspondence: [sonokal@earthlink.net](mailto:sonokal@earthlink.net)



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This is a very interesting, very provocative, sometimes quite helpful, sometimes quite frustrating book, and it is these things on a wide range of topics. Charles Mills is determined, more or less singlehandedly, to make race, and race consciousness, play the role it deserves to play in philosophy at long last, and by “philosophy,” I mean – and Mills means – the political philosophy of today, dominated as it is by near fifty years of John Rawls and all the disfigurements Mills thinks such domination has brought in its train. Mills’ relation to Rawls is complex. The list of all the things that Mills thinks Rawls either gets wrong or wrongfully ignores is long – too long for any brief recapitulation, though details of some of it will occupy us shortly. And it is not only Rawls himself that Mills wants to criticize. Throughout, Mills wants to draw our attention to the limitations of Rawls’ overall orientation, that of “Ideal Theory.” Perhaps it is not Rawls’ fault that this approach has dominated political philosophy to the extent it has. A philosopher is generally not responsible for the good fortune of being so pervasively followed by others! But the limitations of ideal theory are, Mills thinks, at this point, too widespread to accept without critique any longer. And yet, Mills thinks the general orientation we inherit from Rawls, that of an original position, should it be informed appropriately by history and historical consciousness, could serve as the right framework for the particular “*Non-Ideal Theory*” he thinks right. This would have as its aim the project of figuring out what *corrective* justice calls for, where race is concerned.

As I say, there is a lot of variety in the topics taken up. The book is in fact composed of several more or less stand alone chapters on discrete race related subjects, and the discussion in many cases is far too brief. Mills has a tendency to quote a source and take that as sufficient argument for the point at hand. This can rattle. A reader may not agree that so and so “has clearly shown that” all knowledge is thoroughly social in nature (for example; see p.60), but Mills tends to think he can just describe and pass on the conclusions of others – if these are conclusions that he likes – without too much worry. More troubling is that important accusations are sometimes made with far too broad a brush. Throughout the book, there are claims of “white philosophy” “ignoring” issues of corrective justice in the racial domain that made at least this reader scratch his head in puzzlement. Ronald Dworkin, about as prominent an example of white Euro centric Rawls influenced philosophy as can be imagined, spent a large chunk of his remarkably productive career writing long, (very long) essays and book chapters justifying affirmative action on numerous grounds since the *Bakke* case, and he has done so for the general public as well as for academia. “Why Bakke Has No Case” was originally published in *The New York Review of Books* before *Bakke* was even decided! Who else but Dworkin could construct the distinction between “equal treatment” and “treatment as an equal” and argue that Bakke had a right to one, but not the other? I will have more to say about affirmative action, Mills’ view of it, and his complaints about its general treatment in phi-

losophy and our political culture below. But the idea, encountered over and over again in *Black Rights / White Wrongs*, that “corrective justice” in racial matters is generally ignored, *when he sees affirmative action as justified on corrective justice grounds*, is simply provocation. It just ain’t true, and I am sure he knows it.

There is a lot in this book that is simply just terrific fun, fun to read and very worthwhile to think about. There is a chapter on “white ignorance,” drawing impressively on black literary work, such as Ralph Ellison’s *Invisible Man* (54) and white literary work too, such as Melville’s deeply strange *Benito Cereno* (54, 55). The complex relation between racial subordination and a kind of “invisibility” is indeed generally ignored in philosophy, and Mills is quite right to turn to literature as offering a more fertile ground when taking up this topic. Parenthetically, there was once a time when it was not uncommon for philosophers to draw upon literary treatments of a subject in their explorations, and this is far less so now. It is nice to see this practice revived here. There is a nice chapter on Kant’s secret, or at least generally ignored, racism (94). Mills here is part of a growing trend in philosophy to see Kant more accurately in this regard, and in the opinion of this reviewer, Kant is probably headed towards a status like that of Aristotle’s, where the racism (or sexism) of the thinker is increasingly openly acknowledged, but what follows from such views for the seemingly non-biased conception of the person at the center of the theory is not obvious. An inclusive conception of definitional teleology (Aristotle), a non-racist conception of persons and autonomy (Kant), are likely to continue to occupy a central place in moral theory. Mills seems to endorse a “black radical Kantianism” himself when constructing his own corrective theory (209). But he draws our attention to this feature of Kant to remind his readers, once again, of how pervasive self-deception can be where race is concerned (108, 109). There are constant reminders of the apparent asymmetry between race and gender when it comes to Anglo American philosophy’s correcting prior lacunae. So, the degree to which feminist criticisms of liberalism have now been incorporated into political philosophy’s conception of itself cannot be denied. This stands in sharp, and sad, contrast to race, where criticisms of Rawls from a racial perspective remain almost entirely absent from the mainstream anthologies (139 – 144).

But I think it is fair to say that for most philosophers, the essence of the book, what makes it most important, are the criticisms made of Rawls, and by extension, of ideal theory in general. As I say, for all the criticisms, Mills thinks an altered Rawlsian framework, one where parties were suitably informed of our history of white supremacy, could be adopted to the very non-ideal task of corrective justice where racial wrongs are concerned. Unfortunately, this counter argument is barely sketched out in *Black Rights / White Wrongs*; my discussion of it will be somewhat sketch like too. Let us turn then to argument against Ideal Theory. For whatever the limitations of Mills’ own conception of how to theorize corrective justice might be, he has done contemporary political philoso-

phy a true service by forcing it to confront not merely the limitations of Ideal Theory, but the way Ideal Theory cannot help but present those limitations as benign or unimportant. They are, Mills argues convincingly, neither of these things at all.

### **Ideal Theory, opening considerations**

The term “ideal” can mean a great many things, and Mills is duly sensitive to this point (73). But when Rawls talks about his theory in *A Theory of Justice* as an “Ideal Theory” what he means is pretty clear, and certainly by now, pretty well known. And so, to rehearse: We are assuming society is a certain kind of “cooperative venture” entered into for “mutual advantage.” (Mills refers to this language and to its remarkable distance from reality constantly.) We are assuming that, whatever the ideal principles of justice turn out to be, that there will be near perfect compliance with such principles; we will not worry about what society would be like were there widespread subversion of the law. We are assuming we are starting *de novo*, and that there are no wrongs inherited from the past that must be attended to and corrected. We are assuming equality among citizens, and more or less equal deliberative rationality, so we may assume all are equally capable of assessing and, if need be, altering, their life plans. Rawls of course famously does not deny that the problems of corrective justice (for example) are in many ways “more urgent,” but as he famously also says, the best way *into* these difficulties, the difficulties posed by corrective justice say, lies in figuring out what the ideal requires first, for then, presumably, we know at last what we are aiming *for*. The Ideal rightly claims priority, (so says the Rawlsian) because the normative project posed by corrective justice needs to get its normative content from what the world would be like (or would have been like) were we not to have this project to concern us in the first place. Only if we know what justice *is*, as such one might say, or, what the just society would be like apart from any particular historical story, can we then turn to the task of bringing our unhappy, historically tortured, state closer in alignment with this description.

Well, it sort of makes sense. And yet Mills is also rightly skeptical. Of course, of course – Mills knows that the Rawlsian is not saying there is no place for theorizing about corrective justice, or saying it is not a worthy, even “urgent” matter. The Rawlsian hardly thinks that with the publication of *A Theory of Justice*, all reflection on whether a fire department may justifiably advance minorities at the expense of non-minorities, would *cease*! The Rawlsian is only saying that surely, this – saying what the basic structure of society should be – is the *logically prior* task, since it is here that we will figure out what justice really means. How can we say that the present situation of blacks in America is unjust, how say how unjust it is, unless we have some idea of what justice is? And how can we have that idea unless....we construct an ideal theory of justice!

It is here that I think Mills is on to something very deep, and because of the nature of di-

agnosis, something mainstream Anglo American philosophy is in fact especially poorly equipped to detect. The problem (borrowing from G.A. Cohen here) lies one might say in the “ethos” of Ideal Theory, the conception implicitly conveyed by the nature of the argument regarding what is and is not important. It is not just that the assumptions made, say that persons will be rational, or will act in compliance with the principles chosen, generating a well-ordered society, take us away from worrying about the subjects that are, from the standpoint of pragmatic urgency, exactly what should be confronted and puzzled over. Perhaps that is entirely forgivable, since, again, it will be said that such things are just set aside for separate treatment. And after all, what else could Ideal Theory *be*? Rather, the problem is that what is left out, set aside, gets to be seen, almost inadvertently, as something easy, something we can turn to later without any serious difficulty, something not all that deep really. And sometimes in fact, this is indeed so. So, consider something like health say. Of course, as actual persons, our health is sometimes of very great concern to us. A lack of it can even kill us. Obviously. And yet there is nothing wrong with setting this all aside, having the parties under the veil just know in this abstract sense that, once the veil is lifted, some will be healthy, some not, that people get less healthy, generally, as they age, and so forth. But do these considerations pose a deep problem for *philosophy*? Hardly. Anyone ranting and raving to the Rawlsian: “But you have left out health! Something so important to us as actual persons!” would have missed the point, and structure, of Rawls’ argument entirely. And the ideology of Ideal Theory encourages us to see *any* feature of actual life, or actual history, along these lines – messy, sure, awfully pressing in real life to be sure, but nothing to distract us from theory construction, nothing we cannot just fill in the empirical details of later, and correct, or regulate if need be, by reference to the two principles of justice.

Let us take a better example for the Rawlsian, something with some, if in the end benign, political content. Consider the following: it can be conceded I think that when the veil is lifted, some might have anti-Semitic ideas. But surely the first principle of justice chosen under the veil would act as a brake on such views and prevent them from gaining any sort of traction in a well-ordered society. That there are actual anti-Semites in real life seems, from the standpoint of Ideal Theory, more or less benign. It is hardly something that need distract us; the fact, conceded, hardly calls for a revision of the theory.

No, these worries are indeed not real worries at all. The Rawlsian can chuckle kindly from his Olympian heights and get on with the business of defending the difference principle. But it would be a mistake to think this sort of story is always the one on hand. And here we can take a page from feminism. Of course, under the veil of ignorance, parties would not know their gender, and, being risk averse, would choose principles that are non-gender discriminatory. But the feminist argues – rightly I think we would all say now – this is but part of the story, the tip of the iceberg. In this case, that metaphor is near

literal, since it is what is hidden that most warrants our attention. The history of men and women is a history of seeing women's domestic life, the work of child rearing and family support, as "private," not even really "work" in the first place, not at least as that idea is understood in classical social theory. It is these unspoken assumptions, the ideology of male domination, that must be brought out of invisibility and subjected to scrutiny. And indeed, prodded by criticism, Rawls has done so – there is no need to rehearse his trajectory on this subject in any detail. Worries about justice in the family, or what is acceptable between men and women in marriage, are now explicit, and explicitly part of the background understandings that inform principle determination.

One might think that the feminist argument against earlier forms of liberalism gives us a straightforward blueprint when it comes to what it would be to construct an analogously racially motivated critique. Mills certainly wants to make what is in some ways a parallel point about racial domination. It too is hidden, under ideal theory's talk of inclusiveness and the present preference in white political thought for a "color blind" approach to race (5, 6). But the analogy is inexact, though it is not easy to say, in a satisfactory way, exactly why this is so. Certainly some asymmetries are obvious. As Hume quite rightly pointed out against Hobbes about two hundred years ago, men are not really so very solitary after all. The attraction between the sexes and the project of raising children, deeply rooted in our biological nature, has men and women in some kind of intimate life from the time we are this species at all. By contrast, race is a modern construction, not a fact of biology (4, 8, 56), and members of one race did live in isolation from others for centuries. Many continue to live in real isolation from members of another race now, obviously. And once racial domination does arise, it would seem it has distinct, hard to pin down causal consequences all its own. Parenthetically, I should say, Mills quite rightly, wants to make this the correct way of picking out the central subject here – we are talking about racial *domination*, or white supremacy, (Mills uses this term in the broadest sense), not "prejudice" or "bias" understood as a psychological attitude or set of beliefs. What counts is the systematic civic suppression of a group by systems or institutions of power, not the presence or absence of some inner state in some person who self identifies as white (117). Clearly, a person without any such prejudicial beliefs could all the same passively participate in a system that fails to see blacks as equally deserving of a mortgage, or could fail to appreciate the degree to which the criminal justice system sentences drug offenders asymmetrically along racial lines, and so on. It is not private thoughts that are the object of scrutiny here, *it is what actually happens*. It is institutional operations, sometimes explicitly racially motivated, sometimes not, that generate differentials along racial lines to the detriment of black Americans that is our subject. But having identified the subject, it is now bewilderingly complicated how to proceed. The techniques required to ensure fairness in lending will not be same as combatting racially motivated arrest and

sentencing, let alone racially motivated police brutality. And it is very unclear the bearing all of this has as a critique of Ideal Theory. How much does taking up the history of racial domination and its consequences just mean that we have, when we think about race and justice, simply a very different subject from what Rawls is concerned with? Or, will acknowledging racial domination and its history mean the concepts or arguments employed in *A Theory of Justice* are corrupt or compromised in a way that bears on their philosophical integrity?

In one respect, it is enough for Mills to argue the first, and that the “ethos” of white Anglo American philosophy has been, for nearly fifty years now, in a bit of a self-congratulatory bubble, failing to see how *trivial* it is to run an argument like that of Rawls’ when actual “liberal” society is so shot through with racially motivated injustice. It is hard to see the *point* of characterizing “society” as a cooperative venture for mutual advantage (as Rawls repeatedly puts it) – to take but one example – when in fact it seems more accurately described as a social hierarchy where racial domination is as much a collective motivator as anything else is. It is hard to see the point of characterizing the parties under veil of ignorance as rational self-interested proxies for any possible future person, and then, to imagine future persons as generally in compliance with the principles chosen under such circumstances. (76, 77) If this is the framework, racial domination as a collective social force – as opposed to the mere possibility of particular individuals having private beliefs with biased content – quite disappears under this double movement. It is not a topic for us when we are under the veil (fair enough, one might say), *or* in any actual state (and that cannot be right). And of course, as Rawls himself says, quite openly, nothing in his argument can take up whatever problems are posed by “corrective” justice – what we ought to *do* when some wrong has already been done. Corrective justice as a general subject will include, obviously, conceptions of criminal justice and tort liability, but in the context of racial oppression, it is pointedly about what, if anything, is to be done for past acts of racially motivated expropriation and subordination. Here the central topics are two: affirmative action and reparations. And one of Mills’ recurring points throughout *Black Rights/White Wrongs* is this: If you are bewitched by Ideal Theory, as contemporary Anglo-American philosophy has been, then you just won’t pay much attention to those issues that fall outside of it, i.e., those of corrective justice, which is to say, specifically, affirmative action and reparations. And given the importance and urgency of these matters to those who *are* the victims of ongoing systematic oppression, this is kind of an embarrassment, something almost shameful for philosophy today.

As I have said, I think Mills exaggerates the degree to which affirmative action fails to receive attention from philosophers and philosophically inclined legal theorists (Judge Richard Posner is a clear example of my point here). But I also want to dispute the characterization of affirmative action policies as *essentially* or *always* instances of “corrective”

justice in the first place. By “affirmative action” I will mean any policy that distributes a good (e.g., a place in an incoming college class, a promotion to police captain, a city contract, etc.) by reference to explicitly racial criteria, whatever other criteria are also in play (grades, years on the job, past experience in the trade, and so forth.). What Mills tends to leave out in *Black Rights / White Wrongs* is that these policies can draw upon several distinct justification stories; on my view (and the Court’s), they are not always best thought of as correcting for a past wrong. Mills thinks white philosophers don’t like to think about corrective justice in the racial context, so besotted are they with the lofty vistas offered by the two principles of justice and the well-ordered society. I don’t think this is quite so, but if it were, if Mills were right here, then, there is all the more reason to think about the ways affirmative action might embody other aspirations besides those of correcting for a past wrong. I will say more about what those aspirations might be later on. Let us turn now to corrective justice.

### Mills and Corrective Justice

The reader may be surprised to learn that Mills offers no theory of corrective justice himself, no argument as to what should count and why, and what by contrast should be set aside. There is only just the frequent claim that it is a wrongly neglected topic. And so: I offer here a brief primer to get this discussion off the ground.

Obviously, corrective justice works best, by which I mean, is most unproblematically instantiated, when the agent who committed the wrong can restore the loss to the very same person who suffered that wrong. Bob wrongly took Carl’s car and bent the fender.

Bob pays to have the fender repaired and returns the car to Carl. That is about as good, as clear, a case of corrective justice as one could wish. Of course – and this is very, very important – in the affirmative action and reparations case, we won’t usually have anything like this at all. Sometimes we do. Sometimes it is the exact same fire department that acted discriminatorily that now seeks to correct for this and it is the same population of candidates who will now be promoted, But, as Justice Scalia loved to say, this is barely *affirmative action*. When the parties who committed the wrong and the parties who suffered the wrong are the same parties before us, then we can just draw on standard tort law principles of rectification too, and there is not going to be anything terribly difficult, anything philosophically or legally troubling, about *that*.

And it is just this we usually *don’t* have. We won’t typically have the original victims of the original wrong before us, and sometimes we won’t have the same perpetrators of the initial wrong before us either. Germany pays Israel reparations over the Holocaust, but the recipients of that money are by and large ordinary Israelis, not Holocaust victims. At some point very near, there won’t even *be* any Holocaust victims among us to begin with.

And on the other side of the equation, the present government of Germany is very, very discontinuous from the murderous Nazi regime that perpetrated these wrongs. I have not said any of that matters, not yet – though it is pretty obvious that none of this can be entirely irrelevant either. For now, I am just pointing out the gradual movement we have here. On one end of the spectrum is what one might call the “pure” case of restitution or correction, where the party who corrects the injury is the same one who perpetrated the wrong, the party who receives the compensation is the same one who suffered it. At the other end will be cases where the wrong occurred long ago, or over a long period of time such that the victims, or a significant fraction of them, and the wrongdoer, are no longer with us. I think it is rather obvious that the more one moves away from the pure restitution story, the more problematic the justification story becomes. If the victim is not around, but only descendants, this matters; the more attenuated the connection becomes, this matters too. If the apparatchiks of 1948 Communist Czechoslovakia appropriated a farm, and there are now no descendants but the farmer’s grandson’s Irish spouse, it is not clear *she* has any claim at all. If Stalin’s puppet Czech government has long since disappeared and we have a very different government in place now, as we do (we don’t even have that state anymore), it is not clear that this government, the present government, has any responsibility for the crimes committed by this other, earlier, very different state either. If the farm has long since been turned into an apartment complex with many innocent families living there, families who had nothing, clearly, to do with the earlier wrong, it is hardly obvious that they must now leave so that the cows may yet return. I am not saying these problems cannot be faced. To the contrary, I am saying they must be faced.

Mills knows all this of course. He has to; these considerations arise very quickly whenever the subject of restitution arises too. But he does not like to acknowledge the difficulties with restitution when the variables get filled in in non-ideal ways, as it were, because he likes to present “white resistance” to restitution claims as racially motivated rather than, as it well might be, motivated by principled difficulties with the policy, once the variables become, as I say, “attenuated,” or non-standard, as they surely must be, when the wrongs occur over a three hundred year period, and at a point in history when the government was so different that something as abhorrent as slavery was actually federally enforced. Many Americans think, not unreasonably, that they are too discontinuous with the perpetrators of the initial injustices to be financially liable, in tort, as it were, for their compensation now. I am not saying there are not good counter arguments. Of course there are. I am saying Mills does his opponents a disservice when he characterizes resistance to such policies as inevitably expressing a kind of blindness to the causation story where race is concerned, as reflecting a self-serving false consciousness, that of thinking a “color blind” approach to race is all we now need. To be sure, Mills is abso-

lutely right about one thing. There *is* a lot of bad faith on this issue, I do not deny it. But there is not *only* bad faith. There are some very good reasons to demur as well. But they are, believe it or not, never mentioned in *Black Rights/ White Wrongs*.

And this brings me back to affirmative action. Precisely because there are difficulties with compensatory arguments, sometimes it is nice to be able to draw upon non-compensatory arguments instead. Let me illustrate what I mean. Affirmative action policies in college admissions are essentially justified before the courts by being said to contribute to the diversity of the educational experience (Bakke, Fullilove). School boards may distribute students along racial lines in order to bring their schools more in line with the racial make-up of their district (Seattle Schools). Management may think of affirmative action as advancing something of a racial ideal, bringing the racial make-up of the workforce more in line with the community it resides in (Weber). In these justification stories, it is not necessary to speak of correcting for a past wrong, let alone a wrong committed by the same institution that is now enacting the policy in question. A university admissions office does not have to show it acted prejudicially in the past in order to take race into account in its admissions policies now. A police department does not have to be found guilty of past discrimination in order to justify pursuit of a racial target in the present make-up of its officers. A school board need not be guilty of past racial redlining in order to worry now about the distribution of its students along racial lines and subsequent “racial isolation.” It is worth remembering that affirmative action was so named, during the Nixon years, precisely because it expresses an interest in taking affirmative steps to bring America closer to the inclusive society it ought to be – we need not wait for a claim of compensatory justice to be vindicated in order to take these *affirmative* steps.

Of course, it is natural to think: But what difference does it make if the *institution* did not commit the wrong – what matters is that the wrong was committed and the institution can do something to fix it. So, to continue the line of argument: surely it should not matter that the University of Davis Medical School did not *itself* act prejudicially in the past. Let us grant that this is so. What matters is that blacks were and are the victims of discrimination, and Davis can, with its affirmative action policies, do a little bit to fix that. Isn't that enough? Well, no, it isn't, and Mills knows this. When an institution distributes a good it is empowered to distribute along racially explicit lines, it must show it is pursuing a “legitimate purpose,” which is to say, a purpose that it, as that institution, is legally entitled to have. And it must show it is pursuing this purpose in a reasonable way. And courts will assess an institution's claims that it has such a purpose and is pursuing it reasonably by a high standard of review, “strict scrutiny.” So for example, the city of Richmond can worry about the way minorities in Richmond were treated in the past when city contracts were handed out (Croson). It cannot worry about the welfare of minorities as such, so that a Latino from Arizona or an Inuit from Alaska may seek

support in city contract distribution now (which in fact was how the Richmond ordinance was written). If it is going to require that 30% be subcontracted to minority owned enterprises, and not 20% (or any other number) it better be able to justify this target by reference to more than mere hope (which it could not – not because the number could not be justified – we will never know – Richmond just failed to do the necessary work). A bunch of philosophy professors on a graduate admissions committee may legitimately worry about diversity of education when considering applicants, it may not worry about combatting discrimination in America overall, about which they know little, and which they were hardly appointed or elected to pursue.

Now, one might argue that the current legal framework for assessing affirmative action plans is all wrong, and that local institutions *ought* to be able to have more general, even, if you will, abstract, goals, such as “combatting discrimination overall,” or “making America a less racially stratified society.” Or one might argue that the “legitimate purpose” requirement is all right, but that the standard of review should be more relaxed. Fine. These are perfectly reasonable things to think. Then make that argument. Take up the problems with institutional over reach, consider whether this general goal should be granted all institutions, or just those that play a special role in American society, such as public schools or the army or local police and fire departments (this is the position I myself favor) and say why you think the line should be drawn in this way rather than in some other. Take up whether this grant of abstract moral purpose should come via a democratic process, such as an act of state legislature, or Congress, or whether it should come as a matter of constitutional interpretation through the courts.

Face it out. But Mills never does. We just have this “thing,” this undigested lump called “affirmative action,” about which “white philosophers” are evasive or resistant because of an ideology of “color blindness” or “white ignorance.” Sorry. No sale.

### **And now to Mills and Rawls**

As I said earlier, if *Black Rights / White Wrongs* has a single unifying theme, it is the distortive influence Rawls and Ideal Theory has had on contemporary political thought, particularly, at this point in our history, at the expense of racial justice theory (it is now no longer right to say at the expense of feminist considerations). But the exact nature of the distortion is unclear. I do not mean this remark as a criticism – it really is unclear just what to make of this emphasis on the Ideal at the expense of the Corrective. Consider the following, in ascending order of severity:

1. The obsessive focus on Ideal theory has taken for granted what we should be attending to; Rawlsian Ideal Theory fails to make conceptual space for the tools or the concepts we need when taking up corrective justice – in racial matters;

corrective justice theory, especially in so far as it takes up the wrongful expropriation of property and wealth from Native Americans and African Americans, is in fact conceptually prior to Ideal Theory, or conceptually linked to Ideal Theory, in that notions such as “property” cannot be deployed without first thinking through the corrective claims such groups will rightfully make.

I think Mills wants to say all three, and I think all three are in fact plausible things to say, but there is more to the story than the accusation, and I want to ventilate the argument a bit on both sides. The first claim is easy and sort of undeniable. Sure, the amount of energy that has been spent on Rawls and the veil of ignorance over the past fifty years is simply mind boggling, as any google search will show. I think Rawls has done us all a world of good in making redistribution of wealth an impossible to avoid topic in contemporary thoughts about justice, but the formidability of the theory, and the attention it has received, has crowded out, one might say, attention to race among philosophers. Looking back, this obsessive attention to Rawls’ argument, and what was lost as a result, does seem a bit unfortunate, especially when one remembers how much we all lose in the tragedy that is race in America. Let us concede that some form of this point is reasonable and move on.

The second point is a fertile one, and I hope Mills succeeds in getting more philosophers to pay attention to it. A sketch of it came up in the discussion of how the veil of ignorance and then the well-ordered society would handle anti-Semitism. It is a possible state of mind in the first and a possibly instantiated state of mind in the second, and it is prevented from having any authority because of the well-known argument that, combining self-interest, ignorance, and risk aversion, would end up with principles that would prevent such states of mind from having any political authority, were they to be actualized. But while I think this argument, this framework, is quite all right before what is arguably a marginal phenomenon in American life, it fails to capture, by which I mean, adequately represent, the nature of group power, or group dynamics, so central to thinking helpfully about race. (127, 128) The idea that people, or citizens, might identify as members of a race, and, as such, seek to deny members of another equal protection under the law, simply gets no foothold in this highly individualistic ontology.

Consider, by contrast, justice in economic distribution. Here the claim that Ideal Theory has, or ought to have, a kind of priority seems plausible. We run the argument of *A Theory of Justice*, wind up with the Difference Principle, and then, looking at our actual society say, “Aha! Gosh, we are not like this at all (whereas Sweden sort of is). Let’s *correct* this, by which we mean, let us bring our actual society *more in compliance with* this state, which we now know, via Ideal Theory, to be just.” Here, the Ideal Theory truly does give us the right target (presumably). It also points us smoothly towards the “corrective”

stance, where we turn to the task of realizing it. The project of correction is straightforward, because there is nothing in the Ideal argument that prevents us from accurately representing the thing to be corrected.

But it is exactly this that is not so when it comes to race and racial domination. And that is the problem. When we lift the veil, if we remain faithful to the vocabulary we have inherited from Rawls, we simply see some people with less money (say) who happen, disproportionately, to be of a certain color. Why can't redistribution of the money then in compliance with the difference principle be enough? Actually, we will get to just that when we take up Mills' dispute with Tommie Shelby below, but for now, the point is one of description, not rectification. We cannot even *characterize* the situation of blacks in America accurately in the first place. There is no place for white supremacy or racial exclusion. We cannot describe what is *wrong*. There are only individual preferences that would be deemed too risky under conditions of ignorance. Cooperative, organized, racially motivated disenfranchisement, often informal, cannot be *anticipated* under the veil of ignorance, so it cannot be taken up or guarded against. And if we cannot even *describe* the political plight of those who are the subject of racially motivated inequality at all accurately in the first place when within a certain theory, how can that theory be deemed satisfactory? As I say, I find this criticism quite powerful as far as it goes. Rawls' liberalism just fails to do justice to a more demanding, more subtle social ontology, and if we going to think helpfully about race, that is precisely the social ontology we are going to need.

Finally, we have the challenge that some ideas central to the deployment of Ideal Theory, notably property, will require grappling with corrective theory first. So Rawls assumes, plausibly, that actual persons will have more or less Lockian intuitions about what they make, and parties under the veil of ignorance will see such intuitions as having some weight. It is just this that generates the difference principle, since the difference principle balances concern for political equality, ensuring that all with reasonable life plans will have a decent chance at their fulfillment, regardless of their talent, with some regard for Lockian entitlement, for the thought that effort and talent will not make *no* difference to outcome either. After all, even in Sweden, the talented surgeon makes more than the orderly, the CEO of Volvo makes more than the factory worker, and the members of Abba make more than the music studio maintenance crew. But not *that* much more such that the least advantaged in these stories cannot have enough to have reasonably good lives too. As lack of talent does not mean one has less of a vote, or less legal protection when a defendant, it will not mean no access to the goods necessary for a reasonable life either. This seems fine, so far. But suppose the underlying basis of all property has been compromised from the start. Suppose all the real property there is has all been wrongfully taken, and so, until the compensation has been paid, what citizens are entitled to

“from their own efforts” must remain unclear. When we think about America and the initial expropriation of the indigenous peoples, this is not a very far-fetched thing to say. I note in passing it is not so powerful a thing to say about the Finns, or the Poles. (I am careful enough to choose European nations that extracted no wealth from colonial possession either.) It is also of unclear force when we think about intellectual or creative work. Whatever the wrongs of white expropriation of Native American land may be, and they are pretty considerable, they seem to have little bearing on Stevie Wonder’s claim to some significant share of the wealth from the sale of “You Are The Sunshine of My Life,” a song he, and he alone, undoubtedly wrote.

All right, suppose we set cases like these aside and return to the case where this is undeniably a very powerful point. It is just true that all the land in America was indeed taken. It was *not* “virgin land” in some Locke-like fantasy, and it was wrongfully expropriated. But from the standpoint of Ideal Theory, acknowledging this fact it may not be so formidable a difficulty. The Rawlsian can acknowledge that his theory requires an equal or fair starting point. Indeed, he should insist upon it, and he can concede that this can only be achieved when we have first figured out what is owed to whom, if there are wrongs in the past of our actual society that stand in need of correcting. All this I think can even be included under a modified, or reformed, theory of what can be thought of as “general knowledge” under the veil of ignorance. But I see no reason why the Rawlsian cannot then go on to say: once that initial starting point *has* been achieved, then, it is the fair equality of opportunity principle and the difference principle that should govern. And “property,” following the argument, will then be understood along difference principle-compliant lines: persons will retain as exclusively theirs only that fraction which is necessary for an arrangement that is to the benefit of the least advantaged. So on my view, the most powerful challenge to Ideal Theory generated from the standpoint of race-critique lies in the second point: the Ideal Theory Rawls offers fails to do justice to, fails to represent, racial domination at all satisfactorily. It cannot include it in the a-historical original position, and it cannot make sense of its emergence or force in actual society.

### **But Can the Two Principles Solve the Problem of Race All the Same?**

Still, maybe this does not matter so very much. After all, a society in compliance with the two principles would be just, yes? And surely, on one level at least, that is all we can ask for. What possible social pathology could co-exist with such compliance? What injustice (one might say) could possibly co-exist alongside the just state? Maybe it is true that Rawls argument cannot do justice to the distinct, sociologically complex, phenomenon of race domination. Perhaps no purely philosophical argument ever could. But if compliance with what the theory requires would essentially dismantle the *effects* of racial oppression, then, the fact that the theory fails to “characterize” racial domination satis-

factorily may not matter so much. Consider: suppose a monk preaching the principles of Zen can get anyone who follows him to have a serene life. Suppose he knows little about post-traumatic stress disorder, has no idea about war. Still, veterans who follow his teachings are, in my fantasy example, all better, well-adjusted and secure. Does it really matter very much that the monk in question knows very little about the pathology he can make go away? Perhaps the Rawlsian is in a similar position.

Maybe the theory cannot adequately *represent* the nature of racial domination and oppression, but if compliance with the two principles would make its effects disappear, perhaps this is a forgivable lapse.

Well, it is an interesting thought, and goes hand in hand with a very interesting issue in political theory generally. Most social pathologies are coextensive under several alternative descriptions, and if a theory targets the phenomenon under one of these descriptions, the fact that it fails to have the vocabulary to pick it out under any of the others may not matter. Malnutrition is usually coextensive with poverty; if you target and alleviate poverty, chances are you will alleviate malnutrition too. A more subtle example might lie in depression among the rural poor. Chances are, if you targeted unemployment, made headway there, depression, drug addiction and suicide rates would go down too, even if all you ever cared about was unemployment. A Benthamite utilitarian will hold that all the benefits and injuries known to man are captured in this single metric of “utility” – so long as you worry about *that* in the right way, the theory assures us, all will be well. And so it is here, perhaps. Suppose we just *do* what Rawls’ theory says we ought to do – arrange things so that there are equal basic liberties, fair opportunity, and the distribution of primary goods is optimal for the least advantaged.

Won’t that be good enough? I don’t mean that in the sense that this is a reasonable utopia, and how could we ask for more. Rather I mean it in the sense that, if we do manage to do this, won’t we, at the same time, alleviate the traces of racial oppression too, whether we explicitly target such things or not?

Tommie Shelby seems to think so, in a qualified way. When I say “in a qualified way” I mean this in two senses. First, to my surprise, Shelby leans almost exclusively on Rawls’ fair equality of opportunity principle (what gets called throughout the FEO), and not at all on the difference principle, so it remains open how much further along these lines we might go were to think about aggressive compliance with the difference principle as well. Second, Shelby is circumspect and speculative in his thought here.

Aggressive enactment of the FEO “might well” alleviate most of the residual traces of past institutional racism, and “might well” in time even lead to less racial resentment of whites among blacks, less interest in reparations, given the improvement in their status

such enforcement would bring (165, 166). Shelby's is almost a *modus tollens* argument. Given that institutional white supremacy has historically *deprived* blacks of basic liberties and fair opportunity, rigorous enforcement of these political goods, particularly (now) fair opportunity, would correct a grievous political injury (166). Of course, given the structure of Rawls' argument, where we worry about fair equality of opportunity and the difference principle "lexically," which is to say, only *after* equal basic liberties have been secured, we can assume blacks also have equal, robust, basic liberties on par with whites in this scenario too. One might put Shelby's point this way: if blacks really were given equal basic liberties, and really given fair equality of opportunity, the traces of historical racism would be effectively countered.

Of course, Shelby hardly thinks this is simply achieved by judicial order! He is a realist. He understands "opportunity" as growing out of access to important social goods, and so these goods would be subject to substantial, perhaps even radical, redistribution. Educational resources, to take an obvious example, would have to be radically reallocated if we were to achieve anything like fair equality of opportunity (166). Analogous, if perhaps less radical, measures would probably have to be taken with respect to health care and housing resources. But this is nothing new. Bringing American market capitalism into compliance with the difference principle would be no small matter of social engineering either. That is hardly a problem for *Rawls*. The point is clear and dear to the heart of any Rawlsian. If we really do follow this blueprint and

1. secure equal basic liberties for all and
2. secure fair equality of opportunity for all and then (a seemingly less important point for Shelby)
3. allow differences in outcome only

if they are part of a scheme that benefits the otherwise least advantaged, then, whether this outcome was an intended object of the theory or not, the traces and consequences of institutional racism would be effectively rectified.

Unsurprisingly, Mills demurs. I say "unsurprisingly" because of course he is hostile to the general argument here. He has said repeatedly throughout *Black Rights / White Wrongs* that he does not believe the Rawlsian framework, or the framework of any Ideal Theory, can be the right one when we turn to the task of correcting for the history of racial oppression or the nature of white supremacy (165-170). Indeed, if anything is a signature philosophical claim for Mills, this is it. And so, as we should expect, arguments of every stripe and variety are on offer against Shelby here.

That said, I was a bit surprised at the first of them. Mills actually makes something of an appeal to authority in a way I don't think I have ever seen before, outside of the monas-

tery that is. Mills says: If enacting the Rawlsian framework were sufficient for combating the legacy of institutional racism, surely Rawls would have made this argument himself when given the opportunity to do so. But in fact, Rawls in several places speaks of the problem of race as requiring a wholly different approach, and speaks of the argument in *A Theory of Justice* as ill-suited to the task (167, 168). Well, OK, maybe he does. But why should that matter? Given how wrong Mills takes Rawls to be about so many things, one may be forgiven for finding this a surprising place to show such deference. Maybe Quine didn't see the connection between his doctrine of ontological relativity and a disquotational theory of truth (to which Quine was notoriously hostile), but what does that signify? Nothing at all as far as I can see. It is hardly an *argument* that friends of disquotational theory are in fact *wrong when* appealing to Quine in defending their view. In order to assess the argument, we have to assess the argument. I don't think we get anywhere by quoting scripture.

And then there is some very tricky stuff about Shelby's allegedly wrongful use of the fair opportunity principle to address something as central as racial oppression (168 - 170). Mills thinks Shelby's use of this principle to address the pathologies of historical racism is a bit of "category mistake" (his actual expression, 169). Why? Because a principle of economic distribution is being deployed to handle a problem, *inter alia*, of fundamental rights. To get this argument and accusation off the ground, a bit of background and reconstruction is in order.

Mills notes that liberalism bifurcates: there is Nozickian, libertarian liberalism in which it is sufficient for the state to guarantee freedom from undue coercion. On this view, so long as freedom and autonomy are respected, we have a just state, and no economic disparities, so long as they were not produced by fraud or wrongful takings, on their own, can count against that verdict. And then, of course, there is more robust liberalism, Rawls being a paradigmatic example, where respect for persons means ensuring that all citizens, regardless of their talent at accumulating wealth in meritocratic competition, will receive help in realizing reasonable life plans. (177 - 178) Janitors may not drive Jaguars, but they will be able to take modest vacations and perhaps retire at the same age as surgeons. All liberals agree about the necessity of guaranteeing "basic liberties." Only left-leaning liberals like Rawls insist on arrangements that produce greater economic equality and so something like closer parity in lives and life plans. Well, here is the problem. Under a regime of institutional racism, blacks do *not* have their "basic liberties" secured. That seems obvious. But when we turn to the instantiation of the fair equal opportunity principle, we must assume equal basic liberties *are* secured; that is what it means for it (and the difference principle) to be put forward as lexically secondary. If all these years of reading Rawls have taught us anything, it is that we must, when within the theory, satisfy the first principle of justice before turning to any feature of the second.

Shelby, therefore (Mills says), in appealing to the fair opportunity principle makes a kind of category mistake in that he takes a principle that figures in a certain *species* of liberalism, one that worries essentially about economic outcome, and uses it to secure what *all* liberalism, or liberalism as such, worries about, basic political liberties. This is work this principle cannot do, the hoped-for result is one that enforcement of this principle cannot achieve.

On my view, this charge is a bit unfair, or, at the least, undeveloped, since it assumes that differences in meaning always give us differences in extension, and that is exactly what has to be shown in a case-by-case way. Sometimes these differences in meaning don't amount to very much. Every utilitarian is attuned to the need to face this challenge, and Mill (not Mills) rose to occasion admirably in his "Justice and Utility," when he begins by acknowledging that "justice" and "utility" don't *seem* to mean the same thing – but then goes on to argue this appearance amounts to very little in the end, since attending to the second will always give you the first. (In referring to this argument, I hope it is clear I do not endorse it.) From the fact that the FEO is "about" economic distribution cannot, in itself, entail that a world in compliance with it would not be other things too. Obviously, Mills is on solid exegetical ground when he speaks of the "lexical priority" of basic liberty worries over those of economic distribution. And I suppose he is on reasonably solid ground when he speaks of blacks as not having their basic liberties secured, though I want to poke a bit at the ambiguities surrounding this claim in a moment. Inadvertently, I think Mills has pointed out how little this so called lexical priority may amount to in certain contexts. Remember: the *justification* for the difference principle – actually, for everything in the theory that speaks to a more egalitarian outcome as far as wealth is concerned – is a kind of "integrated Kantianism." Rawls rightly was very proud of the way his theory, unlike say Nozick's, carried forward into wealth distribution the intuitions we all share regarding liberties. We don't think that the less talented deserve a fraction of the vote given to the more talented, or less Fifth Amendment protection. We don't think these differences matter when it comes to political citizenship. Harold Pinter deserves all kinds of prizes the janitor does not, but he does not deserve two votes to the janitor's one, or a more forgiving standard of proof when before the court. Nor would Pinter at least ever say otherwise. Well, the difference principle simply takes this intuition regarding equal worth and carries it forward into the possibility of realizing a reasonable life. The Rawlsian argument continues: surely all of us, simply as citizens, have an equal claim to realize a reasonable life plan. This cannot be something that you can reasonably expect satisfied *only if* you are good at making money; at least, that is the judgment we would make from within an initial position of fairness. To respect persons quite apart from their talent is to make possible a reasonable life for all regardless of that talent. Hence in Sweden, even the unskilled laborer, the janitor say, gets a paid vacation and a reason-

able work week – so unlike his counterpart in the Bronx! (I am ashamed to say.) And so while it is true that the two principles are in *some* sense lexically structured, it is also true that they both speak to and advance *the same exact political good*, what one might call a kind of Kantian respect for persons as such. The justification story that generates the first principle, maximal liberty consistent with equal liberty for all, is the exact same justification story we appeal to when seeking to justify the equal opportunity principle and the difference principle. And because this is so, it is not as if, when enforcing the second set of principles concerning the opportunity to acquire wealth and the subsequent distribution of wealth once those opportunities have been exercised, we are pursuing some good wholly discontinuous from what motivates the argument for equal liberty. Indeed, to see these as concerned with different political goods is to play right into the hands of a Nozick-like libertarian. After all, respect for persons on the libertarian view has been *wholly satisfied* once the basic liberties are secured; there is now nothing left to do in the service of that end. Differences in wealth, as such, are politically innocuous, as uninteresting as hair color. From the libertarian point of view, redistribution expresses a kind of sentimental charity, a misguided soft heartedness, perhaps. But whatever it is, it has nothing to do with respect for persons, which, on the libertarian view is of course crucial – and wholly satisfied with generous provisions of liberty. By contrast, for the Rawlsian, in all domains, we are pursuing respect for persons regardless of differences of talent, period. So it is not obvious, at least to me, that aggressive concern for fair equality of opportunity would not engage with, and would not advance, our respect for persons.

Well, what about those basic liberties? Surely these must be in place for fair equality of opportunity to be possible, to be a political aspiration, in the first place. Are they or are they not “secure” for blacks in America today? Unsurprisingly, I don’t feel very qualified to speak to this issue in any detail, but it seems obvious that the answer, broadly, has to be a kind of “yes...and no.” I mean, blacks do vote... and are, in some jurisdictions still the victims of racially motivated voter suppression tactics. Blacks own property, and some accumulate great wealth... and some are still not given a fair chance when applying for a mortgage for racially motivated reasons. Some have homes in communities patrolled by private security guards, let alone well-funded police; some are the object of frightening police harassment and racially motivated attacks causing injury, and even death. Young black men face prison for acts like marijuana use that never put their better off white counterparts at risk. And so on. I very much doubt anyone would deny any of this, let alone Shelby, but more importantly, I don’t see how the undeniability of any of this raises any difficulties for his *speculative* argument. If Shelby *forgot* to add “and my appeal to the fair equal opportunity principle assumes prior, thoroughgoing security of the basic liberties,” then, let’s be sports and just add it to the argument on his behalf. What Shelby is saying seems to me to be something like this: Maybe Rawls didn’t think very deeply,

or very helpfully, about race. Fine. But he did think deeply about how a society might be structured so that persons, all persons, were respected. And if the arrangements that parties would endorse under conditions of fairness were enacted, were made real over time, then, for the most part, as these arrangements became stable, persons *would* be respected, and if that were to become so, then, the injuries of racial oppression would be ameliorated too, even if these were not aimed at under that description.

Of course, I don't know if this is true. But then, I don't know how *anyone* could know whether this is true, by which I mean, I don't know how anyone could know what long term sociological changes we might see were society to strive to be in accord with, and come to approximate, Rawls' two principles of justice. But it cannot be a category mistake to think it might be true.

### Theorizing Corrective Justice

Finally, let us turn to the alternative approach to correcting racial oppression Mills favors, his version of Non-Ideal Theory. I want to be fair to Mills; his alternative is only sketched out here. But even so, there are serious gaps in the argument that must be faced. Here is Mills' account:

“Can we arrive at these principles [of corrective justice] through the utilization of a Rawlsian or modified Rawlsian framework? I believe that we can, but it will require a reorientation of Rawls' apparatus as a “device of representation’...My suggested alternative strategy: Rather than try to tweak [Rawlsian principles] let us run a *different* thought experiment, custom designed for non-ideal theory....So the thought experiment plays itself differently. Self-knowledge is still blocked by the veil (so as to guarantee objectivity). But the veil is thinner on *social* knowledge. We know we are going to emerge into a society whose basic structure has historically been shaped by white supremacy. All the social variants among which we choose will have a white supremacist state as their ancestor. ..So we are making a self-interested choice about different principles of corrective justice that will correct to a greater or lesser degree for this history of racial domination...The choice then becomes this: What kinds of measures would you select to correct for a history of racial injustice worried that when the veil lifts, you may turn out to be black or a member of some other historically subordinated race?” (212 – 213) In keeping the parallel with Rawls, Mills first, and understandably, speaks of “choosing principles” of corrective justice. Notice that later, he asks which “measures” we would choose. The difference in terminology is I think important and revealing, for it is the second, more pragmatic language which turns out to express Mills project here more accurately. But, first, let us consider this “choice of principle.” Note that we do not get in Mills anything like the account we get in Rawls, where Rawls rehearses the assessment process by which the parties, in their deliberation, would find utilitarianism wanting say

(despite its egalitarianism), and come to rank the two principles of justice over utility. Indeed, Mills never even *names* “the principles of corrective justice” he thinks might be chosen by persons in his non-ideal theory, let alone which principles would come in second, and why. Truthfully, I am not even sure what a “principle of corrective justice” is.

Let us help the argument out a bit. Perhaps it is something like this: “So long as the direct descendant of a wrong is before us, it is just to compensate that party exactly as it would have been to compensate the original victim of said wrong.” Or: “So long as a government or state is historically continuous with the government or state that committed an initial wrong, it is just that the successor government or state be liable in

the same degree and the same extent as the original government or state.” Such principles are hardly obvious or non-controversial. And, again, though Mills never puts forward these principles explicitly, let alone defends them, it is reasonable to think that it is something like this that Mills would have his parties choose. After all, taken together, they justify policies he likes, such as reparations for the present descendants of the original victims of slavery and the Jim Crow state. Now, I am not saying these principles are wrong or defective. It may be that these principles are God’s Very Own and would be included in the best theory of corrective justice there is. The problem is that I can see no argument for their rightness in the thought experiment *Mills* has constructed.

When we choose the difference principle from within Rawls’ veil, acting on self interest and not knowing who we will be, we simply express in a metaphor of game theory an argument we can make quite apart from this little illustration. The veil of ignorance illustration is just that – an illustration. Unless the argument it illustrates is itself any good, this illustration (or metaphor) can in itself have no power at all. And that argument is essentially the idea that, whatever your talent in the marketplace might be, you are entitled to social structure you can endorse, find acceptable. Maybe this argument is more or less unassailable, maybe it isn’t. But it is a well-behaved normative argument. A Kantian conception of persons as deserving respect is carried forward into the distribution of wealth; this grounds the argument and more importantly for our present purposes, drives the illustration. But now, in Mills’ non-ideal version, and perhaps this is a problem with using this framework in *any* corrective context, we are simply asking that you assume you are one side rather than another in a *dispute*, and then, drawing on self-interest, rank possible principles accordingly. But why should the result *now* be thought of as vested with any normative authority? Who cares that the plaintiff in a tort action wants a rule of triple damages? Maybe that rule is right (it sometimes is), maybe not (it sometimes isn’t). But asking “suppose when the veil is lifted, you would be the plaintiff in a tort action, not the defendant. Should the rule be triple damages or not?” My god, who would see the answer to *that* question as in any way an argument for the rightness of the rule?

Why not ask: “Suppose when the veil is lifted, it might be you that was convicted of insider trading; well, from that point of view, from that position of (faux) ignorance, what sentence would you want to see imposed?” But I take it as obvious: Before we can ask this question, or take an interest in the answer, we need a prior argument for the claim that whatever persons would choose in Mills’ story - whatever it is - in any way speaks to the *rightness* of such a choice. And then I am inclined to say: if you *do* have an argument along those lines, then, just make that argument. Rephrasing it as what you would choose if you might be the victim cannot make it any stronger. Indeed, I think it can only diminish it, muddying what presumably would be a well-founded argument of principle with ordinary self-interest or partisan politics. If the rule of awarding triple damages is the right rule in certain cases, the argument that it is in no way becomes stronger by pointing out that if you were the plaintiff, then, this is the rule you would prefer.

Further, without something like the thick, independently justifiable constraints upon choice determining the results that we have in an argument like Rawls’, the appeal to “what you would choose” is hopelessly indeterminate. We know this from Mills’ own book. If it were Tommie Shelby behind Mills’ veil, unlike me, he does not have to “imagine” that he is a member of the disfavored racial group. He *is* a member of that disfavored group – and he knows it! Nevertheless, he would say, and we know this because he has said it, and Mills has told us he has said it, “I think we should just choose to enact the principles put forward in that classic of white philosophy, John Rawls’ *A Theory of Justice*.” I suppose black libertarians (and surely there must be some, since there is every version of everything in this mad country of ours) might say, “just make sure all transactions are voluntary and free of fraud; in time, that should be enough to set things right.” What does appeal to any “you” get us when, without artificial constraints, this “you” could be anyone with any ideology at all? We are back in the unsatisfactory land of R.M. Hare’s prescriptivity requirement, and I am surprised Mills doesn’t see this.

Finally, a vaguer thought, one that returns us to the earlier point. Although Mills speaks of choosing principles of corrective justice, I think what he is really after is something broader - and rightly so. This comes out I think in his more pragmatic talk of mere “measures” in the passage above. As I have tried to indicate in the discussion of affirmative action, sometimes the justification for racially self-conscious policies is not exactly one of “justice.” And it should not have to be. It may be that certain policies are the right policies to pursue, in that we have all sorts of good reasons to pursue them, but we need not twist ourselves into the pretzel of justice-talk to make sense of them. It may be that no injustice is being “corrected,” just a good thing is being done, a better society is being made. When most blacks live in a certain part of Seattle, rather than more or less proportionately across the city, it may or may not be the result of “injustice” that this is so. I certainly don’t think the school board should have to prove that it is. I think the school

board should be able to say “Look: maybe these housing patterns reflect a deep injustice done to blacks here, maybe they are the result of other causal forces. It does not really matter. In any event, it is not a good thing for us as a society, or for our children, that all the children of black Americans in Seattle go to just these schools; it would be better if we had more diversity in our high schools, less racial isolation.” We don’t have to say that all measures to combat the legacies of race in this country are correcting for an injustice. All we have to say I think is that it is better if we take these measures and dismantle the legacy of racism wherever we can. But figuring out what those measures *are*, what works and what doesn’t – well, here Mills is right all the way down, more right than is good for him, as it were. By that I mean, no appeal to any sort of veil of ignorance choice theory is going to help, not Rawls’, obviously, but neither will the “Non-Ideal” version Mills himself proposes with an assumption of “thicker” social knowledge really help very much either. When we look at this awful, sad, maddening legacy of white supremacy and racial isolation, we must just try whatever we think might work. And this is something we can find out only through actual experience. No one in 1970s America could “know” what would and would not work in affirmative action programs. How could they? It all lay before us. And clearly, “being a member of a historically disenfranchised minority” as Mills asks us to imagine we are when deciding which measures to choose, is no help here either. This is social knowledge, acquired only in time, by experience. Membership in a certain group may well give you a *motive* for projects to work, sure. But it cannot tell you *which* “measures” *will* work. And so, *no* veil of ignorance argument can work – and the “ignorance” is the reason. Kierkegaard put it beautifully when he said life may be understood backwards, but it must be lived forwards. In the end, for the project Mills most wants to address, I am not sure that even the engaged philosophy Mills favors really has very much to say.