

THEORIZING RACIAL JUSTICE

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My lecture this evening seeks to address the issue of racial justice and, in the process, to look also at the question of why the subject has been so *little* addressed in Western, and, more specifically, American political philosophy.¹ For it is not as if the demand for racial justice is a new one. The protests of recent years, above all “Black Lives Matter,” have brought the topic solidly back on to the national agenda, effectively shattering the widespread “post-racial society” illusions that Barack Obama’s 2008 election had encouraged in some quarters. But, of course, the demand is much older. One could go back to the earlier civil rights movements of the 1950s-70s, both mainstream and radical. Or, before that, to the debates around postbellum Reconstruction, and the later black disappointment and anger over the betrayal of Reconstruction. Or, before that, during the epoch of slavery, to the long history of antebellum abolitionism. And this list just focuses on blacks. I have not even said anything about Japanese internment, Chinese exclusion, anti-Latinx discrimination, or—returning to the founding colonial encounters—Native American expropriation and genocide. So the outcry against the inequitable treatment of people of color by whites—if not always under the explicit banner of “racial justice”—has in a sense always constituted the discordant counterpoint, the dissonantly off-key chorus, to what could be thought of as the self-congratulatory soundtrack, the approved theme music and national anthems, official and unofficial, of the republic, a republic that was, after all, effectively founded as “a white man’s country.”

And yet despite—or should that be “because of”?—this history, and the larger history of modern Western imperialism and conquest in which it is embedded, (white) American political

philosophers in particular, and (white) Western political philosophers more generally, have almost completely ignored this subject. But philosophers, at least in their own minds, are supposed to be the professional experts, the go-to guys, on questions of justice, stretching back 2500 years to ancient Athens and the book often seen as the foundational text of the tradition, Plato's *Republic*.² Moreover, the Western philosopher widely credited with reviving Anglo-American political philosophy, which had been judged at the time to be moribund, was himself an American citizen, John Rawls. His famous 1971 book, *A Theory of Justice*, is standardly regarded not merely as reorienting the normative focus of the field from the issue of our political obligation to the state to the issue of the justice of society's "basic structure," but as making "grand theory" in the field possible again (as against boring logic-chopping and linguistic analysis).³ Surely, then, the ideal conceptual and theoretical environment had now been created to talk about issues of racial justice, especially in the wake of 1960s' protests and global postwar decolonization. Yet, as emphasized, the topic is marginalized not just in Rawls but in the vast secondary literature his work would generate over the next half-century, both Rawlsian and non-Rawlsian, and including theorists on the right of the liberal spectrum, and the non-liberal communitarian tradition, as well.⁴ So, though I will be focusing on liberalism in general and Rawls in particular, it needs to be appreciated that the pattern of neglect in the field is much broader.

The lecture will be in three sections. In part I, "Illiberal Liberalism," I will begin by locating this seemingly puzzling failure within a much longer history of liberal political philosophy's betrayal of its ostensible ideals. In part II, "Doing Injustice to 'Justice': How Rawls Went Wrong," I will then turn specifically to Rawls and the ways in which his particular version of the liberal social justice project was flawed from the start. Finally, in part III, "Liberal Racial

Justice,” I will indicate, if only sketchily, one possible strategy for deriving liberal principles of racial justice via a modified version of the famous Rawlsian thought-experiment.

ILLIBERAL LIBERALISM

1. Liberalism, ideal and actual

Our starting point is the political philosophy of liberalism. I should quickly clarify that I am using the word as a term of art, the way political philosophers and political theorists do.

Liberalism in this broad sense does not refer just to the left wing of the Democratic Party. Rather its reference is to the political ideology that develops over the seventeenth-nineteenth centuries in Western Europe in opposition to the doctrines of monarchical absolutism, natural social “estates,” ascriptive social hierarchy, and inherited status. Associated with John Locke, David Hume, Adam Smith, Immanuel Kant, Thomas Paine, Thomas Jefferson, Jeremy Bentham, John Stuart Mill and others, liberalism is anointed as the philosophy of the new social order, indeed of modernity itself. The rule of law, limited government, democratic consent, individual equality, equal rights—all become the slogans of the revolt against the *ancien régime*. Hence the American Revolution’s famous opening statement of the Declaration, penned by Jefferson, “We hold these truths to be self-evident, that all men are created equal,” and the “Liberty, equality, fraternity” of the French Revolution. Being a liberal commits you to belief in these broad principles. (As has been pointed out, this designation is to a significant extent anachronistic, being applied now to political theorists who would not have been thought of as “liberals” in their own time.⁵ But in retroactively constructing the tradition, this is the usage that has come to be accepted.)

So, from this perspective, we have liberals on the right who insist on market solutions to social problems and liberals on the left who argue for a state that intervenes on behalf of the disadvantaged. But by these minimal criteria, both groups count as liberals. (Hence conservatives' characterization of themselves as "classical liberals.") Liberalism can then be seen as the most important political ideology of the last few hundred years, the ideology that—especially after the 1989-91 collapse of the East Bloc—had seemingly emerged triumphant over all its challengers. As I don't have to tell you, this celebratory moment was pretty brief. We are now in a period when liberalism is under assault by right-wing populism and authoritarian ethno-nationalism, and there are no guarantees who will be the eventual victor. But certainly, we have to hope that liberalism will survive and eventually prevail, given the attractiveness of its ideals and the contrasting ugliness of those of its main current opponents.

In the official story, then, liberalism has historically maintained a principled opposition to reactionary pre-modern political ideologies, ideologies that denied people "individual" status and equal rights and entitlement to government by consent. It's a great story, an inspiring story. . . but the problem is that it happens to be untrue. Or at least, the extent to which it is true is severely qualified. Far from being in principled combat from the start against anti-egalitarian beliefs and systems of ascriptive hierarchy of all kinds, liberalism has been *complicit* with many of them until comparatively recently. (And some critics would say, it is in effect, if no longer overtly, still thus complicit today.) Liberalism as ideal turns out to be illiberalism in actuality.⁶

Consider, for example, gender. From the "first wave" of feminism onward (e.g., the British Mary Wollstonecraft's *A Vindication of the Rights of Woman*; the French Olympe de Gouges's *Rights of Women*; the U.S.'s own Abigail Adams),⁷ feminist theorists have pointed out that the promise of liberalism was not extended to women, a challenge that would of course be

greatly deepened and expanded in the “second” and later waves. Denied equal rights, unable to own property or run for political office or even vote, their legal identities subsumed into their husbands’ under the doctrine of coverture, women are clearly not ranked among the “free and equal” individuals liberated by this new political philosophy of government by consent. Rather, their status seems to be a kind of gender “estate” analogous to those subordinated in the feudal hierarchy.⁸ But women of all races constitute half the population to begin with; this is not a minor exclusion but a huge one. Then think of race. Though this history is now marginalized in the official liberal story, we need to remember that most of the Western European states now uncontroversially considered part of the “liberal” West had, at one time or another, empires (British, French, Dutch, Spanish, Portuguese, Belgian. . .) in which non-Europeans—indigenous peoples and in some cases African slaves—were systemically subordinated. Together these Western countries ruled undemocratically over the vast majority of humanity.⁹ Indeed, this global racial inequality was so firmly entrenched as a norm, so taken for granted, that at the 1919 post-World War I Versailles Conference to set up the League of Nations, the Japanese delegation’s proposal to include a racial equality clause in the Covenant was emphatically rejected by the six “Anglo-Saxon nations” (as they were then called): Britain, the United States, Canada, South Africa, Australia, and New Zealand.¹⁰ Or think of class. Though modernity is surely supposed, at the very least, to equalize status hierarchies among white males, even here the process is very uneven. The birth of liberalism may date to the seventeenth century but property restrictions on the franchise in many European countries remain in place till the late nineteenth and even early twentieth centuries. (In the U.S., it is really only with nineteenth-century “Jacksonian Democracy” that you get “universal” suffrage even among white men.)¹¹

The point is, then, that once we put together all the exclusions of actual historical liberalism, we should be able to see that a conceptualization that represents them as “anomalies” and “deviations” is fundamentally wrong. *The dominant varieties of historical liberalism excluded the majority of the world’s population from equal normative consideration.* But if exclusion is modal—if propertied white males are the major beneficiaries of modernity’s liberalization—then how can the conventional narrative of a clear transition from the world of hierarchical “estates” to a world of equal “individuals” be sustained?

Otherwise put: “liberalism” has historically been “illiberalism” for all but a minority. But then shouldn’t our periodization be changed to reflect this reality? Shouldn’t we be working with a different temporal and conceptual map, as in the contrast between figures 1a and 1b?¹²

Figures 1a and 1b

So, we would reconceptualize/re-theorize liberalism to emphasize its *continuity* with the past, rather than its putative sharp break with it. And on this basis, we would then start to look at liberalism very differently, with, shall we say, a far more suspicious and critical eye. Rather than automatically presuming that liberalism as a political philosophy is going to be adequate for dealing with the particular social problem facing us, we would begin by asking ourselves the question: if liberalism has been illiberalism along so many central axes of social subordination, how has this pernicious shaping by group domination affected its crucial concepts, norms, frameworks, and assumptions? What silences, what opacities, what inadequacies, might we expect to find in liberalism, given this history? Indeed, isn’t it *likely* to be the case that where class, gender, and race are involved, the inclusion of groups previously formally excluded is

going to be merely nominal unless the deep structuring of the theory *by* its previous history is acknowledged and self-consciously addressed?

One can readily appreciate, then, why—given this record—some radical political thinkers have given up on liberalism altogether, judging it to be too contaminated by its past and ongoing complicity with social domination to be reconceptualized and retrieved. But assuming such a retrieval is indeed possible—rebutting the anti-liberal critique by radicals is undoubtedly important, but too large a task to be undertaken here¹³—it would be necessary to acknowledge and take seriously the deep impact on actual historical liberalism of group privilege. Liberalizing illiberal liberalism (to offer a tongue-twisting designation) would require a thorough and radical rethinking. For example:

- (i) Rewriting the history of liberalism so its exclusions are highlighted rather than marginalized
- (ii) Making clear rather than obfuscating the role of the canonical liberal theorists in justifying these exclusions
- (iii) Placing at center-stage rather than off-stage the concrete shaping by group privilege of the crucial components of liberalism
- (iv) Self-consciously reconceiving all of these to achieve genuine liberal justice.

2. Analyzing and rethinking liberalism

Let me give some examples of what I see as the crucial components of liberalism, as mentioned in (iii), and then illustrate in sequence both how they are likely to be negatively affected by unfair group advantage and how they would therefore need to be reconceived to correct for this unfair group advantage.

I would suggest the following list. Liberalism can be thought of as having: (a) A characteristic set of value-commitments; (b) a certain social ontology; (c) a conceptual cartography of the sociopolitical; (d) an account of the history that has led up to the present (varying—obviously—from society to society); and (e) a schedule of rights, protections, and freedoms for individuals.

The first, (a), is seemingly the most straightforward: liberalism is classically represented as committed to the moral equality, freedom, and self-realization of individuals. But as we just saw, the reality is that only some people were deemed worthy of attaining “individual” status, and for others, institutional moral inequality and unfreedom were the actual norms. This fundamental division of the deserving/undeserving population inevitably affects (b). Again, the traditional claim is that liberalism presupposes an ontology of atomic individuals, ruling out an ontology of social groups. But this claim is multiply mistaken.

To begin with, non-contractarian utilitarian and Hegelian liberalisms can also be found in the tradition, for which societal belonging and group membership are crucial. So, we need to demarcate *moral* individualism (the individual as the locus of moral value) from *descriptive* individualism (the individual as abstracted out of society and history). Liberalism only requires the former, not the latter. Secondly, historical (actual non-sanitized) liberalism did indeed have a group ontology (class, gender, and racial “estates”), though today, in keeping with the official story, it is denied or glossed over. But thirdly, the crucial additional point liberal progressives today would want to make is that if liberal society has indeed historically been divided as in (a), then the appropriate revisionist replacement group ontology needs to register this fact and, rejecting naturalism, center social group *domination* (e.g., men over women, whites over people of color) as fundamental. Given the actual record (anticipating [d]) of politics depicting

themselves as “liberal,” a social ontology appropriate for real-life liberal societies cannot, or at least cannot automatically, be predicated on symmetry. Rather, it must acknowledge the deep asymmetries (with implications both for people and institutions) of social privilege and social subordination.¹⁴ Glossing over this reality, as is standardly done in official liberal ontologies, whether “atomic” or “social,” will only consolidate illicit group advantage by effectively generalizing the unrepresentative status of these dominant groups to the society as a whole. (Indeed, the failure of liberalism historically to develop an ontology critically tracking group domination and subordination in supposedly liberal states is itself one of the clearest indications of its “illiberalism.”)

Likewise, the conceptual cartography, (c)—the mapping of the polity—must be drawn so as to be genuinely inclusive rather than complicit with boundaries entrenching group domination. Think, for example, of the feminist liberal challenge to the standard delineation of the public-private demarcation, and its removal of women and gender equity from the realm of the public sphere. Or consider an imperial topography that legitimizes the relegation of “natives” to an inferior conceptual space that justifies the “mother country”’s undemocratic rule over them. Moreover, if the map is supposed to be true to the territory, as maps are definitionally supposed to be, then it should not represent the polity as something that it is not. An ostensibly liberal democratic society that is in actuality (whatever its aspirations) a white supremacist state needs to be categorized as such in the map’s overall picture. The history, (d), is thus essential, not in the sense of the Whig progressivism sometimes ascribed to liberalism, but as an account that tracks the actual—not mythical—genealogy of the polity, the possible injustices marring that history, and the structures of group domination it has created, with corresponding implications for (b) and (c). So, you can appreciate how they are all interconnected.

The overall goal, then, would be to develop an alternative liberalism predicated on the full inclusion of the human beings that are its ostensible subjects. Rather than taking existing hegemonic liberalism's structure for granted, we would then be better theoretically positioned to examine it critically from the "external" perspective (though quite immanent in another sense) of a *counterfactual* liberalism not shaped by group domination. We could then ask—given these alternative social ontologies, redrawn conceptual cartographies, and revisionist histories (all designed to be revelatory rather than, as at present, obfuscatory)—what would the familiar value-commitments of liberalism require in the way of rights, protections, and freedoms for the divergently positioned individuals of the liberal polity? In other words, what would social justice demand?

Far from being *inconsistent* with liberalism, therefore (at least an ideal liberal liberalism, as against actual illiberal liberalism), such a normative enterprise should be seen not merely as *permissible* within a liberal framework but indeed *mandated* by any serious commitment to liberal social justice. For we would now be trying to guarantee, (a), the institutionally recognized moral equality, freedom, and possibilities for self-realization of individuals by taking into account, (b), the group memberships of those individuals, how they are unfairly privileged or subordinated by them, and developing accordingly mappings of society and the polity, (c), that accurately track political and economic power, and social status, in the light, (d), of the actual history of these groups and the legacy of that history in the present, thereby, (e), providing an informed basis upon which to prescribe rights, protections, and freedoms. Insofar as "transparency" is also a liberal value, though usually applied to institutions, it could be argued that liberalism's typical *lack* of transparency on (b), (c), and (d), is, at the meta-level, itself a

violation of liberal norms. It would, ironically, turn out that the revisionists, far from being the subversives, are the real liberals!

3. Racial liberalism

Let us now turn specifically to race, and the distinctive strategy of revision it would require.

Class and gender rethinkings of liberalism are both completely familiar and well-established in the literatures of political theory and political philosophy, as well as in social activism guided by these political orientations. The social-democratic critique targets what could be called “bourgeois” liberalism, a liberalism shaped by capitalist power, while the feminist critique targets “patriarchal” liberalism, a liberalism shaped by male power. The aim in each case is to develop an emancipatory liberalism sensitized to, and restructured to overcome, the exclusions of these dominant forms of liberalism. But as can be confirmed by consulting any introduction, guide, handbook, or companion to political theory or political philosophy, the anti-racist critique of what could be thought of as “racial” liberalism, shaped by white power, is far less extensively developed and represented in these circles.¹⁵ Yet racial injustice in liberal states in modernity has been at least as flagrant as, or indeed far more flagrant than, class and gender injustice, involving great atrocities (indigenous conquest and expropriation, genocide, racial slavery, colonial forced labor, Jim Crow, and apartheid) in the very time period when human moral equality as a general norm was supposed to have been established by the new liberal order. On a global scale, a case can easily be made that racial injustice has significantly affected the fate of the *majority* of the world’s population, both in terms of discrete events and their legacy and in terms of the establishment of enduring racialized structures of sociopolitical domination. Why then has it not received more discussion in political philosophy?

I suggest that a major—perhaps the major—contributory factor is demographic. Philosophy is one of the very “whitest” of the humanities. In the United States, for example, blacks make up only about 1 percent of professional philosophers, a figure that has not changed in decades. In Europe, it’s even lower. (At a January 2019 international Critical Race Theory conference in Paris, I met the single black Frenchwoman with a PhD in the field teaching in a philosophy department. There was a second, but she chose to leave philosophy.) In theory, of course, anybody can work on anything, and there’s nothing to stop white philosophers from working on racial justice (and a few have).¹⁶ But in practice, even in a subject so self-conceivedly removed from the material body as philosophy, identity makes a difference. Over the 2500-year (Western) history of the profession, there was nothing to stop male philosophers from working on gender and gender justice either. But it does not surprise us that only with the relative influx of women into the field from the 1970s onwards do we begin to get a systematic critical examination of the issue. And what these pioneering feminists find, of course, is a pattern of discriminatory theoretical treatment dating from pre-modernity to modernity, taking the form, in modernity, of a liberalism in which (white) men as equal individuals rule over women as inferiors: patriarchal liberalism.

Against this background, then, it should not really be controversial to claim that the (far greater) demographic whiteness of the profession will likewise foster a “conceptual” whiteness. Narratives, frameworks, assumptions, scenarios, thought-experiments, are presented as colorless and universal when all too often they are really based on the European and Euro-American experience. In political philosophy in particular, our focus here, the nonwhite political subject is almost always assimilated to the white political subject, without any attention being paid to the distinctive political history of people of color in modernity, a history that—as just pointed out

above—has involved being subject to colonialism, imperialism, expropriation, genocide, chattel slavery, and ongoing post-Emancipation/post-colonial racial subordination. Correspondingly, the role of liberalism in justifying and rationalizing these practices will not be part of the official philosophical story. Yet the supposed political ideology of individualism, egalitarianism, and universal rights and freedoms was far more often complicit with than in principled opposition to these practices. Locke, Hume, Kant, Jefferson, Mill, et al. all had racist views that arguably shaped the way their liberal principles applied (or not) across the color line. Capacities for self-ownership, civilization, autonomy, full personhood, cultural development, were all seen as influenced by race.¹⁷

Thus we get a racialized liberalism, a racial liberalism, in which all five of the components earlier cited are affected: who is entitled, (a), to “individual” status and the enjoyment of equality, freedom, and self-realization; how the social ontology, (b), is conceived of; what is the mapping, (c), of the sociopolitical; what historical account, (d), is presupposed; and finally, (e), what racialized schedule of rights, protections, and freedoms will actually be drawn up. And it then means, I would claim, that in order to *correct* for this history of systemic exclusion and structurally differentiated treatment, we need to begin by acknowledging it, and asking ourselves what conceptual and theoretical moves will be necessary to redress it. For if racial liberalism in the past took an overtly racist form, denigrating people of color as natural inferiors (whether because of biology or culture), racial liberalism in the present epoch (post-colonial, post-civil rights) will look quite different. It will present itself as *facially* raceless while continuing to be conceptually shaped and ethically oriented by the interests, perspectives, and priorities of the racially privileged white population. The failure to make racial justice central to the renascent Anglo-American political philosophy of the past half-century is thus, I will now

suggest to you—especially given the myriad historical racial injustices of the “Anglosphere,” the combined Anglo-American empires¹⁸—*itself* the clearest manifestation of the continuing racial “whiteness” of liberalism.

DOING INJUSTICE TO “JUSTICE”: HOW RAWLS WENT WRONG

Consider now John Rawls, as a paradigm case, I will argue, of racial liberalism.

1. Rawls and social contract theory

Rawls is generally viewed as the most important American political philosopher of the twentieth century. Indeed, some would go further and declare him the most important political philosopher, period, of the twentieth century.¹⁹ And his central theme, as emphasized, was social justice. His influence on discussions of justice over the past half-century has, accordingly, been huge, certainly in the Western world, but elsewhere also. So, if I can demonstrate the deeply problematic nature of Rawls’s framing of this issue, I will have gone a long way, given his significance, to establishing my indictment of what I am claiming is (whatever the denials) still a racial liberalism. And here I should mention, for anyone who knows my previous work, that my line of argument today actually represents a change of position on my part. I have recently come to the conclusion that I have been misinterpreting Rawls all along, so that many of my criticisms of him over the years have been unjustified. But I also believe that my new position, if it can be successfully defended, actually represents a *superior* line of critique. Rawlsian liberalism and the secondary literature it has generated would, if I am correct, turn out to be even *more* deeply racialized than I had earlier thought. (However, if I am wrong, I would claim that my original position—now my fallback position—though admittedly weaker, still constitutes a challenge strong enough that it deserves to be, but has yet to be, answered by Rawlsians.)

Before I continue, though, I should give at least a brief gloss of Rawls's theory. In addition to being credited with the revival of Anglo-American political philosophy, Rawls is also seen as resurrecting Western social contract theory. The "golden age" of contractarianism was the century and a half from 1650 to 1800, the four most important contract theorists and texts being Thomas Hobbes, *Leviathan* (1651), John Locke, *Two Treatises of Government* (1689), Jean-Jacques Rousseau, *The Social Contract* (1762), and Immanuel Kant, *The Metaphysics of Morals* (1797).²⁰ Social contract theory directs us to think of the creation of society and government through the metaphor, the iconography, of a "contract" among pre-social (somewhat qualified in Locke) and pre-political human beings in the "state of nature." So, it is not actually meant as a literal account but a hypothetical one, an "as if" story. On this basis, the different contract theorists offered varying analyses of what they thought a good society and a fair political system would look like, and what our resulting civic rights and obligations to the state would be. But as noted earlier, critics—utilitarian and more historically-oriented philosophers—argued that even as a hypothetical, non-literal account contract theory was deeply flawed, and suggested that there were better ways to conceptualize both. So, by the early 1800s contract theory fell by the philosophical wayside, seemingly becoming a mere historical curiosity in the development of the field.²¹

However, Rawls's 1971 *A Theory of Justice* rethought the "contract" to make it a thought-experiment directed now not at justifying political obligation but deriving principles of justice for what he called the "basic structure" of society (the Constitution, the legal system, the economy, the family).²² You choose principles of justice on prudential rather than moral grounds, motivated by how you judge you will fare comparatively in alternative societies respectively structured by these different principles. But because crucial aspects of the society

and your own identity are hidden from you by a “veil of ignorance,” the combination of self-interest and stipulated ignorance produces the equivalent of a moral choice. For example, you will not choose a racist or sexist or plutocratic society because you don’t know whether or not you will be a member of the privileged race or gender or socio-economic class. To use language from the Continental tradition, you will be concerned about the oppressed “Other” because—once the veil lifts—you could turn out to *be* the “Other”! So, in this new incarnation, contract theory would experience a remarkable rebirth. Not only would it revive interest in the original versions of the “contract” (1650-1800), but it would also give rise to competing contemporary “contract” models of social justice by theorists opposed to Rawls’s left-liberal/social-democratic picture of the ideal society, whether from the right or from positions further left.

So contract theory is once again alive and well. But why then, given that racial membership will be one of the facets of our identity concealed from us in Rawls’s version, can’t the thought-experiment handle issues of racial injustice, contrary to my claims above? The problem is that the choice situation as designed by Rawls is limited to principles of justice within “ideal theory,” that is principles for an ideal, perfectly just society, what Rawls calls a “well-ordered society.”²³ Everybody, regardless of race, will thus be guaranteed equal rights, but though this will justify pre-emptive principles of anti-discrimination in hypothetical ideal societies, it will not address the correction of historical racial injustices in actual non-ideal societies, such as our own. Such matters are covered by *non-ideal* theory, and the problem is that neither Rawls nor subsequent Rawlsians would go on to explain what such principles (“compensatory justice”) might be.²⁴ In addition, I pointed out in various critical essays over the years that Rawls’s idealizations seemed not to be limited to normative theory, but to extend to *factual* matters as well, including the features of actual societies, in a way that ignored the racist

record both of the United States in particular and the West more generally. (For example, nowhere in his work does he mention the expropriation and genocide of Native Americans, postbellum Jim Crow segregation, and the historically white-supremacist nature of the United States, nor the Atlantic slave trade or European colonialism and imperialism in the non-European world.)²⁵ So, this seemed to me to be evidence of the “whiteness” of Rawls (and Rawlsianism also).

Yet in the opening pages of *Theory*, Rawls himself had explicitly conceded that the problems of non-ideal theory, including “compensatory justice,” were the “pressing and urgent” ones.²⁶ My frustration with Rawls and Rawlsianism, then, was that there seemed to be no real interest on their part—almost fifty years after the book had first appeared—in making the transition to non-ideal theory, and the obviously pressing and urgent matter of the theorization of racial justice in the United States and elsewhere. To the extent that in recent years a body of work in non-ideal theory has begun to develop, it is not really concerned with corrective justice, and certainly not with race.

2. A new reading of Rawls

However, as emphasized, I now believe (as a result of a recent theoretical epiphany) that I have been operating with a mistaken interpretation of Rawls all along. Here is my new position, bolded for the sake of dramatic emphasis:

Rawls’s theory of justice does not apply to the United States.

Now obviously, this is a very startling and counterintuitive claim. Why would Rawls, an American citizen, have devised a theory of justice not applicable to his own country? And considering that we are approaching the fiftieth anniversary of *A Theory of Justice*, one of the

most celebrated and widely read philosophical texts of the twentieth century, wouldn't some of his innumerable readers and commentators have noticed such a strange exclusion by now?

I'll get back to the second question later, but for now let us just focus on the first. Note that I did not say that Rawls *intended* his theory of justice not to be applicable to the United States. What I said, or implied, is that as a matter of *fact* (taking "facts" broadly enough to include structural states of affairs), it does not so apply. Why? Because of what Rawls takes himself to be doing. Here are two interpretations of Rawls's project, my original one and my new one:

MY ORIGINAL INTERPRETATION (at least the first three premises of which, are, I think, widely shared, if not the rest):

- It is important to ϕ .
- We should be trying to ϕ .
- Rawls is trying to ϕ .
- Rawls is doing a bad job of ϕ -ing.
- So, Rawls should be criticized for doing a bad job of ϕ -ing.

MY NEW REVISED INTERPRETATION:

- Rawls is not trying to ϕ in the first place.
- So, Rawls cannot be criticized for ϕ -ing badly.
- But it is important to ϕ .
- We should be trying to ϕ .
- So, Rawls should be criticized for not even trying to ϕ in the first place.

So, the obvious question then is: what is ϕ -ing? And the answer (not to keep you in suspense) is:

Φ -ing: Developing a theory of justice for modern Western liberal societies of all kinds, both racist and non-racist.

And why is Rawls not trying to ϕ ?

Because (in his own mind) he doesn't have to; the class of racist modern Western liberal societies is empty. No modern Western liberal society is racist. Therefore, the United States is not racist. Rawls's theory of justice only applies to non-racist modern Western liberal societies,

but since (Rawls believes) the United States is not racist (no modern Western liberal society is), this is not a problem. If, on the other hand, you believe as I do, and as numerous other people do, that the United States *is* racist, then we get, straightforwardly, the counterintuitive conclusion earlier stated: Rawls's theory of justice does not apply to the United States.

Let us name these premises about the scope of Rawls's theory and the nature of the United States:

TJ(R&~R): Rawls's theory of justice applies both to racist and non-racist (Western liberal) societies.

TJ(~R): Rawls's theory of justice only applies to non-racist (Western liberal) societies.

USA(~R): The United States is not a racist (Western liberal) society.

USA(R): The United States is a racist (Western liberal) society.

(The point of specifying "Western liberal" throughout is because of the further complication that Rawls's theory might be taken to apply to racist Western liberal societies, but not to racist non-Western non-liberal societies.)

Obviously, then, people could disagree with me on multiple grounds. They could insist that Rawls is indeed trying to ϕ , endorsing TJ(R&~R), and then either accept or reject USA(R). Or they could agree that Rawls is not trying to ϕ , endorsing TJ(~R), but rejecting USA(R).

Let us start with TJ(~R). What evidence do I have for this seemingly extraordinary claim? It is most clearly stated in his last book, *Justice as Fairness*,²⁷ where he is summarizing his theory. But I would contend that it has been implicit all along, if not recognized, in his initial characterization of the societies he takes as his reference point, and indeed (more generally) in the very structural assumptions of social contract theory.

In *Justice as Fairness*, Rawls says in the preface that his two main aims in the book are "to rectify the more serious faults in *A Theory of Justice* that have obscured the main ideas of justice as fairness" and "to connect into one unified statement the conception of justice presented in *Theory* and the main ideas found in my essays beginning with 1974."²⁸ The book's editor, Erin

Kelly, in her editor's foreword, reports that because of his illness, Rawls was "unable to rework the manuscript in its final state, as he had planned." But she goes on to emphasize that "most of the manuscript was nearly complete," and that the most unfinished sections were parts IV and V (out of five sections total).²⁹ One could infer with a high degree of confidence, then, that passages from the early, presumably finished, sections of the book state his final definitive version of his theory. Well, what does he say there? In part I, he announces the scope of his theory: "Justice as fairness is a political conception of justice for the special case of the basic structure of a modern democratic society."³⁰ And a few pages later, he clarifies: "From the start, then, we view a democratic society as a political society that excludes a confessional or an aristocratic state, not to mention a caste, slave, or a racist one."³¹

So, the inference is, I would claim, absolutely straightforward. It is not a matter of translation from another language, and the claim that previous translations had been misleading (though there is, of course, Rawls's Harvard colleague Burton Dreben's famous joke that *Theory* read as if it had been translated from the original German). It is not a matter of the discovery of a later, previously unknown manuscript, that corrects earlier versions. It is not a matter of reading between the lines to uncover a point hitherto unnoticed. Rawls is informing us directly and unambiguously, in a book that appeared nearly two decades ago, that his theory of justice is not meant to apply to racist societies: TJ(~R). He is not trying to ϕ . So, if, contra Rawls's view, the United States is indeed a racist society, USA(R), then the further implication is that Rawls's theory of justice does not apply to the United States.³²

3. Why this reading has to be wrong (but actually isn't)

But surely (you object) this could not be correct. I have not kept up with the Rawls literature—I don't know if it is even possible to do so—but I am not aware of any secondary text, whether

article or book, that states this restriction on his theory. Even if most American (or other) Rawlsians don't work on race, one would expect them to indicate somewhere—if this reading is correct—that, by the way, Rawls's principles do not apply to racist societies, and then explain (if they're American) why they do not believe the U.S. is a racist society. Or, more generally, one would look for a caveat to that effect in the numerous handbooks, companions, and introductions to Rawls that have appeared in the last fifteen years or so, or in the online *Stanford Encyclopedia of Philosophy* entry on Rawls. So, this would seem to suggest that TJ(~R) is false, and that in fact I am misinterpreting Rawls somehow. As the two passages stand, the inference does indeed seem straightforward, but my reading of them has to be wrong.

- (i) OBJECTION I: You're just misreading what is the familiar ideal theory/non-ideal theory distinction.

Here's one obvious suggestion: far from my startling and unfamiliar conclusion following, Rawls is merely making his utterly familiar point that his theory of justice is located within ideal theory, and for it to be applied to racist societies, one would need first to derive the necessary principles of non-ideal theory from it.³³ Thus he says explicitly in *Theory* that “The intuitive idea is to split the theory of justice into two parts,” the “first or ideal part” assuming strict compliance, the second or non-ideal part “worked out [only] after an ideal conception of justice has been chosen.” The latter is then conceptually subdivided into two further sections, “[o]ne consist[ing] of the principles for governing adjustments to natural limitations and historical contingencies, and the other of principles for meeting injustice.”³⁴

So, dealing with racist societies and their injustices would require principles of the latter kind, the second subset of non-ideal theory, and would presumably include what Rawls refers to as “compensatory justice.”³⁵ As I emphasized, Rawls never actually derives them. In *Political*

Liberalism, two decades later, he concedes that problems of race and ethnicity (as well as gender) “may seem of an altogether different character calling for different principles of justice, which *Theory* does not discuss,” and in *Justice as Fairness*, likewise, he admits that “The serious problems arising from existing discrimination and distinctions based on gender and race are not on [*Theory*’s] agenda.”³⁶ Nor have subsequent generations of Rawlsians taken up this challenge.³⁷ But the answer from Rawlsians (insofar as they bother to reply) would presumably be the same: the fact that we have not chosen to do this doesn’t mean that it can’t be done. You, Charles Mills, are claiming (originally) that this neglect shows that Rawls, as well as we subsequent Rawlsians, are doing a bad job of it. But whether or not this is true, there is no doubt that Rawls is ϕ -ing.

This response is a natural one, and is, I think, probably modal. But I now believe that it is mistaken. (Two alternative explanations would be [a] to a significant extent our interests shape what we pay attention to, and since most Rawlsians aren’t interested in race in the first place, they don’t even notice the possible implication of these linked *Justice as Fairness* passages; and [b] many—perhaps most?—white readers of the book *agree* with USA[~R], so even if TJ[~R] is true, it doesn’t matter for the application of the theory to the United States.)

Here is my *reductio* of the claim in the objection. Rawls does not single out racist societies for special mention but includes them as part of a longer list of “excluded” social orders: theocratic (more familiar today than “confessional), aristocratic, caste, slave, racist.³⁸ So what goes for racist societies then presumably goes for the others also. But the implication would then be that all we need to do to make Rawls’s theory applicable to *all* these societies is simply to switch to non-ideal-theory versions of his principles. So in actuality, Rawls’s stipulation about the restrictive scope of his theory would not then exclude *any* of them! His famous shift from

“comprehensive” to “political” liberalism, from a theory applicable to all societies *sub specie aeternitatis* (at least past a certain stage of technological development, and demarcated by Humean boundaries)³⁹ to a theory only meant for modern Western liberal democracies, would have been revealed to be no shift at all. Modern or pre-modern, Western or non-Western, all societies meeting this minimal standard would be covered by Rawls’s principles. But obviously this is absurd and in direct contradiction with what he says (and is standardly interpreted as saying in the secondary literature).

I suggest, then, that this attempt to re-affirm the conventional interpretation does not work. Rawls really means, I believe, to exclude racist societies from the ambit of his theory, whether in its ideal version or hypothetical extrapolated non-ideal versions, just as he meant to exclude all those other kinds of society.

- (ii) OBJECTION II: OK, maybe, but even if you’re right, it’s an isolated conceptual gaffe, probably resulting from his illness, and clearly disconnected from the rest of his body of work.

So, consider now another possible riposte. As earlier noted, the final polished version of *Justice as Fairness* was never completed because of Rawls’s illness. Suppose someone were to draw on this fact to argue that so much interpretative weight should not be put on an isolated passage so disconnected (putatively) from the rest of Rawls’s work. The mention of racist societies was a slip that Rawls would have ultimately corrected had he been in better health.

But the problem with such a claim is that the exclusion of racist societies, far from being the conceptual gaffe of an ill man late in his life, follows directly from Rawls’s initial stipulation three decades earlier in the opening pages of *Theory* about the intended scope of his theory of justice. Readers have simply failed to take with sufficient seriousness his foundational

characterization of society there, and how conceptually straitened it is, whether as (ill-considered) definition or (confused) demarcation of the range of applicability of his principles. For Rawls, society is “a cooperative venture for mutual advantage” governed by rules “designed to advance the good of those taking part in it.”⁴⁰ Note that this is not an idealized *well-ordered society*—that comes in the next paragraph. So as I have recently observed elsewhere, it means that even before we get to the idea of a perfectly just, utopian society, we are already operating with a highly idealized notion of societies, one completely discrepant with the long depressing history of actual post-hunter-gatherer social orders.⁴¹

It seems bizarre to conclude that, over his professional lifetime, Rawls believed all societies were really like this, which would in any case be in flagrant contradiction with the later listing in *Justice as Fairness*, not to mention his discussion of “outlaw states” and other oppressive regimes in *The Law of Peoples*.⁴² (But it is noteworthy that Samuel Freeman, Rawls student and pre-eminent Rawls scholar, does in fact attribute this view to him.)⁴³ So I suggest that the most charitable reading, in the light of the later *Law of Peoples* discussions and *Justice as Fairness* passages, is to interpret these opening pages in *Theory* as a muddled first-try demarcation by Rawls of the *kinds* of society to which his theory of justice was applicable rather than a *definition* of society. And such a reading would, of course, be consistent with his revival of social contract theory, which classically represents the creation of society and the polity in consensual and mutually beneficial terms. As he says in *The Law of Peoples*: “[W]e seek a political conception of justice for a democratic society, viewed as a system of fair cooperation among free and equal citizens.”⁴⁴ And “[t]he notion of social cooperation,” as he clarifies in *Political Liberalism*, “is not simply that of coordinated social activity efficiently organized and guided by publicly recognized rules to achieve some overall end.”⁴⁵ After all, a slave society

would meet these criteria. What is additionally required is the idea of “fair terms,” involving “reciprocity and mutuality,” so that “all who cooperate must benefit.”⁴⁶ By contrast, in a slave economy, for example, “their system of law [does not] specif[y] a decent scheme of political and social cooperation.”⁴⁷

So this interpretation would resolve the seeming contradiction between the early and later Rawls’s framing of “society.” Yet this consistency is purchased at a heavy cost, which is that the scope of his theory of justice is thereby revealed to be limited to non-oppressive societies. That is why—we can immediately see—theocratic, aristocratic, caste, slave, and racist societies are all excluded. None of these societies can plausibly be represented in terms of voluntary (informed) consent and the consequent institutionalization of reciprocally beneficial rules of cooperation. The passages in *Justice as Fairness* are only spelling out what was implicit in Rawls’s framework of assumptions from the very start: the adoption of a social contract model famously predicated on universal and symmetrical inclusion is limited in its scope to societies meeting these criteria.

- (iii) OBJECTION III: Your reading couldn’t be correct because at various locations, if admittedly never elaborated upon at any of them, Rawls allows for the possibility of his theory being applied to race (and in any case, it’s just crazy to think that—conscientious liberal that he was—he would have deliberately devised a theory of justice that couldn’t be so applied).

And that brings me to the third and final objection. I am claiming that Rawls’s theory of justice was not intended by him to extend to corrective justice for racist societies. But while race is not explicitly mentioned, *Theory* gives an account of civil disobedience that is arguably inspired by the American civil rights movement, the later paperback edition of *Political*

Liberalism allows for “new groups” with “new questions related to ethnicity . . . and race” developing “political conceptions that . . . will debate the current conceptions,” and *Justice as Fairness*, while conceding that *Theory*’s non-treatment of race was an “omission,” expresses confidence that the “political values” expressed in the book will be able “to deal with these questions,” since otherwise its “resources” would be “seriously defective.”⁴⁸ Moreover, the passage from *Theory* I myself earlier cited specifically mentions (if never to be discussed in detail anywhere) “principles for meeting injustice.”⁴⁹ Surely, then, these passages from three different texts make clear that Rawls did indeed envisage non-ideal theory as potentially covering this issue (for example, via the “four-stage sequence” of *Theory* §31), even if neither he himself nor his followers would ever choose to pursue the matter. And consider, in the end, as a related closing rebuttal, how obviously implausible—indeed absurd, and in addition, some might say, insulting—it is to think that a Rawls who had lived through the racial tumult of the 1960s, and mentions Martin Luther King Jr. in his later work, would be so indifferent to racial injustice as to devise a theory excluding its correction.

The mistake here, I would contend, is the failure to recognize the difference between what we could term *a society with racism* and *a racist society*. Drawing on Rawls’s overarching theorization, albeit not applied to race, a society with racism could be so characterized because of the racist views of many of its members, and their resulting private practices and private institutions, and even perhaps some superficial impact on some of the institutions of the “basic structure.” But it does not count as a racist society unless racism significantly shapes, in a *deep* way, these latter institutions. So, my reply to the third objection is that the passages cited from Rawls do indeed indicate an awareness of, and concern about, racism, and an indication, perhaps, of how he might have tried to tackle it by further developing his theory (as with his brief cryptic

reference in *Justice as Fairness* to “a special form of the difference principle”).⁵⁰ But he is, I claim, presupposing throughout a society whose racism does not extend to fundamentally shaping the basic structure itself, which is why there is no inconsistency between his extensive direct discussion of race on pp. 64-66 of *Justice as Fairness* (the most extensive in his entire body of work) and his earlier denial on p. 21 of the very same book that his principles apply to racist societies.⁵¹ These are implicitly two different categories for him.

Moreover, the point is strengthened once one realizes the need for an internal conceptual partitioning of the non-ideal within the category of the unjust (as against the zone of constraint by “natural limitations and historical contingencies”).⁵² The literal sense of “ideal” is, of course, “perfect,” admitting of no further improvement or bettering. So, an ideal well-ordered society is a perfect society. The slightest deviation from ideality would then mean that you have immediately crossed over into the zone of the non-ideal. Imagine, as in figure 2, the ideal as graphically represented by a large bold I, I for ideal, on the left-hand margin of the page, with rightwards horizontal deviations from this norm of successively greater distance indicating, by a one-dimensional metric, increasing degrees of badness:

Figure 2

Everything to the right of I counts as non-ideal. So, unless we draw internal demarcations within this zone, then hypothetical societies just marginally short of perfection (just to the right of I) and deeply oppressive societies (all the way over to the right-hand margin) would both, in an undifferentiated fashion, fall into the same category, ~I. Obviously, such indiscriminating conceptual inclusivity would be very unsatisfactory and inimical to an appreciation of the real

and important differences within this wide range of possible social systems. One way of thinking of the philosophical work the contract model is doing for us, then, is as a principled demarcation, within the realm of the ideal/non-ideal, of the border between imperfect but still basically good societies (with sound basic structures), that can be modeled as “cooperative ventures for mutual advantage,” and bad societies (with oppressive basic structures), that cannot. Theocratic, aristocratic, caste, slave, and racist societies are all far to the right, and thus beyond this principled demarcation.

We can then immediately see why, in his discussion in *Theory* of the non-ideal issues of civil disobedience and conscientious refusal, Rawls specifies that he is presupposing throughout “the special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur,” “a (more or less) just democratic regime.”⁵³ In the later *Political Liberalism*, likewise, we find “a nearly just democratic society,” “a more or less just constitutional regime.”⁵⁴ Similarly, in the *Law of Peoples*, he refers to “a reasonably just domestic society,” “a reasonably just constitutional democratic society (hereafter sometimes referred to simply as a liberal society),” “a reasonably just constitutional democratic government,” and “a reasonably just (though not necessarily a fully just) constitutional democratic government.”⁵⁵ Finally, in *Justice as Fairness*, he speaks of “a reasonably just, though not perfect, democratic regime,” “a perfectly just, or nearly just, constitutional regime,” and “democratic regimes as we know them,”⁵⁶ thus conceding their real-life flaws, but nonetheless affirming their “democratic” character withal.

“Nearly just,” “more or less just,” “reasonably just” though not “fully just,” “not perfect”—these locutions make clear that Rawls is consistently taking for granted as his political reference group liberal democratic societies that are close to I, in the I-zone, so to speak, not

societies that are beyond it. *His theory of liberal domestic justice*—including non-ideal “compensatory” justice—*only applies to liberal states whose injustices do not exceed these bounds*. Once these (overlapping) ambiguities are cleared up—the difference between liberal societies merely with racism and supposedly “liberal” societies that are racist, the difference between mildly and deeply unjust societies, and, more generally, the difference between the slightly and the radically non-ideal—we can understand why TJ(~R) could be true despite its seeming incongruity with Rawls’s scattered references to racism, and condemnation of racist practices. He simply did not regard the United States as a racist society, that is, a society with a racist basic structure that negated its self-designation as a liberal constitutional democracy. So, for Rawls TJ(~R) was true but USA(R) was false. Any non-ideal “principles for meeting injustice” potentially derivable from his ideal principles would, by his tacit stipulation, be restricted to liberal states in the “nearly just” I-zone, whose injustices were at worst mild ones.

4. Has the United States ever been a racist society? If so, is it still a racist society?

So that brings us naturally to the question of whether Rawls, and other political philosophers who also endorse USA(~R), was right about this belief. We could distinguish various possible claims: (a) The U.S. was never a racist society; (b) the U.S. was once a racist society, but had ceased to be one by the period of Rawls’s lifetime (1921-2002); (c) the U.S. was a racist society for part of Rawls’s lifetime, but then ceased to be such at some unspecified date during his lifetime; (d) the U.S. was a racist society before Rawls’s birth and in Rawls’s lifetime and continues to be a racist society today. (There is also [e]: The U.S. was not a racist society in Rawls’s lifetime, but became one after his death. But I assume this is too silly to require discussion.)⁵⁷

How do we adjudicate this question? Well, remember the presumptive criterion we are working with is whether or not race and racism affect in a deep and significant way the “basic structure.” According to Rawls, the basic structure consists of the “main political and social institutions”: “The political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy . . . as well as the family in some form, all belong to the basic structure.”⁵⁸ Can we say that they were deeply and significantly affected—let’s use the term *racialized* as a convenient shorthand—can we say that they were racialized over any of these time periods?

The very posing of the question reveals its absurdity. The more appropriate variant would be: was there any time period when they were *not* racialized? Consider, in rebuttal of (a) (if it needs rebuttal), the time before Rawls’s birth when the U.S. was a slave society. The “legally recognized forms of property” then included property in black human beings: racial chattel slavery. The late Ira Berlin (1941-2018), celebrated as one of American slavery’s leading historians, drew a famous distinction between “societies with slaves,” where slavery is institutionally cabined, siloed, and “slave societies,” where the “peculiar institution” pervades, directly or indirectly, the entire social order, in effect rendering the whole society “peculiar.” For him, the U.S. was a prime example of the latter: “slavery stood at the center of economic production, and the master-slave relationship provided the model for all social relations: husband and wife, parent and child, employer and employee, teacher and student.”⁵⁹ The “structure of the economy” was thus the structure of a slave economy, in which the supposedly “free” North was deeply complicit.⁶⁰ Not much room for ambiguity about possible racialization there, in a system that lasted nearly 250 years, and that fundamentally shaped the Constitution, not merely in the infamous three-fifths clause but many other aspects also.⁶¹

Moreover, the crucial issue—and this, of course, is the pertinent consideration from (a) through (d), from the antebellum to the postbellum period—is really always how the Constitution is *interpreted*, and the role of race as a hermeneutical lens for reading it.⁶² The passage of the Civil War Amendments, for example, including the Thirteenth Amendment’s putative ending of slavery and “involuntary servitude,” would not save African Americans from the new “Age of Neoslavery,” based on convict lease labor, lasting from 1865 till the beginning of World War II, documented by Douglas Blackmon in his Pulitzer Prize-winning exposé, *Slavery by Another Name*.⁶³ Nor would the “Equal Protection Clause” of the Fourteenth Amendment protect them from the “separate but equal” 1896 Supreme Court *Plessy v. Ferguson* decision, that formally legitimated Jim Crow as the law of the land, not to be overturned till *Brown v. Board of Education* in 1954.⁶⁴ And of course, racial segregation, both educational and residential, has since then, post-*Brown*, remained the practice of the land, if not the law of the land, so deeply entrenched in the polity that it clearly merits categorization as itself a “social institution” of the “basic structure,” if one unacknowledged by Rawls and Rawlsians, lost as they are in the world of ideal theory.⁶⁵ Likewise, the right of African American men to vote, supposedly guaranteed by the Fifteenth Amendment, would quickly become a dead letter in the South via a systematic policy of disenfranchisement not deemed by the Supreme Court to justify federal intervention until the 1965 Voting Rights Act nearly a century later.⁶⁶

So—returning to the sequential list of alternatives—what about (b)? Can we plausibly say that the legacy of slavery and postbellum Jim Crow had been cleaned up by the time of Rawls’s 1921 birth? Again, as we have just seen, absurd even to ask it. We are still in the epoch of the betrayal of Reconstruction, separate-but-equal that is really separate-and-unequal, systemic disenfranchisement, thousands of unpunished lynchings and the repeated defeat in Congress of

attempted anti-lynching legislation, and, in general, widespread discrimination reducing blacks to second-class status.⁶⁷ A slave economy has been replaced by a Jim Crow economy, in which, to cite a famous essay by Cheryl Harris, whiteness itself functions as “property.”⁶⁸ The state and the juridical system—presumably among the “main political and social institutions”—create, re-create, and protect “whiteness” and its privileges, further consolidating race at the foundation of the polity.⁶⁹ Indeed, the discriminatory Jim Crow regime was so impressively organized and juridically embedded that the Nazis—looking around the world in the early 1930s for a legal role model to set up the *Rassenstaat*, the racial state, and design and institute the anti-Semitic Nuremberg Laws—took it as their exemplar, an admiring tribute on their part to what they regarded as the leading racial state on the planet at the time, the United States.⁷⁰

Clearly, then, (b) is not remotely a defensible position. Well, can we point, as in (c), to some crucial event, some historic turning-point in Rawls’s lifetime, after which the U.S. ceased to be a racist society, for example the “Second Reconstruction” of the 1950s-60s? But six decades on, it would be pretty difficult to do this, considering all the depressing contemporary socio-economic indicators most of us who work on race know so well: continuing residential and educational segregation (as earlier mentioned), ongoing nation-wide practices of de facto discrimination, new techniques of disenfranchisement and voter suppression greenlighted by the 2013 Supreme Court *Shelby v. Holder* decision, the wealth gap (illustrating the enduring racialization of the economy), mass incarceration and the prison-industrial complex, the pattern of police killings of unarmed black men and women, and so forth.⁷¹ In 1968, the Kerner Commission established by President Lyndon Johnson in response to the 1960s’ civil disorders issued its famous damning report that “Our nation is moving toward two societies, one black, one white—separate and unequal.”⁷² Fifty years later, in 2018, Fred Harris, the sole surviving

member of the Commission, co-authored a *New York Times* Op-Ed reviewing the progress (not) made over the intervening half a century whose discouraging conclusion was summed up in its title: “The Unmet Promise of Equality.”⁷³

Finally, it is important to realize that the family, part of the “basic structure” for Rawls, is also racially affected throughout this whole period. Because of the demography of the profession, discussions of the family in the Rawls literature have been overwhelmingly shaped by the concerns of white feminism. But during slavery, of course, the non-recognition of slave families and the inferior social status even of free black families made the white family the real domestic pillar of the nation.⁷⁴ As Dorothy Roberts points out, black women have historically been systematically denied equal “reproductive rights.”⁷⁵ And relatedly, the role of anti-miscegenation custom and law—the latter not deemed unconstitutional until the 1967 *Loving v. Virginia* Supreme Court decision—was crucial to safeguarding the “purity” of the white race, and thus naturalizing a social ontology of domination. Though not simultaneously, at one time or another no less than 41 states had anti-miscegenation prohibitions on the books. In the judgment of Peggy Pascoe’s *What Comes Naturally*, “[Anti-m]iscegenation law was a kind of factory for the production of race,”⁷⁶ thereby producing and reproducing the polity *as* a white-dominated one. Whatever the ambiguities of the abstract “colorless” family’s location in Rawls, as debated by white feminists over the past few decades—whether it is fully or not fully part of the basic structure for him—the real-life white family has functioned unequivocally in the basic structure to perpetuate white political rule.

So, it would seem that (d), the U.S. as historically and still currently a racist society, is indeed the judgment validated by the evidence. USA(R) is true. In conjunction with TJ(~R), we

have therefore now finally arrived at the evidence for my (seemingly) startling claim. Rawls's theory of justice does not apply to the United States.

5. The implications of TJ(~R)

Let me now emphasize, if they are not immediately apparent, how shocking the implications of TJ(~R) are.

(i) IMPLICATIONS FOR THEORIZING CORRECTIVE RACIAL JUSTICE

To begin with, it means that whatever few attempts have been made to use Rawls's apparatus to theorize the correction of racial injustice in the United States (but arguably in the "West" more broadly) have been misguided from the beginning. To repeat the points from the start of this section: my original critique, and that of (at least some of) that very small number of us interested in developing the theory in this direction, had been that Rawls is doing a bad job of constructing a theory able to deal with the non-ideal issue of corrective racial justice. Hence my arguments over the years that he needed to recognize the existence of white supremacy, he needed to show how his principles would have to be modified or extrapolated to become rectificatory ones, and so forth. But it now turns out that this critique was based on a false premise. Insofar as Rawls assumed his theory had the resources to handle corrective racial justice, it was only for the close-to-ideal category of a United States with racism, not a racist United States with a white-supremacist basic structure.⁷⁷ Rawls simply did not view the U.S. that way, so he would have seen no need to develop such a theory.

Here is a way of representing the implications for justice theory, ideal and non-ideal. Elsewhere I have suggested that a simple way of depicting Rawls's two principles of justice is by the following formula, where the arrows indicate lexical ordering:

BL → (FEO → DP)

Acronyms: BL: Basic liberties (to vote, run for office, have freedom of speech, liberty of conscience, the right to hold personal property, etc.);⁷⁸ FEO: Fair equality of opportunity (formal equality of opportunity [anti-discrimination] + resources to equalize for class disadvantage);⁷⁹ DP: Difference principle (socio-economic inequalities to be arranged for the greatest benefit of the least advantaged, e.g., those disadvantaged because of having a thin bundle of natural talents).⁸⁰ So, translated into prose, that gives us: the first principle of justice, the guarantee of the equal basic liberties, is lexically dominant (must be satisfied first) over the second principle, in which, in a subordinate lexical ordering, fair equality of opportunity is lexically dominant over the difference principle.⁸¹

Now these are, of course, principles of distributive (not allocative)⁸² justice, PDJ_I, for an ideal well-ordered society, I, one that is “perfectly just.”⁸³ So, let us enclose them within brackets to make this (highly restricted) scope clear:

PDJ [BL → (FEO → DP)]_I

Principles of non-ideal theory for “meeting injustice” in non-ideal societies, ~I—let us call them principles of corrective justice, PCJ_{~I}—are then different from PDJ_I.⁸⁴ But the implication of my earlier reading of Rawls was that these principles of corrective justice could be derived from the ideal principles in some ordering (the uncertainty indicated by asterisks), even though Rawls himself had not explained how, nor had subsequent Rawlsians taken up the issue.

PCJ [PCJ1*PCJ2*PCJ3]_{~I} somehow derivable from PDJ [BL → (FEO → DP)]_I

So, that was the main burden of my previous criticism: why had Rawls and Rawlsians, given their ostensible commitment to remedying the “pressing and urgent matters” of social injustice, here racial injustice, not tackled this project? But my assumption was still that such a derivation from Rawlsian principles was possible.

However, the implication of my new reading, as indicated above, is that we need to demarcate within ~I societies those that are still within the I-zone and those that are outside it. I-zone societies, being close to I (“nearly just” though not “fully just”), are still roughly representable by the social contract model as cooperative ventures for mutual advantage; societies outside the I-zone, on the other hand, being structurally oppressive, are not. Let us call the former ~I(~O) societies (not ideal but not structurally oppressive) and the latter ~I(O) societies (not ideal and structurally oppressive). Then, respecting this demarcation, we have:

PCJ [PCJ1*PCJ2*PCJ3]_{~I(~O)} versus PCJ [PCJ4*PCJ5*PCJ6]_{~I(O)}

Within the I-zone

Outside the I-zone

So, summing it all up, PCJ_{~I(~O)} may possibly be derivable from Rawls’s PDJ, but PCJ_{~I(O)} are not. One will need a rethinking of the liberal justice apparatus to theorize corrective justice for such societies, since they are not cooperative ventures for mutual advantage in the first place.

(ii) IMPLICATIONS FOR THEORIZING SOCIAL JUSTICE MORE GENERALLY

But as should now be evident, the repercussions extend far more broadly than anti-racist corrective justice theorizing. Critical theorists of race and “whiteness” have long pointed out that one of the interesting cognitive phenomena associated with white domination is that under certain circumstances, whites disappear as a “race” and simply become coextensive with the human. Or alternatively phrased, whiteness becomes humanness. Issues of “race” are then tacitly or overtly thought of by whites as really having to do with *nonwhites* as a group, not the “raceless” and “universal” whites.⁸⁵

So, one mistaken reaction to my claim from the overwhelmingly white constituency of Rawlsian philosophers might be that while it is unfortunate that racial justice cannot be theorized by the apparatus, it does not affect social justice theorizing “in general.” But the point is that *all*

Rawlsian philosophy aimed at prescribing social justice for the United States is likewise affected, not just that tiny subsection of Rawlsianism working on racial justice. For whatever the area of focus, all such work is operating with the mistaken assumption that Rawls's theory of justice applies to the United States. But since the United States is a racist society, this assumption is false. And that holds retroactively, of course, for the past half-century's volume of work on Rawls and the U.S. also.

As can be appreciated, then, the implications are really very dramatic ones.

6. How Rawls went wrong

If I am correct, it means that in Rawlsian theorizing a deep injustice has been done to "justice" as a concept. If we start from the reasonable premise that any theoretical apparatus, whether dealing with the physical or moral or mathematical or whatever world, needs to be adequate to the (world-relative) "reality" it is theorizing, then Rawlsian theory, insofar as it is supposed to be designed for the U.S. and other modern Western liberal democratic societies, is a spectacular failure. (I have focused on the U.S. in this lecture, but I would claim that my argument goes through generally for most or all "Western" nations, insofar as their modern history has been one of imperialism, colonialism, racial enslavement, and expropriative white settlement—all under the banner of the racial superiority of Europeans. So, since Rawls's theory excludes racist societies, it excludes them also.) It is not a theory based on a recognition of the racial realities of the development of Western modernity, but rather the opposite: their systematic denial.

But methodological inadequacy is not its most important failing. After all, "injustice" to a concept can only be metaphorical. Far more important are the epistemic and moral injustices of a *literal* kind done to the humans so urgently in need of justice in this modern Western world, above all, of course, the people of color subordinated by the West in modernity. A Western

theory of justice that by its very architecture precludes even the acknowledgment, let alone the remedying, of “basic structure” racial injustice, white supremacy, is in effect a theory of complicity with injustice. So, we need to ask the obvious question: how did this happen? For this silence is not at all idiosyncratic to Rawls. Rather, as I have documented elsewhere, it is *typical* of Western political philosophy, not just across the liberal Anglo-American spectrum, left to right, Rawls to Nozick, but in the communitarian and “Critical Theory” traditions also.⁸⁶ Nowhere in this multi-faceted, multi-politically-oriented body of work do we find any systematic engagement with the history of European expansionism and the resulting creation of global white domination.⁸⁷ So, in seeking an answer to the question of why Rawls went wrong we are really asking a *general* question about a certain community. It is not individual, not (in general) peculiar to Rawls’s own identity and personal trajectory through the world, but social-structural. However, in keeping with the overall theme of the lecture, I will focus here on the liberal philosophical mainstream.

I suggest there are multiple factors at work that together combine in an overwhelming way for an “over”-determined outcome, given that each individually would be arguably close to sufficient in itself.

(i) IDEOLOGICAL SOCIALIZATION AND ILLUSIONS ABOUT THE UNITED STATES

Rawls is in one sense our contemporary, insofar as his philosophical corpus is very much alive and well and still shaping the debate. But in another sense, he is very much from a different epoch, born in 1921, nearly 100 years ago, and growing up in a United States and a pre-decolonization world where white domination would pretty much have been taken for granted in the circles in which he would have been moving. What kind of sociopolitical education would he have received in high school and university? Certainly *not* one that framed the United States as a

racist society. Rogers Smith's 1997 *Civic Ideals*, a book I have cited repeatedly over the years, documents how deeply entrenched in accounts of American political culture is the picture of a historically liberal egalitarian U.S. in which racism is at most an "anomaly."⁸⁸ This was the vision of Alexis de Tocqueville, Louis Hartz, and even Gunnar Myrdal's Carnegie Corporation-commissioned 1944 study of American racism, *An American Dilemma: The Negro Problem and Modern Democracy*.⁸⁹ As various black radical scholars pointed out at the time, and as Stephen Steinberg has reminded us more recently, the very title announces its theoretical tendentiousness, given that Myrdal's conceptual framing was massively contradicted by the data in his huge 1300+ page work.⁹⁰ The 1960s and '70s would see the incursion into even mainstream thought of more radical framings, but Rawls would not adopt them. His view of the United States is fully in the "anomaly" tradition, as against Smith's own "multiple traditions" analysis or the black radical diagnosis of racism as "symbiotic" with liberalism. Thus, the presumption that the U.S. is at worst a society with racism rather than a racist society. (Nowhere in Rawls's work will you find even by now respectable concepts like "institutional racism," let alone the phrase "white supremacy" as an overall characterization of the American social order.)⁹¹

(ii) EUROPEAN SOCIAL DEMOCRACY AND THE "SOCIAL QUESTION"

One must also take into account his personal experience. The timing (1971) of Rawls's book would naturally lead one to think that Lyndon Johnson's 1960s' "Great Society" was a central influence. But as Katrina Forrester has revealed in her impressive overview of the postwar formation of "liberal egalitarianism,"⁹² the foundations of Rawls's theory were actually established much earlier. A 1952 trip to Oxford had put him in dialogue with Oxford academics who were members of the British Labour Party, which was trying at the time to institutionalize the postwar social democratic welfare state. Forrester writes: "He [Rawls] moved left in line with

the debates about equality and social justice that preoccupied the revisionist wing of the British Labour Party. . . . It was social democratic Britain as much as Cold War America that provided the political theories and orientation that shaped Rawls's own."⁹³

But twentieth-century Western European social democracy had its origins in the nineteenth-century debates over what used to be called "the Social Question." Stimulated by the social unrest over the huge and growing divisions between rich and poor in (Western) Europe created by the new industrial capitalist economy, the social question centered on what an equitable division of the social product would be between capital and labor: in other words, the familiar left-right spectrum of liberalism. So, "class" justice and injustice were the issue, certainly not gender (that was the separate "Woman Question") or race ("the Colonial Question," "the Native Problem"). Duly imported into the United States by Rawls, and ignoring "the Negro Problem" of his own country, this body of theory essentially made "social justice" coextensive with "class justice"—which should instantly render understandable for us Rawls and Rawlsianism's marginalization of both gender and race. Indeed, if you carry out the simple thought-experiment—as a preliminary to Rawls's own proposed thought-experiment—of mentally renaming the book *A Theory of Class Justice*, you will, I suggest, immediately see how much more accurate and apropos a characterization of the whole project it is. It was never about "social" justice in any comprehensive sense in the first place. Rather, it was "social justice" = "class justice," where "classes" were conceived of as composed solely of white males. Hence the apparatus's deep-rooted resistance to being adapted to the theorization of either gender or race. Its very design is inimical to tackling these issues because they were not part of its mandate to begin with.

(iii) RACIALLY DEFINING THE MODERN "WESTERN" POLITICAL TRADITION

Moreover, these material origins, as any contextualization of Western social justice theory should lead us to expect, are manifest in the broader discipline's "origins" story as well. In the standard "just so" narrative Anglo-American analytics tell each other and (more unfortunately) their students that I briefly mentioned earlier, Western political philosophy was on its deathbed in the 1950s, limited to boring ordinary-language analysis of political terms, until dramatically revived by Rawls's work. So, Rawls deserves the credit not merely for this resurrection but for shifting the normative focus of political theory from our obligations to the state to the issue of social justice.

But how is "Anglo-American," or, more broadly, the "West" being defined? Is it geographical (national, continental, imperial)? Is it civic (membership in Anglo-American or other Western states)? Is it linguistic (speaking English, or some other "Western" language)? Surely it isn't, surely it couldn't be, *racial*?! But then if it isn't, why is the "tradition" defined so as to exclude people like Frederick Douglass and Martin Delany and W. E. B. Du Bois and Ida B. Wells and Ralph Ellison and James Baldwin? Aren't they English-speaking citizens of the United States? Mightn't an ex-slave like Douglass conceivably have something worthwhile to say about freedom (a central liberal value, so we are told), mightn't a victim of separate-but-equal Jim Crow like *Invisible Man*⁹⁴ author Ellison have some insights about equality (another one)? But it would never occur to Rawls or his disciples, or white American political philosophers in general, that there is a longstanding African American political tradition that—long before Rawls's vaunted reorientation of the field—had made the question of racial justice, and sometimes, if not often enough, gender justice, central.⁹⁵ The Jim-Crowing of everyday American life extends to the American academy and its conceptual space as well. It comes "naturally" to Rawls and Rawlsians to construct a narrative that makes Anglo-American or, more

broadly, Western political philosophy coextensive with the theorizing of its *European and Euro-American* spokespersons, and not their African and African-American slaves and ex-slaves, who might just possibly have had some contrary thoughts on (i) and (ii) above (how we should think of the United States and what we should include in “social justice”). Above all, of course, they would have frontally and militantly challenged a conceptualization of justice that completely marginalized historic injustice and the corresponding need for corrective justice, as Rawls’s apparatus does.

(iv) COMMITTING EPISTEMIC INJUSTICE IN THEORIZING SOCIAL JUSTICE

Once you put these various failures together, you should immediately be able to see how deep an injustice Rawls is committing against the victims of American racial injustice. (My focus here has been on black Americans, but in the case of Native Americans it is even more striking, because of course the “cooperative venture for mutual advantage” characterization, insofar as it ignores the perspective of the indigenous peoples upon whose land this “venture” is being launched, is paradigmatically, one could say definitionally, a white settler colonial conceptualization. Perhaps non-coincidentally, while blacks make at least a fleeting appearance in Rawls’s work, Native Americans are completely absent from the 2000 pages of his five books.) Philosophers have long pointed out the relations between epistemology and ethics, whether in terms of homologous concepts (epistemic and moral duties and prohibitions, epistemic and moral goods, virtuous epistemic and moral agents) or the epistemology of ethics (intuitionism, universalization, the ideal observer) or other connections. Elsewhere I have suggested what I think might be a new relation hitherto unnoticed, or perhaps, more modestly, insufficiently noticed: the idea that we might sometimes, or even routinely, be committing epistemic injustice *in* our theorization of social justice.⁹⁶

Here, of course, I am referring to the very influential work of my colleague Miranda Fricker.⁹⁷ The claim would be that—in the light of what we know about the subordination of the majority of the population in post-hunter-gatherer societies—we should be particularly diligent, in trying to come up with appropriate theories of social justice, about seeking out the voices of those subordinated by our society, so as not to simply recapitulate in more sophisticated form apologist concepts hegemonic in the social discourse of the time. In other words, we can ask (what should have been) the obvious question: why didn't Rawls see that by *not* engaging African Americans and Native Americans he was committing a testimonial and hermeneutical injustice against them? And the answer is, of course, that he was part of a dominant Euro-American social group (“whites”) and a dominant intellectual tradition that simply took such exclusions for granted. It is not a matter of Rawls's personal deficiencies but rather the structural determinants, socioeconomic and cultural and racial, that shaped his perspective, his worldview, that made it so “natural” for him (a social naturalness, of course) to proceed in this way.

In a retrospective essay looking back at her book and its reception, Fricker re-emphasizes that epistemic injustice should be clearly demarcated from intellectual fraud, gaslighting, and other forms of deliberate deception; the causality here is *structural*.⁹⁸ It is because of the circles in which he was moving—very small circles, Forrester points out; a tiny cohort of theorists, largely male and overwhelmingly white, at three elite institutions, Harvard, Princeton, and Oxford⁹⁹—and their embedded ignorances, that what we now know as liberal egalitarianism has the architecture it does. To give just one example repeatedly mentioned by Forrester: Rawls was consistently attracted throughout his career to the idea of representing society as a game.¹⁰⁰ Think of that: *a game!* Can you seriously imagine anybody but a member of the ruling white male social group finding such a figuring anything but completely ludicrous? Are slavery or

indigenous expropriation or colonial subjugation or Jim Crow or apartheid or white supremacy to be regarded as “games”? But it is thus that our preferred metaphors reveal us, make clear who and what we are.¹⁰¹ Given his beliefs about the United States, and the West more generally, John Rawls simply saw no need to develop a theory of justice for societies of structural racial domination. In effect, people of color were simply denied the status of equal team players in the model “games” he and his colleagues were playing with each other.

LIBERAL RACIAL JUSTICE

So that brings us, finally, to the challenge of determining what liberal principles of racial justice would in fact be. If the interpretation of part II is correct, Rawls’s theory of justice only applies to Western societies in the I-zone, not racist Western societies beyond the I-zone, such as the United States. Here it is not a matter of a “deviation” from a “basic structure” that is essentially sound, but rather a basic structure that is itself racialized, unfairly privileging the dominant race, call them the R1s, at the expense of the subordinate race or races, call them the R2s. Obviously, then, this is not a society to be conceived of as a “cooperative venture for mutual advantage,” since there is no reason why the R2s would have voluntarily signed on to such an agreement in the first place. Rather, it is a society that needs to be understood as an “exploitative venture for R1/white advantage.” So, one can immediately see why the orthodox contract apparatus, classical or updated, is an inappropriate metaphor—iconography, story, model, thought-experiment, device of representation, what have you—for capturing the realities of such a sociopolitical order, since, rather than inclusion being the norm, systemic racial exclusion is the norm. As I have argued elsewhere, the more appropriate metaphor is the idea of

a “domination contract,” an exclusionary contract among members of the privileged group to limit institutionalized equality to themselves while subordinating others. Generalized from Rousseau’s demystificatory “class contract” of *Discourse on the Origin of Inequality*, Carole Pateman’s “sexual contract,” and my own “racial contract,” the “domination contract” as a revisionist model seeks both to provide a more accurate *factual* portrayal of modern illiberal “liberal” society and a superior *normative* “device of representation” for deriving principles of justice for modern illiberal “liberal” society.¹⁰²

When I first advanced this suggestion more than a decade ago, I was, as emphasized, still assuming the conventional interpretation in the profession of Rawls’s project, viz., that his theory of justice was meant to apply both to racist and non-racist modern Western societies. So, my criticism was that the mainstream contract would have to be radically modified to take account of race. But now, as a result of my new interpretation, I would claim that my case has, in effect, been made for me by Rawls himself. *A racist society cannot be modeled by a consensual contract, nor can the updated Rawlsian version be a “device of representation” for deriving the principles of justice appropriate for it.* In effect, we can now see, these are two different projects. For the category of racist (modern Western) societies, we need to shift ground to the radically different terrain of societies that are *nominally* liberal, but in fact structured in a systemically illiberal way. Referring back to the discussion in part I, the task of liberal social justice will then be to “liberalize” this illiberal state of affairs by dismantling the structure of group domination in question.

That structure will, of course, be multi-faceted, comprised of overlapping and intersecting constituents (class, gender, sexual orientation. . .). So, abstracting out race as an identity and racial justice as a goal, as I am trying to do here, will necessarily be somewhat artificial. But

assuming that this is possible, we then have—in contrast to the mainstream contract—a social ontology, (b), of individuals as racial group members, R1s and R2s, whites and nonwhites, in relations of domination and subordination; a conceptual cartography, (c), of an R1-dominant, white supremacist American polity, with all the consequent ramifications for its constituent social institutions; and a historical account, (d), of the past that has brought such a polity into existence, requiring attention to the dynamics of European settler colonialism and Atlantic slave societies standardly ignored in the political philosophy literature.¹⁰³ Only on this basis will we then be properly positioned to determine, (e), what the schedule of (racially differentiated) rights, protections, and freedoms should be for the (racialized) individuals in this society to achieve, (a), their moral equality, freedom, and self-realization.

So how do we derive these principles? The recommendation I have made elsewhere, that I will repeat here, is that we perform a modified version of the Rawlsian thought-experiment. We imagine ourselves behind the Rawlsian “veil of ignorance” choosing principles of justice on prudential, self-interested grounds, but with crucial differences from his own version.¹⁰⁴ The contrasting projects are illustrated in figure 3:

Figure 3

In both cases (Rawls’s original on the left, the consensual contract; my modified version on the right, the domination contract) we are choosing principles of justice consistent with liberal values, V, using the “contract” as a “device of representation.” But to begin with, the alternative setting of my version makes it an exercise in non-ideal normative theory, and not “non-ideal but close to ideal” (within the I-zone), but quite remote from it. We are choosing principles of justice

for a racially oppressive, ill-ordered, R1-supremacist society, in which the R1s dominate the R2s, as modeled by the racial domination contract. So, the principles of justice we are seeking are principles of corrective rather than distributive justice, and in addition principles PCJ4, PCJ5, PCJ6, for structurally oppressive societies, rather than principles PCJ1, PCJ2, PCJ3, for societies that are basically sound with some unfortunate “partial compliance” deviations. For racist societies, the phrase “partial compliance” mis-states the situation. It implies that the original intention *was* to fully include the “inferior” races, the R2s (racism as an “anomaly”), when in reality their exclusion was a matter of principle, so that what is actually involved *is* “full compliance,” but with a racialized set of norms (racism as structural).

Correspondingly, the appropriate normative metric here is not ideal theory, but the actual norms that regulated the treatment of the R1s, to be suitably modified, “deracialized,” so as now to include the R2s both formally and substantively, and revised where necessary to correct for previous and ongoing structural R2 subordination. Behind the veil, then, one will be choosing primarily *as* a group member, a potential R1 or R2, not in the sense that one knows one’s R-membership (since such knowledge is blocked by the veil) but in the sense that one’s overriding concern is not to be disadvantaged, once the veil lifts, by one’s R-identity. (Though the veil is thin enough to admit knowledge of the historically R1-supremacist nature of the society, it blocks knowledge of R1/R2 demographic proportions, thereby ruling out the maximization of expected utility as a prudential decision strategy.) So, as in Rawls, the combination of self-interest (here as part of group interest, R1/R2 interest) and stipulated ignorance should result in a morally defensible choice, that we can then compare, once outside the veil, with our “considered convictions of justice” or their “acceptable” extensions.¹⁰⁵ Worried that we might turn out to be R2s in an R1-dominant order basically unchanged or only mildly reformed, or R1s in an R2-

dominant order where long-standing R2 racial *ressentiment* can at last find its vindictive expression, we will make sure that rights, freedoms, and protections are in place to produce a racially equitable order for us whatever we are.

It follows that racial justice is not supposed to be a comprehensive theory of justice. Some varieties of feminism claim to offer self-sufficient theories of justice meant to compete with mainstream (“malestream”) theories, but my view of racial justice is not at all ambitious in that way. So, a racially just society could continue to be unjust in other ways; racial justice is only a part of justice. Drawing on Andrew Valls’s recent book, one way of thinking of this project, referring back to figure 2, is as an exercise in transitional justice,¹⁰⁶ moving us from locations far outside the I-zone to locations somewhat closer to it (depending, of course, on what other systems of structural group domination exist in the society). Because my focus has been on race throughout, it might seem that I am suggesting a sequence of temporal priority and action (first, race; then . . .). But as emphasized from the start, the singling out of race has been motivated by its under-discussion and under-theorization in the literature. In practice, a multi-dimensional social justice project to overcome illiberal group domination would be what is politically called for, with “racial justice” being brought into synthesizing relationship with other corrective measures along other axes, thereby making “social” justice as a concept genuinely inclusive, which it is currently not.

In previous work, I have suggested that racial injustice has at least six dimensions—juridico-political, economic, cultural, cognitive-evaluative, somatic, ontological—that can be illuminatingly gathered under three basic categories, corresponding to one’s civic political status (the first), one’s entitlement to fair (race-independent) professional and economic opportunities for careers and the accumulation of wealth (the second), and one’s socially recognized

personhood (the remaining four).¹⁰⁷ In other words, in a racist society the R2s will, de jure or de facto, be second-class citizens, be exploited through the denial to them of equal economic access and wealth opportunities, and be viewed as less than full persons, with inferior cultures, inferior cognitive capacities, inferior bodies, and an inferior moral status, all on the grounds of race. Correspondingly, my three suggested principles of corrective racial justice, that I am claiming would be prudentially converged upon by choosers behind the veil, and that would match our moral convictions, immediate or extended, outside the veil, are:

PCJ4: End racially unequal citizenship

PCJ5: End racial exploitation

PCJ6: End racial disrespect

Note that, as pointed out from the start, one does not have to be a left-liberal to recognize the wrongs being targeted here as violations, since they constitute infringements on basic rights that are supposed to be affirmed across the liberal spectrum. Racial justice is thus conceptually distinct from Rawlsian social-democratic justice, and should in theory be endorsed by right-liberals also. But in practice, right-wing and libertarian ideological hostility to the concept of a constraining “basic structure” that shapes people’s lives—especially when extrapolated to include *non*-juridical “material” obstacles that justify (I am claiming) coercive state intervention to restructure it—means that left-liberals will be its natural constituency.

Yet for both left and right, this seeming parallelism might encourage the criticism that in the end these principles are hardly different from Rawls’s own, so that my claim to be engaged in a quite different exercise turns out to be false. But remember, to begin with, that insofar as I am self-consciously working within a liberal framework, drawing on liberal values, V, and a deontological contractualist vocabulary of rights, liberties, and duties, there will inevitably be a

certain normative convergence. If the principles were totally unfamiliar, they could hardly be liberal ones! In terms of key differences, note that (1) there is no difference principle, DP (racial justice requires closing the R1/R2 gap, but it is not the case that the DP has ever been implemented in the U.S., or other modern Western liberal societies, so for race it is irrelevant); (2) PCJ6 requires the correction for institutional racial disrespect, which does not even exist in Rawls's ideal society, predicated as it is on the reciprocal equal recognition of the "contractors," whereas systemic disrespect is structurally foundational for the non-idealized domination contract, for whom the R2s are not equal contractors in the first place; (3) PCJ5 mandates ending racial exploitation,¹⁰⁸ but since exploitation does not even exist in Rawls's idealized "cooperative venture for mutual advantage," the concept is completely untheorized by him, whether for race or any other identity;¹⁰⁹ and finally, (4), the realization of PCJ4 will necessitate a correction not just of the deficient basic liberties, BL, of the R2s but also of the unequal and asymmetrically superior BL of the R1s, which will be *reciprocally related* to the R2s' inferior BL, e.g., an "equal protection" that in effect embeds differential R1 racial privilege at R2 expense, or a schedule of property rights in which whiteness/R1-ness has effectively functioned as "property."¹¹⁰ So a liberal deracializing of the illiberal domination contract to redress past and ongoing illicit structural R1 advantage and R2 disadvantage is not the same as a liberal prescribing of equal rights and opportunities for a society of equals that was never racialized to begin with.

As we saw, Rawls's principles of justice are lexically ordered, PDJ [B

$L \rightarrow (FEO \rightarrow DP)]_1$, and in his brief discussion of corrective justice, he seems to be suggesting that principles of the latter kind should also have a lexical ordering, insofar as the most "grievous" injustices should be addressed first.¹¹¹ But he was really thinking of societies that were flawed, but still close enough to ideal that their situation could be thought of in terms

of “partial compliance.” With a racist society, the situation is different, in that, as emphasized, the real problem is more or less “full compliance” *with* racist principles. Whether the issue is second-class citizenship, racial exploitation, or denied personhood, the refusal to admit the equal humanity of the R2s is the common factor throughout. I suggest, then, that in the case of such societies, the principles of corrective justice, PCJ4, PCJ5, PCJ6, should be regarded as conjunctively rather than lexically operative, that is, as having equal priority. For in each area, institutionally recognized R2 personhood is being violated: the “inferior” ontological status of the R2s, their socially disrespected standing, is what justifies their second-class citizenship and the denial to them of equal economic opportunities. So, the principles should be seen as jointly rather than lexically imperative for us to fulfill: PCJ [PCJ4.PCJ5.PCJ6]-I.

Another point worth noting is that the R2 category, being just the negation of R1 (“nonwhite”), will include different racial groups, with different histories and different claims to justice. Recent work in critical race theory has warned of the dangers of trying to squeeze all racial relations into the “black-white binary.”¹¹² Anti-Latinx, anti-Asian/Asian-American, and anti-Native American racism have historically taken different forms, with different dikailogical remedies arguably being called for. In the case of Native Americans in particular, demands for, say, land and sovereignty are quite different from African American demands for affirmative action or reparations. My hope is that the principles are articulated at a sufficiently high level of abstraction that these differences can be accommodated once the particular racial histories are taken into account. Intersectionality, and its complication of what “racial” justice would mean, as in the famous black feminist manifesto of the Combahee River Collective, has not been addressed here.¹¹³ But elsewhere I have made suggestions about modifying the “domination contract” to include both race and gender in what I believe is a useful way that could be applied

to these and other “intersecting” identities.¹¹⁴ And note that dealing with such challenges will be a general problem for *all* theories of corrective justice, so it is certainly not the case that my recommended modified racial contractualism is uniquely or distinctively disadvantaged in this respect.

Finally, as an interestingly inverted variant on an earlier objection, it might be claimed that these principles are not (tacitly) Rawlsian and thus controversial (for those not on the left), but in fact essentially trivial, the justice equivalent of Mom and apple pie. *Of course* we should end second-class citizenship, exploitation, and institutional ontological inferiority for any thus affected groups—who could disagree with that? But first, one must demur—in a time of resurgent racism for which the epoch of “color-blindness” is a distant memory—that significant sections of the white population do not in fact endorse such putative truisms, and do actually disagree. So unanimous or near-unanimous acceptance cannot be taken for granted. For this subset of the population, affirming such norms, even without further specification, is not at all an uncontroversial matter.

Second, and more importantly, once the actual content of the principles is specified, as determined by an informed recognition of what life is actually like for the R2s in an R1-dominant social order, their substantive, and thus controversial, prescriptive implications (all legally coercible, remember) will immediately become apparent. First-class R2 citizenship, for example, would arguably require not merely the obvious *formal* granting of equal civic status, which people of color (nominally) already have, but such substantive measures as a rethinking of the threshold for Supreme Court “strict scrutiny” where race is involved, the rescinding of the 2013 *Shelby County v. Holder* Supreme Court decision, the ending of felon disenfranchisement because of its hugely racially disparate impact, the redrawing of racially gerrymandered voting

districts and prohibition of other related practices of voter suppression, exploration of the role of the Electoral College and the Senate in perpetuating white majoritarianism, massively increased funding for the effective implementation of existing anti-discrimination law and extension into other areas of society of such law, structural reform of the criminal justice system, the dismantling of the urban ghetto and other manifestations of national segregation, a rebuilding of an American educational program that systemically handicaps students of color, and many other measures. Ending racial exploitation would not just mean, say, prohibiting unequal pay for equal work, banning sweatshop labor, and abolishing the (in actuality if not designation) national racial division of labor, but initiating a refurbished and aggressive affirmative action program across the country as well as reparative measures to correct for the huge wealth advantage whites have accumulated over the years at the expense of people of color through “unjust enrichment,” a concept not usually so broadly defined in liberal jurisprudence, but arguably manifest in the long history of discrimination in hiring and promotion, federal backing of restrictive covenants, mortgage discrimination, the racist postwar implementation at the local level of the G.I. Bill, inferior education (again—though here in its economic implications) in segregated inner-city schools that denies blacks and Latinx an equal chance to develop human capital, and so forth.¹¹⁵ “Ontological” equalization (as socially recognized and institutionalized respect)¹¹⁶ would require far more than getting rid of public racist imagery in the form of mock-Native American team names and mascots, the Confederate flag, and Civil War monuments and statues glorifying the “Lost Cause” and its “heroes,” but would also demand federal apologies, the reconstitution of national memory and the re-imagining of national iconographies, and could extend to rewriting textbooks to emphasize the historically white supremacist nature of the polity, and the devising of early childhood educational programs to combat the development of “implicit bias” in

children, and the resulting stigmatization—once these children become adults who will discriminate in the public sphere—of nonwhite cultures, testimonies, bodies, and personhood as unworthy, not credible, ugly, and inferior. In sum, once one thinks through, in their darkly impressive multiplicity and multi-dimensionality, how many different ways race affects us, one should also be able to see how sweeping the corrective measures would need to be to achieve genuine racial justice.

If such measures appear strange and illiberal to those familiar only with the discursive world of the segregated white forums of mainstream liberal social justice theory, that is, of course, my point. Racial liberalism as idealizing white liberalism has bleached not merely the actual world but whited-out an objective perception of what would be required to right its wrongs. I would contend that, however unfamiliar, the alternative liberalism I have sketched here is indeed truly to be characterized as such, and is in fact more faithful to the liberal ideal than its currently hegemonic pretenders and usurpers. As the country moves toward a nonwhite demographic majority for the first time in its history, we can confidently predict that the demands for racial justice are only going to get louder.¹¹⁷ A philosophical liberalism with nothing to say to such claimants will continue to be, albeit more sophisticatedly than in the degraded intellectual universe of Twitter and the blogosphere, a racial liberalism in all but name, and a betrayal of the tradition at its (infrequent) best.

NOTES

¹ New July 2020 endnote: This talk was originally given at the University of Michigan on Feb. 12, 2020, more than three months before George Floyd's killing by the Minneapolis police on May 25, 2020 would ignite national and then global protests around the issues of police brutality, racism, and systemic racial injustice. In that respect, my lecture turned out to be tragically timely. But it must be reiterated, as emphasized in my introduction, that these issues are not recent but longstanding ones, and white mainstream political philosophy's ignoring of them is likewise a deep-rooted and long-enduring case of the disciplinary malfeasance of the profession. For important pioneering work on the subject by two now-retired black philosophers, see Bernard R. Boxill, *Blacks and Social*

- Justice*, rev. ed. (Lanham, MD: Rowman & Littlefield, 1992) and Howard McGary, *Race and Social Justice* (Malden, MA: Blackwell, 1999).
- ² Plato, *The Republic*, ed. G.R.F. Ferrari, trans. Tom Griffith (New York: Cambridge University Press, 2000).
- ³ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999); orig. ed. 1971.
- ⁴ For documentation, see Charles W. Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism* (New York: Oxford University Press, 2017).
- ⁵ Duncan Bell, “What Is Liberalism?”, *Political Theory* 42, no. 6 (Dec. 2014): 682-715.
- ⁶ Desmond King, *In the Name of Liberalism: Illiberal Social Policy in the USA and Britain* (New York: Oxford University Press, 1999); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Thought* (Chicago: University of Chicago Press, 1999); Duncan Ivison, *Postcolonial Liberalism* (New York: Cambridge University Press, 2002); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, NJ: Princeton University Press, 2005); Domenico Losurdo, *Liberalism: A Counter-History*, trans. Gregory Elliott (New York: Verso, 2011); Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, NJ: Princeton University Press, 2016).
- ⁷ Mary Wollstonecraft, *A Vindication of the Rights of Men* and *A Vindication of the Rights of Woman*, ed. Sylvana Tomaselli (New York: Cambridge University Press, 1995); John R. Cole, *Between the Queen and the Cobby: Olympe de Gouges’s Rights of Woman* (Montreal and Kingston: McGill-Queen’s University Press, 2011); Abigail Adams, *Letters* (New York: Library of America, 2016).
- ⁸ Carole Pateman, *The Sexual Contract* (Palo Alto, CA: Stanford University Press, 1988).
- ⁹ Charles W. Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997).
- ¹⁰ Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men’s Countries and the International Challenge of Racial Equality* (New York: Cambridge University Press, 2008), ch. 12.
- ¹¹ Losurdo, *Liberalism*.
- ¹² My thanks to Tyler Zimmer for his technical graphic expertise in constructing the four figures.
- ¹³ But see ch. 2, “Occupy Liberalism!”, of Mills, *Black Rights/White Wrongs*.
- ¹⁴ Ann E. Cudd, *Analyzing Oppression* (New York: Oxford University Press, 2006).
- ¹⁵ Mills, *Black Rights/White Wrongs*.
- ¹⁶ See, for example, Elizabeth Anderson, *The Imperative of Integration* (Princeton, NJ: Princeton University Press, 2010).
- ¹⁷ Mehta, *Liberalism and Empire*; Pitts, *Turn to Empire*; Andrew Valls, ed., *Race and Racism in Modern Philosophy* (Ithaca, NY: Cornell University Press, 2005); John M. Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760-2010* (New York: Cambridge University Press, 2012); Inder S. Marwah, *Liberalism, Diversity and Domination: Kant, Mill and the Government of Difference* (New York: Cambridge University Press, 2019).
- ¹⁸ Srdjan Vucetic, *The Anglosphere: A Genealogy of a Racialized Identity in International Relations* (Palo Alto, CA: Stanford University Press, 2011).
- ¹⁹ Samuel Freeman, *Rawls* (New York: Routledge, 2007).
- ²⁰ Thomas Hobbes, *Leviathan*, rev. student edition, ed. Richard Tuck (New York: Cambridge University Press, 1996); John Locke, *Two Treatises of Government*, student edition, ed. Peter Laslett (New York: Cambridge University Press, 2013); Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings*, 2nd ed., ed. and trans. Victor Gourevitch (New York: Cambridge University Press, 2019); Immanuel Kant, *The Metaphysics of Morals*, rev. ed., trans. Mary Gregor, ed. Lara Denis (New York: Cambridge University Press, 2017).
- ²¹ Michael Lessnoff, *Social Contract* (Atlantic Highlands, NJ: Humanities, 1986); David Boucher and Paul Kelly, eds., *The Social Contract from Hobbes to Rawls* (New York: Routledge, 1994); Stephen Darwall, ed., *Contractarianism/Contractualism* (Malden, MA: Blackwell, 2003).
- ²² Rawls, *Theory*, 6-10.
- ²³ *Ibid.*, 8.
- ²⁴ *Ibid.*, 8, 309.
- ²⁵ Mills, *Black Rights/White Wrongs*, ch. 8, “Rawls on Race/Race in Rawls.”
- ²⁶ Rawls, *Theory*, 8.
- ²⁷ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001).
- ²⁸ *Ibid.*, xv.
- ²⁹ Kelly, foreword to *Justice as Fairness*, xii.
- ³⁰ Rawls, *Justice as Fairness*, 14.

31 Ibid., 21. An interesting point about this list is that at one stage or another, the United States would arguably have qualified for at least three of the excluded categories (caste, slave, racist), thus rendering Rawls’s offhandedness about the issue even more striking. The second and third are discussed below; for the first, see Isabel Wilkerson, *Caste: The Origins of Our Discontents* (New York: Random House, 2020).

32 In a November 2019 presentation of this second section of my talk as a self-contained lecture at Harvard University, I was corrected in the audience Q&A by T.M. Scanlon, who said that my interpretation was wrong, and that Rawls had indeed thought of the United States as a racist society. Never having even met Rawls, I am certainly in no position to counter Prof. Scanlon’s recollections of Rawls (his doctoral supervisor and friend) with my own. But I would then raise the question I originally dismissed: why would Rawls, an American citizen, self-consciously devise a theory of justice inapplicable—by his own stipulation—to his own country? Clearly to attribute such a project to him is prima facie very implausible. Note also that in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2001), Rawls characterizes the United States of 1945—long before the civil rights victories of the 1950s-60s (the “Second Reconstruction”), with the nation’s postwar Jim Crow regime still solidly in place, and after an anti-fascist war fought with a segregated military—as “a liberal democratic people” (101), which would seem to be incompatible with any simultaneous diagnosis on his part of national racism. So the textual evidence does not appear to support Scanlon’s claim. But in any case, whatever Rawls’s own illusions or possible inconsistencies, the real issue is that by his own prescriptions about the restrictive scope of “political liberalism,” the most important Western liberal social justice theory of the twentieth century does not cover racist societies, thereby, I would claim, vindicating my contention about the continuing “racial” character of Western liberalism, here in the non-acknowledgment of the actual racist history of the West.

33 Before my theoretical epiphany (if indeed it is such), this was in fact what I reflexively assumed myself.

34 Rawls, *Theory*, 216.

35 Ibid., 8, 309.

36 John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), xxviii; Rawls, *Justice as Fairness*, 66.

37 For documentation, see Mills, *Black Rights/White Wrongs*.

38 Rawls, *Justice as Fairness*, 21.

39 Rawls, *Theory*, 109-10.

40 Ibid., 4.

41 Charles W. Mills, “Through a Glass, Whately: Ideal Theory as Epistemic Injustice,” APA Central Division Presidential Address, Feb. 23, 2018, *Proceedings & Addresses of The American Philosophical Association*, Vol. 92 (Nov. 2018): 43-77.

42 Rawls, *Justice as Fairness*, 14, 21, 101; Rawls, *Law of Peoples*, 4-5, 65, 80-81, 90-91.

43 Freeman, *Rawls*, 106, 483.

44 Rawls, *Law of Peoples*, 31.

45 Rawls, *Political Liberalism*, exp. ed. (New York: Columbia University Press, 1996), 300.

46 Ibid., 300.

47 Rawls, *Law of Peoples*, 66.

48 Rawls, *Theory*, ch. VI; Rawls, *Political Liberalism*, liii; Rawls, *Justice as Fairness*, 66.

49 Rawls, *Theory*, 216.

50 Rawls, *Justice as Fairness*, 66.

51 Ibid., 64-66, 21.

52 Rawls, *Theory*, 216.

53 Ibid., 319.

54 Rawls, *Political Liberalism*, exp. ed., 15n17, 15.

55 Rawls, *Law of Peoples*, 11, 12, 23, 24.

56 Rawls, *Justice as Fairness*, 4, 13, 43n5.

57 New July 2020 endnote: In the wake of Floyd’s death, with the ongoing vastly differential racial impact of the Covid-19 pandemic being daily manifested (both in mortality rates and economic fallout), and after two months of huge multiracial demonstrations across the country, and innumerable news stories, Op-Eds, online PDFs, TV shows, documentaries, and podcasts exposing the ubiquity and multi-dimensionality of structural and institutional racism in all spheres of U.S. society, from the economy and criminal justice system to the worlds of fashion and classical music, the following discussion will inevitably have a somewhat tonally odd and dated character. After all, nine out of the top ten books on the recent (as I write) *New York Times*’s nonfiction bestseller list were on race and racism, and on July 13, 2020, George Soros’s Open Society Foundation promised \$220 million to the cause of realizing racial equality. The reader may wonder: why work so hard to prove the obvious? But remember that the (largely

white) audience I was addressing in February 2020 was very different from the present one, and for them, and the white political philosophy Establishment more broadly, these claims were *not* (or at least could not be assumed to be) obvious. And in any case, given my philosophical engagement with Rawls specifically, the connection between race and Rawls’s “basic structure” concept still needs to be demonstrated, being crucial to my overall argument.

⁵⁸ Rawls, *Justice as Fairness*, 10.

⁵⁹ Neil Genzlinger, “Ira Berlin, 77, Historian Whose Books Upended Notions of Slavery, Dies”: June 9, 2018 obituary, *New York Times* (print), section B, 6. The quote is from Berlin’s *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: Harvard University Press, 1998).

⁶⁰ Anne Farrow, Joel Lang, and Jenifer Frank, *Complicity: How the North Promoted, Prolonged, and Profited from Slavery* (New York: Ballantine, 2006).

⁶¹ George William Van Cleve, *A Slaveholders’ Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago: University of Chicago Press, 2010); David Waldstreicher, *Slavery’s Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2010).

⁶² Donald E. Lively, *The Constitution and Race* (Westport, CT: Praeger, 1992); Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, eds., *Critical Race Theory: The Key Writings That Formed the Movement* (New York: New Press, 1995).

⁶³ Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Doubleday, 2008). See also the 2016 Netflix documentary by Ava DuVernay, *13th*.

⁶⁴ Lawrence Goldstone, *Inherently Unequal: The Betrayal of Equal Rights by the Supreme Court, 1865-1903* (New York: Walker, 2011); Tina Fernandes Botts, *For Equals Only: Race, Equality, and the Equal Protection Clause* (Lanham, MD: Lexington Books/Rowman & Littlefield, 2018); Mark Golub, *Is Racial Equality Unconstitutional?* (New York: Oxford University Press, 2019).

⁶⁵ Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993); Gary Orfield and Susan E. Eaton, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (New York: New Press, 1996); Anderson, *Imperative of Integration*; Erica Frankenberg and Gary Orfield, eds., *The Resegregation of Suburban Schools: A Hidden Crisis in American Education* (Cambridge, MA: Harvard Education Press, 2012); Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform* (Cambridge, MA: Harvard University Press, 2016); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright/W.W. Norton, 2017); Jessica Trounstein, *Segregation by Design: Local Politics and Inequality in American Cities* (New York: Cambridge University Press, 2018).

⁶⁶ Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Farrar, Straus and Giroux, 2015).

⁶⁷ Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America* (New York: Modern Library, 2003); Desmond King, *Separate and Unequal: African Americans and the U.S. Federal Government*, rev. ed. (New York: Oxford University Press, 2007); Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W.W. Norton, 2019); Henry Louis Gates, Jr., *Stony the Road: Reconstruction, White Supremacy, and the Rise of Jim Crow* (New York: Penguin, 2019).

⁶⁸ Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106, no. 8 (June): 1709-91.

⁶⁹ Anthony Marx, *Making Race and Nation: A Comparison of the United States, South Africa, and Brazil* (New York: Cambridge University Press, 1998); King, *Separate and Unequal*; Ian F. Haney López, *White by Law: The Legal Construction of Race*, rev. 10th anniversary ed. (New York: New York University Press, 2006); Gloria J. Browne-Marshall, *Race, Law, and American Society: 1607 to Present*, 2nd ed. (New York: Routledge, 2013).

⁷⁰ James Q. Whitman, *Hitler’s American Model: The United States and the Making of Nazi Race Law* (Princeton, NJ: Princeton University Press, 2017).

⁷¹ Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, 10th anniversary ed. (New York: Routledge, 2006); Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (Cambridge, MA: Harvard University Press, 2017); Rothstein, *Color of Law*; Carol Anderson, *One Person, No Vote: How Voter Suppression Is Destroying Our Democracy* (New York: Bloomsbury, 2018); Noel A. Cazenave, *Killing African Americans: Police and Vigilante Violence as a Racial Control Mechanism* (New York: Routledge, 2018); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 10th anniversary ed. (New York: New Press, 2020). Because of the aforementioned Rawlsian focus on ideal theory, he has very little to say about the criminal justice system. But obviously, given his categories, it would have to count as part of the basic structure also, and—under non-ideal conditions—a particularly important one.

⁷² *The Kerner Report: The National Advisory Commission on Civil Disorders* (Princeton, NJ: Princeton University Press, 2016).

- 73 Fred Harris and Alan Curtis, “The Unmet Promise of Equality,” NYTimes.com (accessed May 17, 2020). See also Fred Harris and Alan Curtis, eds., *Healing Our Divided Society: Investing in America Fifty Years after the Kerner Report* (Philadelphia: Temple University Press, 2018).
- 74 Tera W. Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (Cambridge, MA: Harvard University Press, 2017).
- 75 Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, 20th anniversary ed. (New York: Vintage, 2017).
- 76 Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009), 11.
- 77 For a classic comparativist historical treatment, see George M. Fredrickson, *White Supremacy: A Comparative Study in American and South African History* (New York: Oxford University Press, 1981), and for a more recent analysis from a political science perspective, David A. Bateman, Ira Katznelson, and John S. Lapinski, *Southern Nation: Congress and White Supremacy after Reconstruction* (New York and Princeton, NJ: Russell Sage and Princeton University Press, 2018). The “Southern Nation” of the title does not refer to the South, but rather—that’s the whole point of the book—to the country as such.
- 78 Rawls, *Theory*, 53.
- 79 *Ibid.*, 62-63.
- 80 *Ibid.*, 64-73.
- 81 Rawls, *Theory*, 265-67; Rawls, *Justice as Fairness*, 42-43.
- 82 Rawls, *Theory*, 77; Rawls, *Justice as Fairness*, 50-51.
- 83 Rawls, *Theory*, 8, 215.
- 84 *Ibid.*, 215-16.
- 85 Linda Martín Alcoff, *The Future of Whiteness* (Malden, MA: Polity, 2015); Richard Dyer, *White: Essays on Race and Culture*, 20th anniversary ed. (New York: Routledge, 2017).
- 86 Charles W. Mills, “Decolonizing Western Political Philosophy,” *New Political Science* 37, no. 1 (March 2015): 1-24; Charles W. Mills, “Criticizing Critical Theory,” in Penelope Deutscher and Cristina Lafont, eds., *Critical Theory in Critical Times: Transforming the Global Political and Economic Order* (New York: Columbia University Press, 2017); Charles W. Mills, “Racial Justice,” *Aristotelian Society Supplementary Volume* 92, no. 1 (2018): 69-89; Mills, *Black Rights/White Wrongs*.
- 87 For an exception, see Thomas McCarthy, *Race, Empire, and the Idea of Human Development* (New York: Cambridge University Press, 2009).
- 88 Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997).
- 89 Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy*, 2 vols. (New York: Routledge, 2017).
- 90 Stephen Steinberg, *Turning Back: The Retreat from Racial Justice in American Thought and Policy*, 3rd ed. (Boston: Beacon Press, 2001).
- 91 Mills, “Rawls on Race/Race in Rawls,” ch. 8 of *Black Rights/White Wrongs*.
- 92 Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Making of Political Philosophy* (Princeton, NJ: Princeton University Press, 2019).
- 93 Forrester, *Shadow of Justice*, 3.
- 94 Ralph Ellison, *Invisible Man*, 2nd ed. (New York: Vintage, 1995).
- 95 See Melvin L. Rogers and Jack Turner, eds., *African American Political Thought: A Collected History* (Chicago: University of Chicago Press, 2020).
- 96 Mills, “Through a Glass, Whitely.”
- 97 Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (New York: Oxford University Press, 2007).
- 98 Miranda Fricker, “Epistemic Injustice and the Preservation of Ignorance,” in Rik Peels and Martijn Blaauw, eds., *The Epistemic Dimensions of Ignorance* (New York: Cambridge University Press, 2016).
- 99 Forrester, *Shadow of Justice*.
- 100 *Ibid.*, 11, 12, 13, 16, 17, 33, 35, 37, 39, 67.
- 101 George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 2003).
- 102 Jean-Jacques Rousseau, *The Discourses and Other Early Political Writings*, 2nd ed., ed. and trans. Victor Gourevitch (New York: Cambridge University Press, 2019); Pateman, *Sexual Contract*; Mills, *Racial Contract*; Carole Pateman and Charles W. Mills, *Contract and Domination* (Malden, MA: Polity, 2007), chs. 3 and 4; Mills, *Black Rights/White Wrongs*. But for a critique of Pateman and myself for our neglect of disability, see Stacy Clifford

Simplican, *The Capacity Contract: Intellectual Disability and the Question of Citizenship* (Minneapolis: University of Minnesota Press, 2015), which argues that ableism is actually the more fundamental category.

¹⁰³ See, for example, Berlin, *Many Thousands Gone*; Van Cleve, *A Slaveholders' Union*; Edward Cavanagh and Lorenzo Veracini, eds., *The Routledge Handbook of the History of Settler Colonialism* (New York: Routledge, 2017); Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (Lawrence, KS: University of Kansas Press, 2018). The *New York Times* "1619 Project" (*New York Times Magazine*, Aug. 14, 2019) is also of obvious relevance here. While there has been criticism of some of project creator Nikole Hannah-Jones's claims in particular, the importance of recognizing the role of slavery and corresponding anti-black racism in American history has generally been conceded even by its critics, at least those on the liberal side of the political spectrum.

¹⁰⁴ Pateman and Mills, *Contract and Domination*, chs. 3 and 4; Mills, *Black Rights/White Wrongs*, epilogue

¹⁰⁵ Rawls, *Theory*, §4.

¹⁰⁶ Andrew Valls, *Rethinking Racial Justice* (New York: Oxford University Press, 2018).

¹⁰⁷ Charles W. Mills, "White Supremacy as Sociopolitical System," ch. 7 of Mills, *From Class to Race: Essays in White Marxism and Black Radicalism* (Lanham, MD: Rowman & Littlefield, 2003); Mills, "Racial Justice."

¹⁰⁸ Mills, "Racial Exploitation," ch. 7 of *Black Rights/White Wrongs*.

¹⁰⁹ "[T]he notion of exploitation is out of place here," since "It implies a deep injustice in the background system": Rawls, *Theory*, 272.

¹¹⁰ Botts, *For Equals Only*; Golub, *Is Racial Equality Unconstitutional?*; Harris, "Whiteness as Property."

¹¹¹ Rawls, *Theory*, 216.

¹¹² See, for example, *Critical Philosophy of Race* 1, no. 1 (2013): Special Issue: Beyond the Black/White Binary.

¹¹³ Keeanga-Yamahtta Taylor, ed., *How We Get Free: Black Feminism and the Combahee River Collective* (Chicago: Haymarket, 2017).

¹¹⁴ See Mills, ch. 6, "Intersecting Contracts," in Pateman and Mills, *Contract and Domination*, and also Charles W. Mills, "The Racial Contract revisited: still unbroken after all these years," *Politics, Groups, and Identities* 3, no. 3 (Sept. 2015): 541-57, esp. 552-55, "Intersectionality and the contract."

¹¹⁵ William A. Darity and A. Kirsten Mullen, *From Here to Equality: Reparations for Black Americans in the Twenty-First Century* (Chapel Hill, NC: University of North Carolina Press, 2020).

¹¹⁶ Derrick Darby, *Rights, Race, and Recognition* (New York: Cambridge University Press, 2009).

¹¹⁷ Five months later—as I complete this final revision in July 2020—does this point really need any further emphasis?

CONVENTIONAL PERIODIZATION

Illiberalism vs. Liberalism

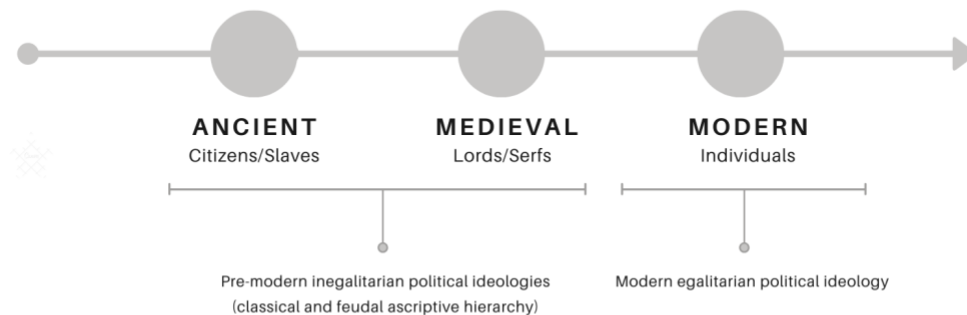


Fig. 1a

REVISIONIST PERIODIZATION

Illiberalism I vs. Illiberalism II (aka "Liberalism")

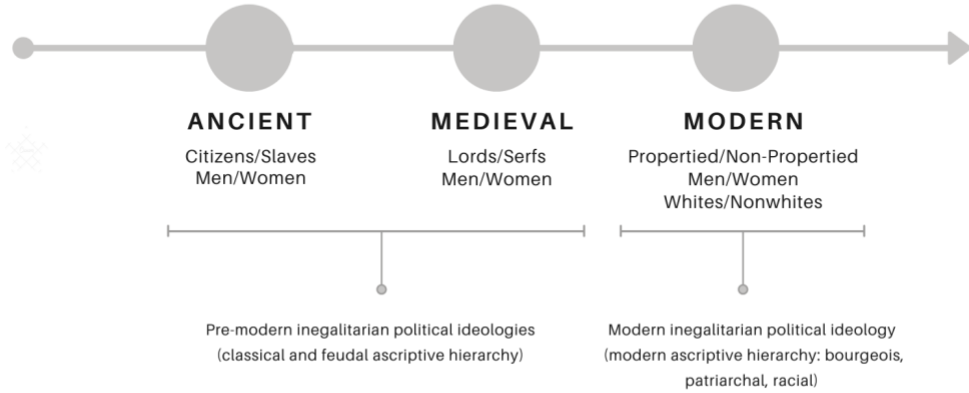


Fig. 1b

DIFFERENTIATING THE NON-IDEAL



Fig. 2

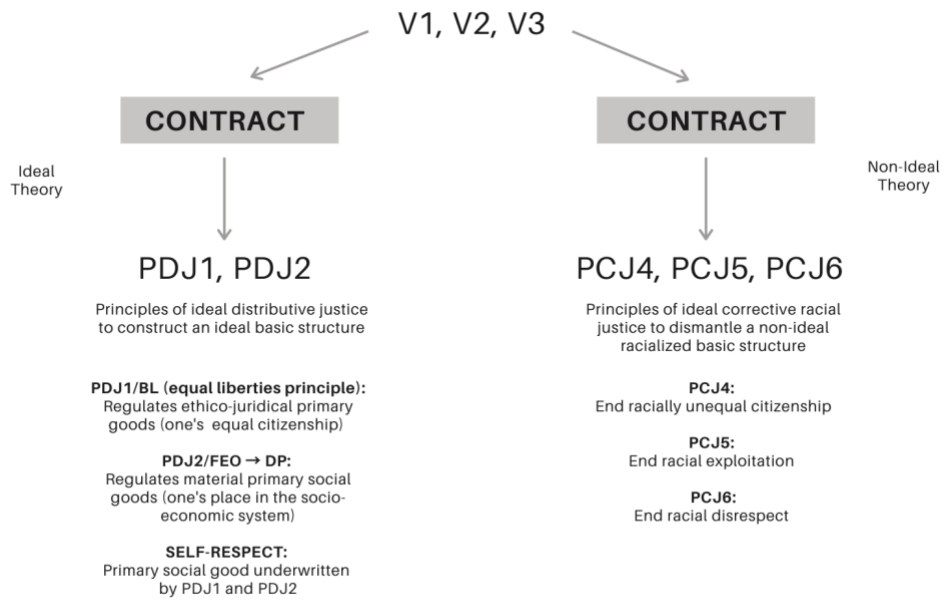


Fig. 3