RACE, POWER, HISTORY, AND JUSTICE IN AMERICA

By

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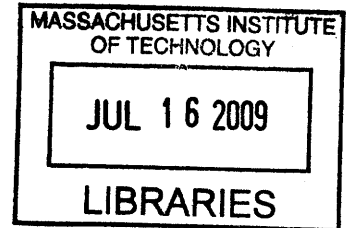
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ABSTRACT

This project sets out two broad aims. First, I seek to explain the persistence of racial inequality in an era of formal racial inequality. I offer a theory of power, *historically evolved socially embedded power*. The theory states that racial inequality is to be explained in the first instance by the way historical racial norms become embedded in practices and processes of path dependent institutions, shaping the way institutions value persons of color. Subsequently, this impacts the way broader society values persons of color, and the way they value themselves. This sets up the conclusion that the problem of racial inequality is fundamentally a problem of racial valuation rather than a problem of distributive justice. In articulating the theory of power, I depart from orthodox analytic political thought methodology by relying on a cross-section of empirical resources, such as history, sociology, and social psychology.

Second, I conclude from the above that a theory of justice appropriate for the needs of racial inequality must center on a normative ideal as its primary aim to counteract this more fundamental dynamic. Given the above characterization of racial inequality, I argue that self-respect is the necessary ideal and the social bases of self-respect are the appropriate currency of justice. By self-respect I mean, *one's disposition towards oneself such that plans and perceived purposes are reflectively developed in line with an autonomously articulated morally appropriate conception of the good life*. By the social bases of self-respect I mean, *the public commitment and efforts made by major social institutions to embrace and affirm persons of color as substantive equals in a way that reckons with both the history and contemporary reality of racial injustice*.

I formulate *justice as democratic partnership* as the appropriate conception of racial justice. It states that justice obtains when institutions consistently provide the social bases of self-respect as per a defined set of institutional principles, and persons of color utilize this resource, as per a defined set of personal principles, by conceiving and pursuing the good of their lives just as the more socially and politically advantaged are able to.

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Race, Power, History, and Justice in America

Christopher Lebron

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Introduction

In 1908, forty-five years after the Emancipation Proclamation freed the slaves, Green Cottenham, a black man arrested on the charge of vagrancy, was first sentenced to thirty days of hard labor, which was extended to six months, and, eventually, sold to U.S. Steel Corp.[1] In 1970, six years after the Civil Rights Act sought to undermine America's history of racial oppression and abuse, that history made itself patently present in policy. America embarked on its path to developing the most muscular carceral system on earth in which blacks are now severely overrepresented. In 1971, the publication of John Rawls' *A Theory of Justice* revolutionized political thought by offering a theory of justice predicated on the idea that fairness requires the absence of many kinds of facts we take to be crucial in understanding our place in society, history among them. Meanwhile, as I will show below, the principles of justice he formulated, as well as the method of normative philosophy he inspired, were and remain inadequate to the cause of racial equality. Today, race, history, and power continue to play a role - one in three black males age 20-29 are under state supervision, for instance - without an appropriate theory of racial justice in sight.

This project is about neither crime policy nor Rawls. However, it is a response to the persistence of racial inequality, in all its various manifestations; and, it simultaneously urges the field of normative political thought to return to politics, society, and history, and to abandon detached reflection as the primary basis for understanding what we ought to do in striving for a world better than the one we have got.

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[1] Douglas A. Blackmon, *Slavery By Another Name: The Re-enslavement of Black People in America From The Civil War to World War II* (New York: Doubleday, 2008), 1-2.

I seek to explain and respond to the problem of systemic racial inequality in a society formally committed to fairness and equality. By systemic racial inequality[2] I shall mean a person's being of color is causally sufficient for statistically reduced chances of realizing a good life, of being treated as well as others in society, of being shown equal respect and consideration. Neither the explanatory claims I forward nor the prescriptive suggestions I conclude with depend on a cataloguing of racial inequality. First, the factors that contribute to racial inequality are many and manifest in many ways. Incomes between blacks and whites are widening for instance, but being denied an interview by dint of having an 'afro-centric' name is also a form of racial inequality. Fixing income inequality does little to prevent the latter manifestation of racial inequality and vice versa.

The term 'systemic racial inequality' denotes its two constitutive components each of which embody a tension that furthers our ability to productively confront racial inequality. First, its systemic nature implicates institutions – they are ordered in ways and embody practices that consistently result in unjust outcomes along racial lines. Here, there is a tension between powerful historical precedent and the absence of intention alongside the presence of preemptive measures. On the one hand, the U.S. and its institutions have a long history of racial oppression, dominance, and disrespect. On the other hand, the U.S. is currently committed to formal racial equality and fairness. Thus, persistent racial inequality is troubling for it seems to simultaneously indicate historical continuity during a time when it is claimed that that history has been accounted for. Second, normative beliefs revolving around race seem to insinuate themselves into our internal lives. It is a mistake to say we live in a racist society; yet there are racial divides in attitudes and perceptions of

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[2] From this point forward I shall simply use the term racial inequality.

American life that inform opinions on a range of topics from welfare policy to the fairness of the federal government's response to Hurricane Katrina. Additionally, and the aspect I will focus on most throughout, persons of color are not inherently damaged or inferior or irrational, but there are behaviors and dispositions that from some views are seen as simply irresponsible and counterproductive. The foundational point I will put forth is that institutional practices, which give society its general normative tenor, risk undermining persons' of color ability to conceive and achieve a good life – their internal lives are at risk of being detrimentally impacted by the power dynamics that give racial inequality its basic nature.

Thus, I forward the following thesis: racial inequality is fundamentally determined by the bond between history and power, and the way this bond informs a framework of valuation of persons of color: how our major institutions value them, how broader society values them, and how they value themselves. All race-informed inequalities flow from this fundamental relationship. As I shall argue throughout, it is difficult to understand persistent, and in some instances increasing, racial inequality during a time of formal fairness and equality any other way.

For our purposes, it is important to acknowledge that the most fundamental justice is dispositional. It is impossible for certain ideas of what persons are owed to come into view unless we are already disposed to those persons in a certain way; unless we hold them to be peers and equals in the deepest sense, giving them their due of moral equality. It is worth noting that a major accomplishment of modern liberal societies has been the discrediting of systems of formal hierarchy. Theories of justice tend to take this development to be a success in a very broad sense, hence theorists often approach justice

at what I call a level 1 approach: institutions, procedures, and practices are fundamentally well-ordered – they simply require recalibration to realize a certain conception.

However, if one accepts my characterization of racial inequality and its constitutive contours, we should be wary of this approach in responding to racial inequality. The major proposition this project rests upon is as follows: racial inequality persists because race, as a normatively loaded social category, destabilizes institutions' and society's ability to consider persons of color as equals and peers, and risks the same outcome for persons' of color own disposition towards themselves; and this is in part due to the way racial practices have become so deeply embedded in our institutions and social psychology. This leads us to the conclusion that we require what we might call a level 2 approach – we need to identify a normative ideal that provides a moral foundation strong enough to stabilize institutions' practices, and society' notions and responses to race in such a way that we can take for granted substantive equality as a political and social fact across all of society. Similarly, it must provide a robust foundation to consistently secure persons' of color own ability to conceive and pursue a good and worthwhile life.

To understand the project's ambition in this regard, let us consider Rawls' powerful and enduring theory of justice with respect to the problem of racial inequality. Rawls derives two principles of justice meant meant to apply in the first instance to society's basic structure – he terms his conception *justice as fairness*.

1)   each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all

2)   social and economic inequalities are to be arranged so that they are both:

   a) to the greatest benefit of the least advantaged, consistent with the just savings principle

b) attached to offices and positions open to all under conditions of fair equality of opportunity[3]

The power of the two principles is that they at once secure liberties needed to employ the two moral powers – abiding by a conception of justice and developing a conception of the good life – while institutionalizing a mechanism whereby those worst off in society can benefit from the fruit of social cooperation, coordination, and the fact of differential endowments and motivation

One reading of Rawls' principles is that they are purely formal: society has satisfied the first principle just in case everyone formally has an equal right to equal basic liberties as everyone else. We immediately run into difficulties from the point of view of racial justice, however, for the Civil Rights Act corrected for the systematic exclusion of blacks and completed a long process of granting blacks the same liberties as all other citizens. Yet racial inequality persists.

But, let's give Rawls the strongest possible reading and suppose that the principle is substantive, such that it is not merely a legislative mandate. It is instead meant to be read: each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all, *and if it turns out that social, economic, and political outcomes evidence such an inequality, they are to be rectified accordingly.* This principle seems to acknowledge that legislative mandates may be inadequate to secure persons' equal basic rights. The problem here is two-fold: First, we are confronted with an injustice; and, on Rawls' own accounting justice as fairness is meant to theorize justice, not respond to injustices – this is a fundamental aspect of an ideal theory. Second, once we make the move to consider injustices, we must then be committed

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[3] John Rawls, *A Theory of Justice*, Revised ed. (Cambridge, MA: Belknap Press, 1999), 266.

to understanding the particular contours of that injustice. This inevitably leads to prescriptive measures designed with *that* injustice in mind, which must themselves be fully informed, moving us firmly into the realm of non-ideal theory.

How does this exercise play out with respect to the second principle? Interestingly, the second principle is more amenable to a substantive reading because it immediately takes up a matter of injustice: inequality. The second principle tells us what we ought to do in the event that an unjustifiable inequality obtains: make that inequality to the benefit of the least advantaged. This second principle seems to hold particular promise with respect to racial inequality, for surely some of the least advantaged are persons of color (among others in society).

But the second principle is inadequate, even on this reading. Rawls conceives the least advantaged as follows: "In a well ordered society where all citizens' equal basic rights and liberties and fair opportunities are secure, the least advantaged are those belonging to the income class with the lowest expectation."[4] Here, Rawls assumes that once rights are secure, the only variable that affects persons' expectations is their class status. But, with regard to racial inequality, in all its manifestations, this is patently not the case: middle-class persons of color are arbitrarily rejected for loan approval just as poor persons of color. In this instance, low expectations straddle multiple income classes. So, if it is the case that Rawls' conception of the least advantaged cannot subsume the entire category of racial inequality, then even when redistribution will aid some persons of color, it seems that a significant portion of that population will fall outside the ambit of the difference principle.

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[4] John Rawls, *Justice As Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Belknap Press, 2001), 59.

Thus it will hold much less emancipatory power for persons of color than a conception that undermines the fundamental dynamics of racial inequality.[5]

In response to both the contours and facts of racial inequality as well as the inadequacies of contemporary (ideal) theories of justice, I develop a non-ideal conception, *justice as democratic partnership,* that makes the social bases of self-respect – a normative ideal imagined as powerful and practical enough to undermine the fundamental dynamics of racial inequality – its primary object; this is done in response to the thesis that racial inequality is fundamentally a problem of racial valuation and that it violates justice at the most fundamental level – institutions and society have a morally inappropriate disposition towards persons of color.

To successfully develop such a conception, three subsidiary goals must be achieved. First, we must offer a clear and comprehensive explanatory framework. Building on a conversation in chapter one that focuses on the relationship of institutions, choice, and responsibility to racial inequality, I offer the explanatory theory of *historically evolved socially embedded power.* The theory is comprised of two aspects that reflect our institutional and individual level concerns. Since institutions are already formally committed to equal racial treatment, there must be a way to account for the discrepancy between that commitment and patterned disparate outcomes in the absence of explicit racism. *Historically evolved power* is: *the phenomenon of historical normatively grounded group asymmetries finding their embodiment in path dependent institutions resulting in robust forms of contemporary inequality.* This component of the model in turn provides guidance in understanding how once explicit and overt practices have shaped the developmental trajectory of institutions such that they continue to produce racially disparate outcomes.   •

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[5] A defender of Rawls here would respond that the social bases of self-respect are considered the most important primary good. I take up this objection at length in chapter four. Suffice it to say that even Rawls' conception of the social bases of self-respect leaves something (crucial) to be desired when considering a response to racial inequality

Since we denied that persons generally are not racists nor do they accept racial roles, there must be a way to account for the discrepancy between what we tend to think as the proper way to treat others and ourselves, and the way we actually do. The *socially embedded* aspect of the model of power is posited just in case systemic inequality is also indicative of the mutual construction of disadvantage between institutions and the internal lives of persons. The internal lives argument is essentially an argument about how persons under the ambit of power are internally impacted, with respect to their racial position in society and by racial norms which in turn influence their judgment and reasoning. It is *the ability for social asymmetries to affect the internal lives of persons such that those better positioned tend to hold beliefs and attitudes which only serve to enhance their standing while those worse positioned are at risk of developing a self-nonregarding disposition, thus preventing them from making manifest the value of full personhood.*

Our second goal is for the theory of justice to embrace history and other relevant empirical resources as a foundation for normative prescription. I trace out a specific strand of history – the relationship between institutions and race. I then ground the line of historical continuity in this relationship by offering two case studies that strongly argue for and illustrate the contours of historically evolved power. First, contemporary criminal justice policy is commonly understood as a direct response to crime. There is sufficient evidence to understand its development as not only having a racial historical precedent but as being a crucial site for the persistence of racial disadvantage embedded in institutional development and practices. Second, public discourse over welfare has consistently remained contentious and laden with racial overtones. I argue that this has a deeper history than is often unacknowledged and that

contemporary racial overtones are emblematic of the continuity that allows racial inequality to remain a feature of our society.

The third goal for the theory of justice is the identification and statement of a concept that can realign the way institutions and society value persons of color, and the way they value themselves – an idea that gives content to the idea that the most fundamental kind of justice is dispositional. That concept is the social bases of self-respect. By self-respect I shall mean: *one's disposition towards oneself such that plans and perceived purposes are reflectively developed in line with an autonomously articulated morally appropriate conception of the good life*. By the social bases of self-respect I shall mean: *the public commitment and efforts made by major social institutions to embrace and affirm persons of color as substantive equals in a way that reckons with both the history and contemporary reality of racial injustice*. Since the notion of a just liberal democracy is predicated upon moral equality, it seems few normative concepts can challenge the normative framework that gives race its place than respect. I hold that this approach defuses systemic racial inequality at its core.

Justice as democratic partnership holds that the conditions of justice are being met when on the one hand institutions accept responsibility for their past role in sanctioning and embodying racial disadvantage and embrace their capability to lead social change for the purposes of realizing a just democratic society. On the other, persons of color must take seriously what the idea of self-respect entails and take ownership of being persons of equal value. In this sense, *justice as democratic partnership* is a bilateral conception of justice, though with added weight placed on institutions. I offer four institutional principles – historical review, procedural urgency, equal moral beneficence, and proportionality/commensurability – as well as three personal principles – self-recognition, fair assessment, and development – that together are

envisioned as contributing to realizing substantive racial equality. I subsequently outline the

parameters of the content of the social bases of self-respect – prioritizing the needs of human

existence, promotion of truth, reflexivity, and scalability.

It is important to realize that democratic partnership is a conception the outcome of which

is an ongoing process of human reconciliation and fulfillment that ultimately leads to substantive

equality, rather than as a conception aiming to lead straightaway to a state of affairs, such as

resource or opportunity equality. The reasoning for this might be intuited from historically

evolved socially embedded power: if it is the case that a systematic unjust state of affairs is the

outcome of an institutional and social evolutionary process, then *a fortiori* any conception of

justice which takes this process seriously must pay homage to the idea of correcting for the

process as a means of reversing a state of affairs rather than simply aiming to reverse the state of

affairs. So long as we realize that deep historical continuity of injustice obligates us to sustained

future engagement with that injustice, theory and philosophy have taken a step towards

establishing their relevance for actual persons suffering under actual circumstances.

This leads to a final word on the orientation of the project. Normatively, I accept, begin

from, and develop my arguments to accord with two basic contemporary liberal ideals. First, that

persons are the important unit of concern, that they are to be considered moral equals, that the

good of an individual's life is paramount in an appropriate moral theory. While liberal theory

often comes under attack for privileging individuals over community, it will become apparent

that the division is one drawn in the sand – we are concerned about the individual lives of

persons of color precisely because of their disadvantage by way of being part of a disadvantaged

group. Second, institutional design is requisite for the attainment of justice in modern society. It

is the rightful duty and obligation of government to oversee and manage the just workings of

society. Liberal theory is often criticized on this count since it seems to pay scant attention to agency and individual attitudes. Conservatives (and some liberals), for instance, complain that this approach lets people off the hook for their own bad decisions and irresponsibility. However, I will show in the course of developing my main arguments that we ought to acknowledge the extent to which a focus on institutions is paramount for concerns over agency and individual attitudes just as it is for holding institutions responsible for their direct complicity in racial inequality.

PART I – THEORIZING THE PROBLEM

*"...we have got on to the slippery ice where there is no friction
and so in a certain sense the conditions are ideal,
but also, just because of that, we are unable to walk; so we need friction.
Back to the rough ground."*
Ludwig Wittgenstein, The Philosophical Investigations

Chapter 1 – The Problem of Racial Justice: Power, Institutions and Circumstances

§1. The State of Theorizing Racial Justice

§1.1   Racial inequality is in need of a theory of justice. In a 2003 publication, Charles Mills[1] complains that thirty years after Rawls' theory reoriented analytic political thought towards conceptions of justice, we had yet to see serious philosophical engagement with racial inequality. Indeed, there has been a deficit in the amount of work done at the intersection of race and philosophy within the analytic framework. The need for this work is obvious: a liberal democracy cannot morally abide inequality patterned after centuries of systematic subordination. The concern grows all the more troubling when one makes three observations: the centrality of ideas such as justice, equality, freedom, autonomy, and the good life in liberal thought; that persons of color are systematically at risk of lacking varying combinations of these to varying degrees in a consistent manner; and, finally, the paucity of systematic thought on the relation of the first two observations to each other.

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[1] Charles Mills, *From Class to Race: Essays in White Marxism and Black Nationalism* (Lanham: Rowman and Littlefield Publishers, 2003), 195.

There have been some efforts to address racial inequality. Bernard Boxill's[2] *Blacks and Social Justice* was notably early to place the problem of race and justice front and center in liberal thought. Twelve years later, Amy Gutmann[3] presented a lecture for the Tanner speaker series which emphasized the need for a response to racial injustice. However, neither effort has proven satisfactory; yet, the need for an appropriate theory persists. In brief, each argues for a color-conscious approach to racial equality that fails to sufficiently theorize exactly why it is racial inequality persists in an era of formal equality. I will argue that a crucial gap between their identification of race as a determinant of inequality and their accounting of the nature and dynamics of racial inequality results in difficulties for a coherent and effective approach to an appropriate theory of justice. By coming full circle back to Mills' approach, which itself fails to directly engage the underlying dynamic of racial inequality, I will set the stage for exploring what addressing racial inequality requires and the direction the problem points in.

§1.2   Boxill and Gutmann each argue for color conscious policies, but present slightly different justifications for them. For Boxill, affirmative action policies combined with a compensatory framework express the justness of well ordered institutions, while for Gutmann, color conscious policies express the virtue of fairness in a (deliberative) democracy. Boxill presents an argument in which social justice for blacks crucially depends on color conscious policies. He writes: "Racial discrimination against blacks is unjust because it does not enable goods to be produced and distributed according to principles of

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[2] Bernard Boxill, *Blacks and Social Justice*, Revised Ed. (Lanham: Rowman and Littlefield Publishers, 1992).
[3] Amy Gutmann, "Responding to Racial Injustice" *The Tanner Lectures on Human Values*, presented May 16-19, 1995.

justice,"[4] and this is important because "The principles of justice are distributive: justice is concerned not only with increasing the total amount of good a society enjoys, but also with how that good should be distributed among individuals."[5] The basic justification for Boxill's recommendation is that race undermines (distributive) justice. For him, a significant component of racial justice is affirmative action policy, which he believes can be grounded in two ways. He offers a backward-looking argument that essentially frames affirmative action as a response to past racial injustices. Second, he offers a forward-looking argument that frames such policies as preemptive (moving to adjust policies and opportunities for the betterment of future generations of blacks) rather than compensatory.

I believe Boxill's justification is right, but he leaves open the important question, if race undermines distributive justice, why would we think that color conscious distributive justice is the answer? For two things are certainly the case. Compensatory justice requires some goods to be taken from others for the purpose of compensating a historic injustice that many will simply fail to be compelled to take responsibility for. Likewise, preemptive measures require a redistribution of goods and resources. These policies rely in the first instance on distributive measures, which as Boxill points out, seem consistently threatened by the role of race in society and politics. This seems to indicate that racial justice is embodied in a problem prior to that of maldistribution. The concern is that this does not direct Boxill's attention in the way it ought. It seems that for Boxill, racial injustice is a problem because it is racial, which entails it is informed by deeply embedded historical norms on the value of blacks. There are two concerns here. First, without attending to the normative dynamics which bind race to inequality, distributive justice will never be really

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[4] Bernard Boxill, *Blacks and Social Justice*, 16.
[5] *Ibid.*, 15.

secure. Second, distributive measures can only go so far in directly addressing the harm done by the normative framework that makes racial inequality a problem. On this view, the social conditions necessary for self-respect, an important value for Boxill, are also not properly secured. I want to say that undermining this normative framework is justice's appropriate primary aim in order to both realign the moral disposition towards persons of color as well as secure the conditions required for distributive policies to be enacted, which depends on the first objective.

§1.3 Gutmann is primarily concerned, not with the idea of distributive justice, but with fairness. In a similar defense of color-consciousness, Gutmann's core argument can be stated as follows: in a liberal society, fairness is a more fundamental social principle than color-blindness, and in light of how our racial history informs contemporary racial unfairness, preferential treatment expresses a high degree of fidelity to fairness. Reviewing actual cases of preferential treatment in hiring and firing, and in school admissions, Gutmann's fairness argument essentially revolves around two points. First, since blacks have been historically denied the resources and opportunities to compete for certain positions in society, fairness mandates differential consideration when deciding who to hire or admit. Second, "The case for preferential treatment rests on the idea that giving preference to basically qualified black candidates may help create the background conditions for fair equality of opportunity in our society."[6] On this view, the idea of fairness moves beyond transactional – what is fair for you here and now (in light of past considerations) – and embraces fairness as a broader social ordering principle that is

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[6] Amy Gutman, "Responding to Racial Injustice," 309.

imagined as improving society as a whole in the future; moreover, this improvement is seen to contribute to transactional fairness in the future.

Gutmann's fairness arguments express parallels with Boxill's backward- and forward-looking arguments for affirmative action. The important difference between the recommendations on offer from each is that while Boxill relies upon principles of distributive justice, Gutmann predicates her argument on a different set of claims. As a deliberative democrat, Gutmann understands democratic society as a moral community in which moral equals give each other's reasonable arguments due consideration. This is particularly important for Gutmann because we have good reason to believe that people's views tack toward available counterarguments.[7] The idea here, then, is that deliberation can construct an epistemology that realigns our views of race. This depends on the power of not only reasonable reason giving but also reasonable listening.

However, Gutmann acknowledges a problem peculiar to race – racial identification is not voluntary, and the problem with its involuntary nature is that when we are prompted to self-identify for anything from a loan to the census "we have been told the answer by the way we have been treated ever since we were too young to choose for ourselves."[8] Gutmann's final recommendation, though wanting in specific principles, is worth stating: persons in a moral community must collectively take responsibility for both each other's well-being as well as for their own will to capitalize on this effort. Particular responsibilities are demarcated by one's identity in that community.

But Gutmann is aware that her recommendation faces a problem: "The very act of identifying with people of 'one's own race'...has the psychological effect of undermining

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[7] *Ibid*, 324.
[8] *Ibid.*, 302.

mutual identification among individual human beings."[9] Additionally, "Race consciousness...binds individuals to a group identity regardless of their will, *regardless of whether they reflectively accept the identity attributed to them.*"[10] In the end Gutmann falls back upon the force of obligations since the epistemic aim seems threatened. But there will be difficulties for relying upon obligations as motivations for reasons similar to why the constructive epistemic approach is threatened. Obligations depend on a person's reasonable and somewhat objective assessment of what they ought to do. If we follow the implications of Gutmann's insightful observations on the power of racial categories, and how these play a pivotal role in personal development all the way through, it seems falling back on the idea of obligations is to make two mistakes. First, the argument seems to rely upon ignoring the way racial identification is likely to skew one's sense of obligation in the wrong way (that is, not towards working to realize social justice regardless of one's group affiliations). Second, if race really is both powerful and loaded with substantive content, and we agree that the combination of these two factors is a major impediment to justice, then isn't re-visioning this content and dampening this power the first order of business for justice? It seems then that both Boxill and Gutmann have sidestepped the most fundamental obstacle to racial justice: the power of race. This brings us back to Mills.

§1.4 In his essay, "White Supremacy and Racial Justice," Mills presents a simple framework for conceiving racial justice: "Facts + Values = Moral Judgment."[11] On Mills' view, there are two problems attending racial injustice. First, is the actual condition of

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[9] *Ibid.*, 336.
[10] *Ibid.*, 337 [emphasis mine].
[11] Charles Mills, *From Class To Race*, 196.

racial inequality. Second, philosophy seems unable to properly theorize it. On Mills' view the common factor to each of these problems is white supremacy, by which he means both a viewpoint and set of practices that have been unilaterally devised by whites, who have historically been the dominant group in our society. Specifically, the problem refers back to the above equation – our moral judgment suffers, not because of our values so much as because of the facts which (white) philosophers have either ignored or gotten wrong. Mills' complaints in this regard are generally unhelpful because of one of the few potent arguments he does offer.

Mills spends the last third of the essay outlining six dimensions of white supremacy: economic, juridico-politico, cultural, somatic, cognitive-evaluative, and metaphysical/"ontological".[12] It is easy to imagine the content of and arguments for the first five dimensions, so I will not belabor those points here. However, in the next to last paragraph of the essay, Mills offers: "I want to conclude by underlining that in a sense it all comes down to the 'ontological': the original injustice, of which the preceding [five dimensions] are just different manifestations, of the failure to see people of color as full persons in the first place."[13] The basic point here is sympathetic to Gutmann's: race makes people. However, there is a strong claim here: until we figure out how that works and disarm that content, there is little else to discuss.

I think Mills is exactly right, but this point underlines why Mills' complaints are generally unhelpful: race makes us all. This means that we all, to varying extents, suffer under the framework of power that makes this "ontological" claim true. In this sense,

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[12] *Ibid.*, 204-18.
[13] *Ibid.*, 217.

invoking white supremacy reifies racial divisions in society in a way that fails to analytically contribute to responding to racial inequality.

This failing is particularly acute in a recent essay published by Mills[14] in which he argues that reparations can be justified if we amend the informational bases of the agents bargaining in Rawls' original position. There is a key problem with Mills' argument. In the preceding essay in the same volume,[15] Mills argues for doing away with ideal theory. However, he misidentifies the role and content of ideal theory in Rawls' work. Mills' interpretation and the problems surrounding ideal theory are dealt with in more detail in the third section below. Suffice it to say that discarding ideal theory, properly understood, entails discarding the presumption of strict compliance – the idea that all relevant agents to the original agreement strictly comply with the principles.

The issue I want to raise here is apparent in light of Mills' own argument about the ontological claim: if we discard strict compliance as a presumption of the theory *and* race has such a powerful affect on how we are constructed, exactly what will change when we emerge from behind the veil that we should believe reparations will actually be affirmed in light of our sociology and then distributed? To the extent that Mills' prior claim is the right one, the answer is: not much. It seems to me that if the problem with race is in large part the problem of how we are constructed because of problematic racial beliefs and norms, any attempt at distribution that ignores this observation is threatened. Justification and distribution are distinct activities; just because a principle has been justified, particularly under ideal bargaining circumstances, doesn't mean justice will follow. Indeed, this has

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[14] Charles Mills, "Contract of Breach: Repairing the Racial Contract," in *Contract and Domination*. Carole Pateman and Charles Mills (Malden: Polity, 2007), 106-133.
[15] Charles Mills, "The Domination Contract." 79-117.

been society's major failing in the aftermath of the Civil Rights Era. The reliance on distribution and obligation needs to be preceded by a direct confrontation with the historically normative power of race – with society's disposition to persons of color.

There is a further connected point to be made. If Mills' ontological claim is true, the problem of racial inequality is far more deeply embedded in our practices than the idea of white supremacy can helpfully specify. The ontological claim is not true of its own accord – we need to better understand the institutional mechanisms that contribute to making it a social fact. Our society has a long history of sanctioned racial subordination, manifest in racial inequality. To say that institutions are 'white' doesn't get us far enough because it fails to explain nearly two centuries of institutional development – our society today is not the same it was even forty years ago, so we need a far more nuanced analytic account of which dynamics contribute to racial inequality. So the problem of racial inequality is a matter of deeply embedded unjust institutional practices and the way our racial framework impacts our internal lives by way of social construction.

§2. Framing Justice With Regard to Racial Inequality and Vice Versa

It has become commonplace for scholars with moral concerns over the way society treats its members to think in terms of justice. This development coincides with the widely accepted proposition that justice is a first virtue of cooperative political systems; systems which ought to have a certain moral disposition toward their members. I believe there is good reason to acquiesce to this view given a reasonable characterization of justice: "the

notion (or notions) of reasonable expectations, or of the right to expect, is the basic notion of justice, and that injustice consists in treating people differently – more accurately worse – than they have a right to expect."[16] On this view, to think in terms of justice is to be substantively concerned with the relationship between cooperative political systems, both as structures and as sites of interpersonal engagement, and persons' reasonable expectations within that system.

A key indication that an issue of justice obtains is when the relationship between society and persons reveals a discrepancy between this basic expectation and treatment. I think a primary way of determining what justice requires is by observing two dimensions. A discrepancy is *patterned* just in case a person is at more than moderate risk of suffering under the discrepancy by mere dint of some morally irrelevant identifying marker (i.e. race, gender, sexual orientation) that places her in a statistically disadvantaged class. We might consider the discrepancy to be *robust* insofar as it has established temporal staying power and manifests itself in a number of political/social/economic circumstances.

This project concerns itself with the injustice of systemic racial inequality[17] by which I shall mean a person's being of color is causally sufficient for statistically reduced chances of realizing a good life, of being treated as well as others in society, of being shown equal respect and consideration. The fact that the inequality is both racial and systemic indicates that it is patterned by way of my identifying marker, and robust by way of its scope across a number of social, political, and economic arrangements, as well as over time.

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[16] Anthony D. Woozley, "Injustice" in *Injustice and Rectification*, ed. Rodney C. Roberts (New York: Peter Lang), 40.

[17] From this point forward I shall use the term 'racial inequality' to mean the same thing.

Thus, a theory of justice sensitive to racial inequality requires thoughtful commitment on

its own terms.

There are two ways a person may have their expectations undermined. First, there

may be external factors. A structural concern over racial inequality is a concern over the

empirical fact of how major social institutions, in a patterned and robust manner, distribute

advantages and burdens, while favoring some starting places along racial lines. Second,

expectations may simply fail to manifest properly or may become retarded. This second

point refers to the internal lives of persons and the ways one's relationship with one's self

and aspirations may be disrupted, if not corrupted, by persistent and pervasive exposure to

certain circumstances. The very nature of racial inequality suggests that persons of color

face pervasive adverse circumstances, albeit at different levels in different situations. A

productive engagement with racial inequality, then, requires being concurrently aware of

and responsive to structural factors as well as the way disadvantage affects the internal

lives of persons

In what follows I want to lay the grounds for theorizing racial inequality and what

counts as a claim of justice against it. In pursuing this dual track approach to the problem –

structural and personal, institutional and internal lives – I conclude by suggesting that if we

have characterized the problem of racial inequality correctly, the appropriate remedy is a

focus on a normative ideal with the potential to undermine the dynamics which result in

racial inequality. I claim that the social bases of self-respect is the appropriate

countervailing normative ideal. By self-respect I shall mean: *one's disposition towards*

oneself such that plans and perceived purposes are reflectively developed in line with an

autonomously articulated morally appropriate conception of the good life. By the social bases

of self-respect, I shall mean: *the public commitment and efforts made by major social institutions to embrace and affirm persons of color as substantive equals in a way that reckons with both the history and contemporary reality of racial injustice.*

Below, I first follow Rawls in providing an argument for making institutions the primary subject of justice but also show that our methodology has to focus on non-ideal theory to best confront racial inequality. Second, a rather non-controversial conception of responsibility tends to frame our considerations on matters of justice. In challenging this conception my aim is to bring into view the relationship between bad circumstances and internal lives. These two large discussions allow us to map out the conceptual and philosophical terrain of an appropriate conception of racial justice. Throughout, I also offer preliminary specifications of an explanatory theory of power – *historically evolved socially embedded power* – and suggest that our prescriptive efforts will depend upon it. The sum of these efforts is the marking out of a robust starting point to a complex moral and political problem.

§3. Institutions/Structure and the Problem of Racial Inequality

§3.1   Consider the following statement: "The individual acts of racist bigots went unpunished in Mississippi because of policies, precedents, and practices that are an integral part of that state's legal institutions."[18] The authors go on to stipulate that an act of racism can occur "without the presence of conscious bigotry."[19] The above incident is one of

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[18] Owen Blank *et al, Institutional Racism In America* ed L. Knowles and Kenneth Prewitt (Englewood Cliffs: Prentice, 1969), 4.
[19] *Ibid.,* 5.

structural racism since the justice system failed to comply with what pure procedural justice would have looked like against appropriate background justice. Stated differently, though society was already committed to ideals of fairness and orderly justice, that commitment faltered, possibly through no particular overt action. And, this failure is imagined as being substantively tied to the victim's race. Racial inequality is to be understood, then, as the prevalence and frequency with which persons of color can expect to be treated contrary to the ideals already set out by a society.

What makes structural inequality 'structural' is the idea that the processes and practices that result in inequality are somehow integral to the way institutions work. As we shall see, there are two important points about structure. First, since institutions tend to be very stable over time, these processes and practices tend to be informed by particular histories, hence, tend to carry a certain amount of baggage with them. Second, because institutions are imbued with great authority and so greatly impact the shape and nature of a society, institutions tend to have a significant impact on and greatly influence persons. This dual concern in large part ought to motivate us in making institutions a significant focus in a theory of justice. Whether or not we consider liberal democracy predicated upon the idea of mutual consent, it is democratic society's institutions that grant it its nature and play a role in the development of its citizens.

Rawls' contribution on this count turned on an insight internal to political thought – the only way to realize the moral ideal espoused by liberals, namely respect for individual autonomy and development, is to provide moral constraints on the structural ideal espoused by liberals, namely minimum government as synonymous with maximum individual freedom. Understanding that privileging the structural ideal without appropriate

qualification puts at serious risk even partial attainment of the moral ideal, Rawls' significant move was to revision and mobilize the Kantian moral and contract tradition to respect one foundational premise: "Justice is the first virtue of social institutions."[20] In this way, a parameter was established for granting the structural ideal normative parity with the moral ideal. The outcome was justice as fairness. Rawls' conception relies upon the original position as the appropriate status quo under which agents formulate the principles of justice. Thus, a large part of Rawls' contribution consists in the attempt to bring into harmony the ideas of institutional design and political sociology for the purposes of developing a conception of justice more faithful to the idea of society as a scheme of ongoing cooperation of moral equals.

The question then becomes, what theoretical mechanics are needed to achieve this aim? For Rawls, the first move is to establish the priority of institutional design: "the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements."[21] Importantly, the principles apply to the basic structure rather than persons as the primary subject of justice.

So it seems a great deal turns on understanding the idea, hence, the role, of the basic structure. Rawls' early work characterizes it as a system of rules that prompt persons to cooperate for mutual benefit and stipulates the way the advantages of cooperation are to be assigned by major social institutions – the political constitution, the principal social and

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[20] John Rawls, *A Theory of Justice*, Revised ed. (Cambridge, MA: Belknap Press, 1999), 3.
[21] Rawls, *A Theory of Justice*, 10.

economic arrangements, such as the family and property.[22] In his later work, where he gives the basic structure more careful consideration, Rawls defines it as "*the way* in which the main political and social institutions of society *fit together* into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time."[23]

The difference between the two definitions is subtle but important. The first definition is descriptive and treats the basic structure itself as a rule set separate from the institutions that embody and act by those rules. The latter definition treats the basic structure holistically and in a somewhat explanatory manner – there is something about *how* institutions cohere and act *in combination* with the collective action of persons, with regard to the relevant distributions, that deserves to be the primary subject of justice. Thus, for Rawls "the basic structure is the all-inclusive system that determines background justice."[24] But what are Rawls' motivations for focusing on the basic structure? Why should we accept that the idea that justice is a first virtue of institutions leads to their being the primary subject of justice? There are two particularly powerful motivations elucidated by Rawls that will turn out to be pivotal for any normative theory concerned with systemic injustice.

First, Rawls is motivated by the socio-psychological premise. While never explicitly theorizing power, it is clear Rawls is aware of, and sensitive to, what we might consider the Foucauldian warning: power produces subjects. Rawls writes: "A theory of justice must take into account how the aims and aspirations of people are formed; and doing this belong

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[22] *Ibid.*, 74; 6.

[23] John Rawls, *Justice As Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Belknap Press, 2001), 10 [emphasis mine].

[24] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 271.

to the wider framework of thought in the light of which a conception of justice is to be explained."[25] Thus the basic structure is taken as the primary subject in part because it determines who persons want to be and who they are. It limits their hopes and ambitions "for they will reason with themselves in part according to their position in it and take account of the means and opportunities they can realistically expect," as well as provide support for the proper development of respectful and supportive attitudes of other free and equal persons who share in the benefits of a fair system of cooperation.

Second, Rawls believes that free and equal persons can develop agreements which are initially fair, but that may aggregate in such a way that "together with social trends and historical contingencies are likely in the course of time to alter citizens' relationships and opportunities so that the conditions for free and fair agreements no longer hold."[26] Here, Rawls opens the way for considering a social reality – persons not only prefer outcomes on an instrumental basis but act and make decisions motivated by social factors that have little to no bearing on reasonable and rational considerations of fairness and obligation. This is the historical contingency premise.

We easily see how Rawls' focus on the basic structure supports a similar focus for racial inequality. To the extent that Rawls is correct in holding that structure has such profound effects on the development of persons, and that we are correct in saying that racial inequality is *not* a function of overt explicit racism, we also will want to account for the ways patterned unfair treatment impacts the way persons of color relate to themselves and to the way the rest of society relate to their own beliefs about persons of color. Finally, given America's history, it would be peculiar to think that racial inequality is not

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[25] *Ibid.*, 269
[26] *Ibid.*, 266

historically contingent. Racial inequality ought to be concerned with the basic structure since it indicates a dissonance within the basic structure when it comes to persons of color – the major social institutions do not fit together in the right way to treat persons of color as they reasonably expect to be, and are, treated. But it will turn out to be the case that racial inequality compels us to develop unique analytic tools. This in turn sets a different course for developing the appropriate theory of justice.

§3.2   Having secured the importance of focusing on the basic structure for the purpose of addressing racial inequality, we now need to ascertain the best way to remain consistent in light of our normative aims and commitments. Theories revolving around the idea of justice break down into two categories: theorizing justice and responding to injustice. To preview: Rawls' commitment to ideal theory as the floor beneath theorizing justice proves insufficiently stable for the purposes of responding to injustice, thus, we are directed to develop the appropriate tools. I first anticipate an objection: it is unfair to highlight the inadequacies of Rawls' theory with respect to injustice if his stated goal is to theorize justice. This is a fair point and helps frame the below discussion. My aim is not to discredit Rawls' theory, but to interrogate his claim that ideal theory gives us a better grasp on injustice. We should suspect that if this claim proves incorrect, understanding the nature of its error will be particularly illuminating for our approach to racial inequality.

Rawls is concerned to grant the theory of justice structural stability so that all its elements cohere in the right way. For Rawls this is achieved by beginning with the

appropriateness of ideal theory. [27] Rawls is interested in "principles of justice that would

regulate a well-ordered society," so "[e]veryone is presumed to act justly and to do his part

in upholding just institutions."[28] Ideal theory is a theory formulated upon the presumption

of strict compliance – once the principles regulating the relevant distribution have been

agreed upon, all relevant parties are assumed to act in compliance with the principles of

justice. This results in what Rawls refers to as a perfectly just society.[29]

    We might still think, however, that even a theory of justice must acknowledge the

fact that it will ultimately bump up against actual political injustice. Rawls accordingly

argues ideal theory is "[t]he only basis for the systematic grasp of [the] more pressing

problems" we face in everyday life.[30] And, by "systematic grasp" I take Rawls to mean, a

more insightful means in responding to injustice. Is this true? I think it is if and only if the

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[27] It is worth noting that other theorists concerned with race have raised concerns over Rawls' utilization of ideal theory and the ways it inappropriately sidesteps racial injustice and is complicit in domination. Charles Mills has been a particularly consistent voice on this matter. However, I choose not to address Mills' critique for it is based on a macro-conceptualization of ideal theory – as a complete set of circumstances that fail to meaningfully resemble the world as we know it. On this view, both the original position and the assumption of strict compliance counts as ideal theory. In his most recent work (see Charles Mills, "The Domination Contract." *Domination and Contract*. Eds Carol Pateman and Charles Mills. Malden: Polity Press, 2007; 79-105) he seems to elide Rawls' precise meaning of ideal theory (as strict compliance) by suggesting Rawls is setting up ideal conditions a la the original position to arrive at the principles of justice. This is not a matter of semantics. As a matter of precision, Rawls separates the idea of ideal conditions, by referring to them as the appropriate initial status quo, or a situation of perfect fairness, from the idea of ideal theory. The difference is important. By referring to the informational constraints, the model of persons, the bargaining situation and the matter of post-bargaining compliance as ideal theory, Mills conflates the idealization of the input and output of the theory. Rawls means ideal theory to refer to a point in time after bargaining is complete when the relevant parties are presumed to strictly comply with the agreements they've made. The difference between the two meanings of ideal theory will become more important once we make note of Rawls' motivations for making the basic structure the primary subject of justice since Mills seems to imply that part of the problem with ideal theory is an insensitivity to inequality and power relations. In fact, Rawls' motivations indicate quite the contrary, that he *is* concerned about precisely these things. The value of separating out the input from the output is that it allows us to see exactly this aspect of the theory and trace more precisely how even on Rawls' more restricted conception of ideal theory, there will still be problems. Maybe most importantly, it allows us to use Rawls himself to illustrate why (his conception of) ideal theory will undermine his own theory, while allowing us to make a stronger case for the basic structure focus than Rawls was able to. The real issue, so I shall argue, is that to the extent that both we and Rawls take seriously his motivations *and* seek to account for the power of racial norms, then we note that privileging ideal theory is destabilizing to the theory since it is inconsistent with being motivated by inequality, power, etc.

[28] *Ibid.*,8.

[29] Rawls, *Justice as Fairness*, 13.

[30] Rawls, *A Theory of Justice*, 8.

nature of injustices that remain after the establishment of the two principles are best *explained* by the theoretical innovations of the conception. That is to say, we would have to be confident that the nature of injustice really is a matter of unfairness, rather than subordination or marginalization. Note, that these latter two classes of injustice can be said to lead to unfairness. Unfairness *simpliciter*, however, is easily mitigated by fair procedures, whereas the power dynamics that engender subordination or marginalization have a strong tendency to undermine attempts at fairness. Racial inequality is a case of the latter two rather than the former. The only way to make a theoretical end-run around these dynamics, then, is to more firmly embrace the two motivations for the basic structure as empirical hypotheses. Their validity combined with the particular facts about our society point us in the direction of non-ideal theory as well as indicate the need for robust explanatory tools. There are two reasons for this, each bound to a motivation for making the basic structure the primary subject of justice in the first instance.

First, the historical contingency premise raises alarms over how distributions can be upset, not by lapses in procedure, but by factors such as norm driven social trends informing distributive procedures. Second, the socio-psychological premise indicates that regimes of unfair treatment impact the internal lives of persons, which we might reasonably think undermine their ability to both act compliantly and treat others or themselves with proper respect and consideration. It is very much worth noting that if we take the two motivations as empirical hypotheses we should be able to gauge their real world contours and affects. And, if we can do that, then we are much more strongly positioned to respond to injustice. Ideal theory takes a forward-looking view of the two motivations – things we will have to be on the lookout for and preemptively address.

However, the two motivations, as I will show in the ensuing chapters, seem empirically valid as our society stands today. While this is morally concerning, the good news is that a reasonable accounting of these dynamics under a non-ideal framework significantly closes the gap between the actual injustice, its explanation, and the prescription we formulate for it.

To better understand my argument, consider the objection that Rawls' account gets around this problem by assuming rational persons who abide by agreements. They might be thought to first formally comply with what is required by a well-ordered society, and *then* over time continue to develop the sense of justice, which ultimately replaces this formal compliance.[31] On this view, my above concerns are simply beside the point. We might respond that Rawls' argument confuses persons' capacity to be fair for their capacity to be tolerant. It might in fact be the case that the model of rationality that undergirds Rawls' conception, and which is coherent with the idea of fairness, is embarrassed by the facts of human psychology and attitude formation – persons often lack the tolerance Rawls requires for them to be fair and compliant with the principles.[32] A specific response that poses difficulties for an ideal theoretical approach to racial inequality is that race is a particularly salient social factor that mitigates against persons' ability to assess various situations and issues in just the way ideal theory depends on them to. For example, Jennifer

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[31] Rawls stresses that the basic structure, as the primary subject of justice, is to be understood as part of a necessary division of labor. On the one hand, persons ought to act ethically in their dealings – justice as fairness has little to say on this matter directly. But consider how the basic structure is important on two counts. First, when compliant with the mandate of pure procedural justice, it guarantees fair outcomes, whatever they may be, since the procedure is appropriately specified and constrained by the two principles of justice. Second, since the basic structure has such profound affects on persons individually it contributes to a social dynamic in which persons are able to affirm the public commitment to the two principles, which itself is imagined by Rawls as contributing to developing the appropriate sense of justice. In this way, while the principles do not apply to persons, or even associations within the basic structure, their shaping of the basic structure is imagined to contribute to the ethical development of free and equal persons.

[32] See George Klosko, "Rawls's 'Political' Philosophy and American Democracy" in *American Political Science Review* 87, no 2 (1993): 348-359.

Hochschild expresses concerns over the ability to realize justice given whites' lower commitment to equality as compared to blacks. Her concern stems not merely from differential commitments to equality, for these might simply be artefacts of divergent interests. Rather, the concern revolves around the observation that race itself seems to explain a lot of the differential commitment to equality. [33] The trouble then is that a rather arbitrary, irrational, yet loaded identifying marker interferes with persons' ability to assess and consider certain morally important issues in their own light, *away from a historicized social context.*

§3.3   We can test the plausibility of my above concerns by previewing the case of welfare policy in America.[34] As an institution of social security the American welfare state developed in response to the suffering and deep material inequalities resulting from the Great Depression. From its inception, however, New Deal institutions and policies were uneven in their treatment of blacks. Old Age Insurance omitted occupations historically held by blacks from its benefits schedule as did Unemployment Insurance. Southern Senators held great power in shaping welfare policy and ensured that it, more than any other policy, was to be administered at a local level; as such welfare was subjected to the vagaries of prevalent racial norms.

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[33] Jennifer Hochschild, "Ambivalence About Equality in the United States or, Did Tocqueville Get It Wrong and Why Does That Matter?" in *Social Justice Research* 19, no. 1 (2006): 43-62. Another interesting finding is that blacks seem less committed to equality when they perceive that that others' gains will come at their expense. Hochcshild insightfully suggests that this difference isn't merely a matter of rational calculation – rather it is bound up with concerns over relations of power, i.e. to lose to another group is to replay a history of subordination. For the problem of compliance in Rawls' philosophy considered more generally, see Alan Carter "The Evolution of Rawls's Justification of Political Compliance: Part 1 of The Problem of Political Compliance in Rawls's Theories of Justice" in *Journal of Moral Philosophy* 3, no. 1 (2006): 7-21.

[34] Discussed at greater length in chapter three.

Maybe the most racially charged program was Aid To Families With Dependent Children (AFDC), what we commonly know as welfare today. Welfare's benefits have historically been unevenly distributed along racial lines. Today, benefits continue to be skin color-sensitive as studies show definite correlations between variables such as percentage of black recipients and state applications for waivers that allow them to use ever greater (and punitive) discretion in providing welfare benefits. Today, though welfare represents the smallest percentage of social spending it is, by way of slanted media coverage and loaded public political debate, the most racialized in the public mind. The fact that welfare has remained racialized and continues to produce racially disadvantageous results over the course of nearly seven decades, which saw the passage of the Civil Rights Act, provides strong evidence in support of the socio-psychological and historical contingency premises.

Now, to privilege ideal theory when thinking about justice is to make three assumptions: that historical contingencies can be overcome by realigning the rules of distribution; that persons' sense of justice is strong enough to remain committed to agreements despite prevalent social norms, which themselves are not motivated by reason or rationality. The third assumption can only hold to the extent that the first two do: that focusing on the problem of distribution sufficiently confronts the problem of distribution; that is to say, whether the problem of unfair distribution does not continuously become a problem precisely because of the empirical validity of Rawls' two motivations.

The case of welfare clearly poses difficulties for these assumptions since its policy and distribution have been continually informed by the historical problem of race even though society has moved away from explicit racial oppression. Let's call the processes that allow for the persistence of this kind of link, and their manifestation in institutional

practices despite a commitment to formal equality and fairness, *historically evolved* processes. Also consider that welfare represented a significant departure from the American ethos of self-reliance, signifying Americans' willingness to rethink that widely held norms. However, welfare has been stigmatized with regard to race, not with regard to poverty, and when self-reliance has been made an issue, it has usually been in the context of race. Martin Gilens' research on welfare, public opinion, and the media illustrates this – one of the few historical periods where the norm of self-reliance was relaxed was during the early 1980's, when many whites fell into economic hardship.[35] This indicates that individuals and institutions have been able to adjust their behavior (comply) with the idea of social security as a normative mandate, but that race motivates a certain set of norms that act as a limiting factor on compliance as well as altering the publics' basis for policy assessment. Let's call these kinds of dynamics *socially embedded*. This last aspect will be further developed and broadened in the next section.

A defender of Rawls might cry foul at the use of welfare policy as a challenge to his theory. She might say, for instance, that Rawls clearly indicates that the principles apply to the basic structure and instances of injustice or lapses in the workings of particular institutions are matters of *local justice* about which the principles have nothing to say.[36] Here, Rawls takes his cue from Jon Elster who specifies local justice as referring to *"arenas of American society....that follow different principles and procedures for selecting recipients of goods and burdens."*[37] On this view, welfare is a matter of local justice since it is (ostensibly) based on the principle of *need*, therefore any shortcoming in welfare is a

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[35] Martin Gilens. *Why Do Americans Hate Welfare: Race, Media, and the Politics of AntipovertyPolicy* (Chicago: University of Chicago Press, 1999): 125-26.

[36] Rawls, *Justice as Fairness*, 11.

[37] Jon Elster. *Local Justice* (New York: Russell Sage Foundation, 1992), 2-3.

matter of adjusting its distribution or its procedure in order to meet needs. But note that when we raised the complaint about welfare, the complaint was not merely that the institution was not meeting the needs of persons of color. The complaint was stronger, that the allocation procedure (and the policies determining them) had become bound up with racial stigma, therefore that persons of color are not fairly having their needs met is not *merely* a matter of a shortcoming in the procedure but a function of the racialization of a 'local arena'. This necessarily refers the problem back to Rawls' general theory (and as not solely assignable to local justice) since, for Rawls, the social bases self-respect is the most important primary good. The failure of local justice with regard to welfare violates this primary good given that the failure in the distribution and policy formation refers to racialization, *not* the procedure itself. On this view, the failure of welfare harms self-respect since it marks out a distinct sub-population as undeserving among other unflattering characteristics. Therefore, to relegate the issue to local justice is to obfuscate, and possibly become complicit in, how some persons by dint of a morally arbitrary starting place (race) are not treated as moral equals. So much, then, for the local justice objection.

Racial inequality clearly indicates the need for a structural focus given the historical complicity[38] of institutions and their power to play a significant role in reshaping social norms and impacting our own beliefs and attitudes. The case of welfare shows that while persons of color are treated unequally, unequal treatment is not merely one case of inequality among many cases. The issue here revolves around what counts as the underlying problem of justice, namely, the disproportionate extent to which persons of

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[38] The idea of complicity is taken up further in chapter five in the discussing the institutional principle of historical review. For now I take the synthesis of the factual observation of the historical involvement of institutions, continuing systemic racial inequality, and the idea of moral responsibility as sufficiently motivational to be more or less uncontroversial. If these do not support the justifiable assignment moral duties or obligations then nothing does.

color can have their expectations unmet and undermined. It is not that persons of color are treated unfairly in a generic sense. The issues is that they are treated unfairly along particularly salient lines and in particularly patterned ways, due to particularly deep historical developments, motivated by particularly powerful and subtle norms which continue to find expression in our institutions. Ideal theory seems intended to preempt a social world where there could be exceptional inequalities or kinds of endemic unfairness, not for one in which these conditions already hold.

I will suggest that the motivations for making the basic structure the primary subject of justice point the way to one part of the corresponding necessary tool for responding to racial inequality. It is the first aspect of the complete theory of power (and one part of the complete theory of power to be specified in chapter two) – *historically evolved power* is an explanatory tool that formalizes our observations about the historical continuity of racial disadvantage in major social institutions. More precisely, *historically evolved power* is the phenomenon of *historical normatively grounded group asymmetries finding their embodiment in path dependent institutions resulting in robust forms of contemporary inequality.*

I now want to explore the relationship between circumstances and responsibility to introduce our second concern – racial inequality and internal lives. This leads to indicating the second aspect of the complete model as well as establishing the social bases of self-respect (as I have conceived them) as the proper aim of a theory of justice intended to confront racial inequality.

§4. Circumstances, Choice, and the Problem of Racial Inequality

§4.1   A successful argument for the *priority* of the basic structure does not establish it as

the *sole* appropriate concern over justice. Specifically, I have in mind those who argue that

before a distribution of any sort can be made, justice requires ascertaining the right

recipients of that distribution. These thinkers put forth the claim that insofar as we can

distinguish between a person's misfortunes as a result of her own bad choices and

misfortunes resulting from circumstances for which she ought not be held responsible, *that*

distinction ought to designate the recipients of aid. Insofar as the principles are

appropriately guided by this distinction, justice is realized.[39]

In what follows I bring into relief the concern over internal lives as it bears on racial

inequality and theorizing racial justice. Specifically, I forward the claim that once we relax

the assumptions which undergird a seemingly non-controversial conception of

responsibility, we better understand how bad circumstances can adversely impact internal

lives in a way that refocuses our attention on the relationship between power and

circumstances. This will have implications for developing our explanatory framework as

well as conceiving justice. I conclude that these considerations inform the second

component of the theory of power – *socially embedded power* – as well as ground the social

bases of self-respect as the proper aim of racial justice.

§4.2   The idea of responsibility holds a place in normative theory on two counts. First, the

idea that persons must to some extent be accountable for their actions simply seems

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[39] This is under assumption that an appropriate equalisandum – resources, opportunity, welfare, access to advantage – has been settled upon.

consistent with the very idea of normativity. Second, the idea of responsibility supports the idea of moral agents deserving of our respect – it would be peculiar to reduce the objects of a (liberal) moral theory to the status of wards. The central value of persons as capable of conceiving and pursuing the good of their lives would be undermined. Thus, responsibility is often consistent with our moral aims. Moreover, on the face of it, it is a rather straightforward concept – either a person is actually responsible for some action of his, or he is not. Something like this kind of view has become particularly powerful in liberal thought without raising many alarms.

For example, Scanlon's idea of *value of choice*[40] has embedded within it a more or less standard view of responsibility. He offers the following scenario: a society expresses the right moral disposition toward its members when it provides the best possible choice circumstances for them. Scanlon asks us to consider the following: a municipality must remove some toxic waste, but cannot do so without a certain amount of risk to local inhabitants. The municipality acts in two ways. First, it tries to take direct action by building a fence around the site to keep onlookers out while wetting down the waste to prevent too much of it from becoming airborne in the course of transport. Second, it embarks on an information campaign – it takes all possible actions to inform persons of what will take place, when it will take place, and what the risks are. Moreover, it strongly recommends, in light of the disclosed information, that all persons evacuate during that time in order to avoid harm.

Scanlon considers this as sufficiently protecting the municipality's residents. On his view, so long as all reasonable effort was put forth to provide informed circumstances of

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[40] T. M. Scanlon, *What We Owe To Each Other* (Cambridge, MA: Belknap Press, 1998). Especially chapter six.

choice, the municipality has acted appropriately. Scanlon undergirds this conclusion with a rather non-controversial conception of responsibility: persons were uniformly considered as capable of reason; this was defined as objectively assessing the available information; all persons, as specified by the idea of reason, would assess the information in the same way; what follows is that the assessment ought prompt the right action – evacuation; persons who did not exercise such reason were responsible for their fate.

This seems obviously right, but let's complicate Scanlon's setup to better understand the implications of this view of responsibility for racial justice.

§4.3   Consider Roger: he has heard the city's bulletins and decides to stay home. Is he responsible? On the face of it, and on Scanlon's view, the answer seems an unqualified, "yes." However, Roger is a member of a group that is typically not treated well by the municipality. Whenever it snows, the city claims it will provide clean streets for everyone, but somehow plows consistently arrive a week later in his neighborhood than in others. Meanwhile he and his friends struggle all week to get to work on time. The city announces a budget surplus and a plan to give school children new educational resources. His daughter sees a few new books, but the daughter of Roger's colleague at work, who resides in a neighboring district populated by members of another group can't stop expressing joy at her new access to computers. This pattern has repeated itself for a long time, across a number of issue spaces, through many administrations, such that Roger and most of the people in his neighborhood are (justifiably) convinced that the municipality is *not* looking out for their best interests – they've had to get by on their own. Additionally, due to the

municipality's prior actions there is a crisis of confidence – why should Roger and his friends believe the city government? It hasn't been reliable before.

If we take Roger's situation in isolation, it will seem all that has happened is that Roger's frame for rational deliberation has changed: Roger rightly values trustworthiness; the city has not been trustworthy, thus, the city's injunctions hold no value when Roger and his friends make a decision. However, I want to suggest the possibility of something deeper. I said above that the crisis of confidence stems from a history of mistreatment and marginalization. It is likely that as a kid Roger witnessed this lack of regard and developed certain attitudes, and as Roger's cohort grew up these attitudes became part of an internal framework such that by the time Roger's generation had kids and their families experienced this lack of regard, they now hold attitudes that those from outside their situation would deem irresponsible: school is for losers, because only losers do what the establishment (which they rightly think doesn't care about them) directs them to do; voting is for losers because it obviously doesn't change unfair outcomes. In this sense, responsibility obviously requires reframing with respect to how systemic bad circumstances affect the internal lives of persons. How does this relate to justice and race?

§4.4   I believe it is reasonable to settle on the following characterization of a circumstance: the context one finds oneself in at a given moment such that it has weight in giving oneself reasons for making a decision. A circumstance is bad, then, just in case the weight on decisions presented by the context carries non-negligible burdens on decision-making. We might imagine that the content of these burdens are such that in an ideal situation persons would choose to shed these burdens since they ought bear no substantive

relation to the context but have a substantive impact on decision-making nonetheless. Consider a case in which the close relative of a person, Julie, passes away; and, Julies lacks full funds to travel to attend the funeral. While this is unfortunate, this itself does not count as a bad circumstance. It is incidental that she lacks the money at that point in time. Now let's change Julie's situation. Julie (barely) has the money but the low wage job for which she qualifies offers insufficient time off. Additionally, the local economy has gentrified such that job opportunities for her skill set are scarce. In the first hypothetical, the lack of funds by itself has no substantive bearing to the context since it is merely incidental – a week earlier or a week later her situation is more favorable. However, in the revised hypothetical, Julie's circumstances are such that even if she wanted to choose to do what she feels obligated to do, she could only do so at great cost. Moreover, this cost cannot be offset by anything except a major re-visioning of her life and lifestyle.

We will recall that systemic racial inequality is my probable risk of not being able to realize or pursue the good of my life by simply being a person of color. I want to say that racial inequality presents particularly pervasive and harmful bad circumstances such that the internal lives of persons are affected; and, this ought prompt how we conceive of one's responsibility for one's decisions with relation to justice. Above, Julie was in bad circumstances, but nothing of a normative nature set her apart. That is to say, if she had an education she would be in a better position to overcome her circumstances, but it is not the case that she is *marked* by her lack of education, subsequently identified as a less valuable person, and *then* finds herself at a disadvantage in fulfilling her obligation.

The point I want to move towards lies at the distinction between Julie's case above and racial inequality. In Julie's case, we can imagine that gentrification is simply an

(unfortunate) artefact of the mobility of capital and the ability of the market to identify low cost/high yield opportunities. But, Julie has no reason to think less of herself *on account of gentrification*. She might lament pursuing a failed acting career rather than taking up computer programming, but nothing in her bad circumstance affirms her as a less worthy person because of her choice.

Racial inequality operates differently. First, it depends on my racial marker so before I can demonstrate to others what kind of person I am, their perception and assessment of me is already unfavorably framed. Notice that in Julie's situation, her ability to take time off in no way hinged on an assessment of her. Second, in addition to being informed by a rather deep history, racial inequality is pervasive. In one day, I may go to interview for an associate's job at a law firm, and upon approaching the receptionist I am told (without any prompting) that deliveries go down the hall. I later walk into a department store and find I am being watched more closely than others. Seeking to relax, I watch a few crime shows at home (it's rest and relaxation for a lawyer) and see that everyone who "looks like me" seems to be a defendant and never does the interrogating. Importantly, as 'wrong' as this day is, it's unremarkable for me – similar has happened before. The fact of racial inequality suggests that this web of experiences and observations are common for persons of color, or at least not entirely out of step with regular occurrences in their lives. I want to now argue that systemic racial inequality, as a particularly objectionable category of bad circumstances, presents problems for the internal lives of persons in a way that bears importantly on how we conceive responsibility in relation to justice claims.

§4.5   The line drawn between choice and circumstance is an intuitive and powerful one. It

is intuitive given our cultural commitments to individuality and responsibility, and it is

powerful since it seems to embrace what for some is surely an emancipatory mood. The

discussion in the above section indicated where and how this goes wrong with regard to

systemic inequality. We will recall that bad circumstances adversely impact decision-

making. However egalitarians who take themselves to be concerned with destabilizing

patterns of subordination hold persons responsible for their choices in ways that seem

inconsistent with the concern over circumstances, and this has significant implication for

the theory of justice.

> Consider the following statement offered by G. A. Cohen:

> "We are not looking for an absolute distinction between presence and absence of genuine
> choice. The amount of genuineness that there is in a choice is a matter of degree, and
> egalitarian redress is indicated to the *extent* that a disadvantage does not reflect genuine
> choice. That extent is a function of several things, and there is no aspect of a person's
> situation which is wholly due to genuine choice."[41]

He goes on: "All that we need to say, from the point of view of egalitarian justice, is: *the*

more relevant information he had, the less cause for complaint he now has."[42] Cohen,

working from assumptions similar to those made by Scanlon, makes relief of responsibility

contingent upon objective standards. On this view, relevant information is available, and so

long as it is within reach, all outcomes are fair game. This tacitly assumes that there are no

obstacles to a person's getting information (when within reach), fairly assessing it as

anyone might, and then acting on it.[43]

> Is this view coherent? Let us look at an example offered by Cohen.

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[41] Cohen, "On The Currency of Egalitarian Justice," 934 [emphasis in original].
[42] *Ibid.*, [emphasis mine]
[43] Note, that from the point of view of power relations, there are possible issues at each of these three steps, not only
with how they cohere into a framework for action.

> Paul loves photography, while Fred loves fishing. Prices are such that Fred pursues his past time with ease while Paul cannot afford to. Paul's life is a lot less pleasant as a result: it might even be true that it has less meaning than Fred's does. I think the egalitarian thing to do is subsidize Paul's photography.[44]

Cohen goes on to offer that Paul "hates fishing and, so I am permissibly assuming, could not have helped hating it – it does not suit his natural inclinations."[45] In this example we have: a structural change in market prices; a psychological claim in that Paul's dislike for fishing is a matter of natural inclination and *not* a matter of choice; and a justification for distribution based on a situation that has befallen Paul for which he is not responsible and for which he is compensated given his natural inclination. Note that Cohen allows Paul's internal life to ground the distribution.

Let us return to Roger. Cohen says above that the more information one had at the time of making his or her decision determines how much he or she now has to complain about. Keep in mind that Paul's internal life counts for something when determining justice. So far, so good. But in Roger's case we seem to run into difficulties. On Scanlon's view, Roger is responsible because he was fully informed, and Cohen is unlikely to compensate him due to the amount of information he had, so his responsibility precludes him from compensation. But note that in Roger's case, there was also an internal lives issue at stake. Roger and his friends, over the course of generations, had been consistently marginalized. I argued that this consistent marginalization has done more than to reframe rationality. I said that this kind of marginality became internalized and developed into the bases for choices – choices for which Scanlon and Cohen would hold him and his group accountable.

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[44] *Ibid.*, 923.
[45] *Ibid.*

It seems to me, then, that the controversy here does not revolve around the concern over internal lives – Cohen himself is willing to guide considerations of justice based on persons' proclivities. The issue, rather, turns on how the power dynamics which inform racial inequality push past the limits of what is typically considered a responsibility-bearing choice. The limits are breached precisely because of a false divide set up by scholars like Scanlon and Cohen. On their view either persons are not responsible for their natural inclinations or they are responsible to the extent they have been fully informed. Issues of responsibility that revolve around race are problematic because the middle ground they occupy is crucially undertheorized – persons who make seemingly irresponsible choices are neither naturally inclined to make them, nor does full disclosure solve the problem since their internal lives have been impacted by bad circumstances in such a way that their choices seem to not reflect full regard for their welfare.

§4.6 So, we have shown that the objective choice model offered by Cohen, which relies on the objective conception of responsibility and determines who benefits from the principles of justice, seems attentive to the internal lives of persons but not the way power dynamics impact internal lives, thus opens a rift between what justice tends to aim for and what it will accomplish since some people will be wrongly held responsible for their choices under pervasive unjust circumstances. I shall argue that racial inequality as a set of bad circumstances ought to motivate an account of justice which is sensitive to relations of power, and that there is a particular way we ought to think about this if we take the phenomenon of racial inequality as deeply problematic on its own account rather than as a generic case of inequality.

To get traction on the problem with regard to race, let's keep the relation of internal lives to racial justice in view by considering deviant ghetto behavior.[46] Although the aim of Tommie Shelby's account is to think about what, in light of ghetto conditions, is required of ghetto residents by way of civic obligations and natural duties, Shelby makes a significant contribution by attending to a problem prior to assigning obligations and duties. Since part of what makes an obligation a matter of justice is the idea of reciprocity under more or less just circumstances and institutions, Shelby argues that, given the U.S. is fundamentally unjust with regard to race, ghetto residents are less obligated, or not at all, to the ideal of reciprocity in supporting institutions. However, they do have natural duties – self-respect is chief among them. In continuing to focus on the problem of the choice/circumstance distinction, I want to move the abstract arguments we have considered closer to the concerns of the non-ideal world. Shelby's arguments indicate a telling convergence of the choice/circumstance problem, self-respect, and justice.

Shelby helps clarify the issue of choice under particularly disadvantageous circumstances. He highlights certain behaviors towards which we tend to react with punitive or dismissive attitudes, in turn highlighting how much understanding we extend (or fail to extend) to those in truly bad circumstances.

Shelby uses crime as a starting point. He writes:

> Ghetto poverty creates desperation and feelings of shame, and some, seeking to escape the weight of their social conditions, or at least make it more bearable, resort to crime....When persons from the ghetto choose crime...they do so under conditions of material deprivation and institutional racism. Thus their criminal activity might express something more, or something other, than a character flaw or a disregard for the authority or morality.[47]

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[46] Tommie Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy and Public Affairs* 35, no, 2 (2007): 126-160.Shelby defines deviant behavior simply as behavior "sharply divergent from widely accepted norms." (p. 128).
[47] *Ibid.*, 136

Furthermore, "The impact of institutional racism is deepest in dark ghettos, because here racism and extreme poverty combine to create a uniquely stigmatized subgroup of the black population."[48]

Portraying ghetto circumstances as representing the locus of these problems helps us understand the implications for undertheorizing the middle point between choice and circumstances. What are these circumstances? Shelby neatly lays out the way institutional arrangements and practices beget series of cascading and intersecting disadvantageous circumstances. First (but not causally in this order), blacks have a tougher time acquiring employment since they have been stigmatized as social deviants. Second, they may be unable to get housing in neighborhoods that offer their children better schooling to provide the skills to compete for higher wage jobs and escape ghetto conditions either because they lack the funds or because of discriminatory housing practices. Third, they tend to be overrepresented in the criminal justice system precisely because crime is seen as a way of life (it even informs a street ethos that is shown respect). It is clear that this is something much more akin to a (vicious) cycle that can be hard to permeate. Choices informed by circumstances which result in perpetuating circumstances that inform choices, *ad infinitum*.

Shelby implicitly argues, *anyone* living under such circumstances would likely consider these options perfectly reasonable. However, who would *voluntarily* submit themselves to such circumstances? These represent particularly oppressive circumstances into which persons are born and face great difficulty getting out of. Many, then, make choices that seem ill-advised. Bad circumstances give rise to choices that seem obviously

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[48] *Ibid.*, 139

irresponsible and presumably avoidable from the point of view of Cohen's objective choice model – we all know that illicit behavior results in punitive reaction, that a lack of education is a sure route to failure in the modern world. However, persons of color systematically exposed to such circumstances seem to be at risk of being put in a position to make bad choices.

It is worth pausing to get clear on which persons constitute the domain of concern. Sometimes it seems as if I mean to argue the internal lives of all persons of color are harmed, while at other times I seem to be concerned with urban youth. One problem is that there is no way to know ahead of time precisely which individuals are being affected. Certainly there are some people who make it out of the ghetto having made all the right choices. These are the people who are pointed at when some cry foul at what are perceived as paternalistic or perfectionist undertones of arguments like those offered here. There is a way to clear the matter up, and it begins by acknowledging that not everyone is harmed in the way I am concerned.

Systemic inequality is a categorical, hence probabilistic phenomenon. What makes it particularly concerning are three factors. First, though it is probabilistic, persons of color are at a *higher* probability of being disadvantaged merely because they are a person of color. Second, as remarked above, race is predicated upon a history of dominance and subordination justified by normative beliefs about the status of blacks. Racial inequality, especially in a time of formal equality, hints at a troubling historical continuity that has no place in a just, liberal democracy. Last, because racial inequality is linked to this norm-laden historical continuity, it impacts how persons are valued and how they value themselves. What these factors add up to is the construction of a social milieu such that

even those who make it out of the ghetto and have always made good decisions are inappropriately exposed to a system of valuation that places people from their group in a position of marginality. Similarly, those who are not genuine racists share in a society that nonetheless affirms a higher value for them which leads to certain kinds of social, political, and economic benefits being taken for granted as well as less motivation to acknowledge the injustice of racial inequality.

In the third section, I indicated that a complete theory of power addresses both the structural elements of racial injustice as well as the problems that occur at the social and individual level since the problem of systemic racial inequality is both an issue of institutional practice and the impact of norms on the internal lives of persons. At the conclusion of that discussion I offered the first aspect of that model, *historically evolved power*. Now I want to unveil the complement to it. *Socially embedded power* is *the ability for social asymmetries to affect the internal lives of persons such that those better positioned tend to hold beliefs and attitudes which only serve to enhance their standing while those worse positioned are at risk of developing a self-nonregarding disposition, thus preventing them from making manifest the value of full personhood*. To the extent Shelby has reliably characterized the problem of choice for ghetto residents, and the way these dynamics re-present themselves in systemic racial inequality, this portion of the theory of power seems to ably contribute to understanding why racial injustice persists.

§4.6   I earlier set the goal of understanding what implications these considerations held for justice. It is worth remaining in conversation with Shelby. After working through the conditions of the ghetto, he aims to, on the one hand, challenge the view that, all things

considered, ghetto residents have the same civic obligations as those existing under more

just circumstances. On the other, he holds that these persons still have natural duties – one

of these is that of self-respect. For Shelby, the duty of self-respect

> ...is fulfilled by recognizing and affirming one's equal moral worth as a person, [and] also
> provides a reason to protest or resist injustice....One expresses self-respect by, for example,
> standing up for oneself when on has been treated unjustly, rather than meekly
> acquiescing....The duty of self-respect is a self-regarding duty....The duty of self-respect
> demands action from those who have been wronged...[49]

To my mind, Shelby is generally right about self-respect being a duty – without it we can

only incompletely be the persons we otherwise could be. But I think there are two things

that need to be thought all the way through. The first represents what I perceive as a failure

to connect the arguments defining deviant behavior and that of calling for self-respect; the

second falls outside Shelby's aims so are stated here as a way of giving the project of racial

justice a start.

The first: if deviant behavior is a result of truly desperate circumstances which shift

the grounds of what is reasonable for a person to undertake, one of two things must be the

case. Either the same actions which result in reasonable deviant behavior are also

expressive of an altered adopted sense of self-respect (so it, like the attitudes which glorify

street life, is somewhat alien to those of us who don't experience these circumstances in

any meaningful way), or it is the case that the duty of self-respect is a more or less

objectively specified value that is either unattainable or rather hard to live up to precisely

because of the factors which lead to deviant behavior. Indeed, it seems that deviant

behavior is prevalent because there is a lack of self-respect from this objective point of

view. So, this must be Shelby's view or else his call for self-respect would already be

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[49] *Ibid.,* 153

satisfied on the first view, which he apparently (and, rightly) wants to reject. I want to

press on this point a bit. Throughout the article Shelby makes a case for understanding the

framework within which persons undertake behaviors and adopt attitudes that seem

irresponsible. His argument suggests that pervasive bad circumstances alter persons'

disposition towards acceptable norms in ways that allow them to live under those

circumstances. This is essentially about the way power invades the internal lives of persons

– they relate to themselves, their environment and their future in ways ordinarily

considered harmful.[50] If this is so, exactly how might we expect a ghetto resident to

undertake the duty of self-respect as outlined by Shelby? This leads to the second point.

Shelby does not consider the specifics of what justice requires (of society and

institutions), and that is not his aim. But to my mind the above disjuncture between what

bad circumstances promote within persons (and among them in a community [and

between communities]) and the diminished ability to fulfill the duty of self-respect *is itself a*

matter of justice. It is a matter of justice because although individuals cannot be responsible

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[50] I imagine Shelby would respond that a main point of his article, in reframing the grounds for reasonable choice, is to retain a more full sense of agency in that persons are conscious choosers. What follows is that, if these otherwise unacceptable choices are reasonable within a certain frame of existence determined by political and social structures, then our claims of justice are particularly well-grounded. On this view, I am unfairly imputing to him an internal lives argument that he is not making. I think there are two ways of clearing up the confusion. First, Shelby himself seems to vacillate between an internal lives argument and a rational choice argument. In his example of crime, he sometimes seems to be arguing that anyone under the same circumstances would make these choices after evaluating the alternatives and seeing that there are few. At other times, such as when he speaks of embracing and wholeheartedly identifying with a street ethic (*Ibid.*, 138) or adopting a survival strategy (*Ibid.*, 139) or acknowledging that structures not only frame choices but have a role in shaping desires and ambitions (*Ibid.*, 148) he seems to tack towards an internal lives view. Second, and which I offer as supporting my reading of Shelby, is Scheffler's argument against luck egalitarians, namely, that they make a metaphysical error in treating choice as a distinct thing from a person's overall skill set ("Choice, Circumstance, and the Value of Equality," *Political, Philosophy, Economics* 4. no. 1 (2005), 10-14). On this view, to the extent that we (and most scholars seem to) accept that skills themselves are significantly affected by one's circumstances, then it follows, choice, as one skill among many, will also be affected by circumstances, therefore must be treated as such. I don't think this has any implications for Shelby's general argument, for I think one can accept the internal lives argument and still argue that one's obligations ought to be considered in light of the choices unjust institutions prompt. As I say below, maybe the most important aspect of making the internal lives claim is that it relocates the justice cut from distributions or redress towards quality of existence, which itself might call for resources as commonly understood, but is done so with respect to the impact on persons in light of a certain history and regime of power relations.

for the circumstances in which they find themselves, society and its institutions can act to change the circumstances that influence the choices for which they do want to hold persons responsible. In this regard, I will suggest that justice requires making the social bases of self-respect the focus of its theory. We're looking for a way of meeting persons' basic expectation of being treated as true moral equals as well as enabling them to treat themselves as such.[51] With regard to race, this entails facing up to the exceptional nature of the circumstances persons of color exist under and correcting for the norms that support the perpetuation of these circumstances. Once the commitment is made to support persons in more fully attaining self-respect, justice requires that they take ownership of the course of their lives. It is this dual obligation between institutions and persons that guides us to conceiving of justice as *democratic partnership*: institutions and persons are imagined as continually doing their part to correct for and overcome the legacy of racial inequality.

But note, part of the issue we have been grappling with is the attitude of others which lead to insufficiently understanding the disadvantageous circumstances persons of color face. Such attitudes also lead to intentional and unintentional acts that contribute to racial disadvantage in various ways. Thus, when we say that the social bases of self-respect are crucial for addressing the internal lives problem, we are saying that they also realign attitudes *towards* persons of color from the inside out, so to speak. In this sense, I want to say that the social bases of self-respect, when they are publicly affirmed and mobilized, enable persons of color to pursue the good of their lives in light of viewing themselves as moral equals while others in society are prompted to view and treat them as such.

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[51] It is worth noting that this is imagined as enabling the conditions for a conception of responsibility, such as Scanlon's, to be uncontroversial, for certainly we want to endorse the idea that the convergence of (full) information and self-regard ought to motivate people to actually be self-regarding, to care for themselves.

§5. Conclusion

The problem of racial inequality is complex and getting the project of theorizing racial justice off the ground requires covering a great deal of conceptual terrain. To sum: I have argued that racial inequality is a two-fold problem. On the one hand it revolves significantly around institutions. We reviewed Rawls' motivations for making the basic structure the primary subject of justice and found that his concerns over historical contingency and the interaction between institutions and human psychology expressed sympathy with concerns of racial justice. However, we concluded that the presumption of strict compliance was inconsistent with these concerns, hence a need to work within non-ideal theory. On the other hand, the problem of racial inequality hinges on the internal lives argument, which states that circumstances which reflect particularly pervasive and long-standing relations of power cast doubt over assumptions of what constitutes a responsible agent. Our engagement with Scanlon, Cohen, and Shelby carried forward the concern over human psychology but cast a stronger light on how that concern, alongside institutional practices expressing historical continuity, more fully informs an approach to justice.

The above investigation also suggested implications. First, we require a theory of power to more completely make sense of our institutional and internal lives arguments. While its two aspects were briefly stated, the complete model is foundational for guiding further investigation and prescription. This is the task of the next chapter. Second, racial inequality appears to be strongly motivated by a normative framework that grants lower value and status to persons of color. The impact of this was explored in the second part above. However, a key premise of the project, as evidenced by my engagement with Rawls,

is that we must engage history to better specify our explanations as well as our prescription. This is done in chapter 3. I initiated the argument that to the extent that racial justice is a problem of normative valuation, the proper response is a conception of justice the primary aim of which is a countervailing normative frame that centers on the idea of self-respect; the specification and relation of this idea to racial inequality will be stated in chapter 4.

Justice as democratic partnership is offered as the appropriate conception of justice for the problem of racial inequality. The appropriateness of the conception is founded on two of its imagined accomplishments. First, it holds institutions responsible for past complicity in racial inequality while mobilizing their power to lead social change. Second, while it focuses on racial inequality, it does so while showing equal concern and respect for all in society by granting integrity to the idea of society as a scheme of ongoing cooperation by focusing on the social bases of self-respect as its primary aim. The conception, along with a statement of its social implications, is specified in chapter 5.

But what if he our conqueror (...)
Have left us with this our spirit and strength entire
Strongly to suffer and support our pains
That we may so suffice His vengeful ire
Or do Him mightier service as His thralls.
- John Milton, Paradise Lost

Chapter 2 – Historically Evolved Socially Embedded Power

Though persons of color today formally have every right due citizens, the fact of racial inequality is unnerving when viewed against the arc of history – nearly three centuries of overt and institutionally supported dominance and oppression. We ought to wonder why persons of color continue to suffer disadvantage when exactly this historical burden is meant to be accounted for in our political, social, and economic institutions.

In the previous chapter I offered a succinct conception of racial inequality – a persons' being of color alone gives her a higher probability of not being able to achieve the good of her life. I then cleared the ground for theorizing an appropriate conception of justice by laying out some considerations over the role of institutions in supporting racial inequality as well as their power to impact the internal lives of persons. Additionally, I raised some concerns over how intuitively appealing conceptions of responsibility were troubling for achieving racial justice precisely because of this power of institutions as well as the impact of bad circumstances on the lives of persons of color. This supported the thesis that the presence of racial inequality in an era of equality hinged on understanding racial inequality as a problem of valuation – the way society values persons of color, and how they value themselves. In highlighting the appropriate points of interest for the theory of justice, I brought into view concerns over power. I identified two complementary

components – *historically evolved socially embedded power* – we would need to theorize and specify to properly undergird the theory of justice. The two components comprise the complete theory. That task is the main aim of this chapter.

The theory states: *historically evolved power* is *the phenomenon of historical normatively grounded group asymmetries finding their embodiment in path dependent institutions resulting in robust forms of contemporary inequality; socially embedded power* is *the ability for social asymmetries to affect the internal lives of persons such that those better positioned tend to hold beliefs and attitudes which only serve to enhance their standing while those worse positioned are at risk of developing a self-nonregarding disposition, thus preventing them from making manifest the value of full personhood.* The theory, then, is intended to be a comprehensive explanatory tool of racial inequality. Further, it serves to ground the claim that racial inequality violates the most fundamental kind of justice – dispositional. The theory of power specifies how and in what way persons of color fail to come into view as equals and peers to others as well as to themselves when this is the case. It is thus imagined as a necessary resource for developing an adequate theory of justice.

I begin by discussing Glen Loury's theoretical engagement with racial inequality to refine our understanding of the contours of racial inequality. This engagement produces three criticisms that help to establish three points. First, though he acknowledges their role, Loury undertheorizes the *nature* of institutions as a locus of racial inequality. We need to be conceptually open and willing to theorize how institutions embody racial values. This point directs us to a synthesis of Pierson's theory of path dependence with aspects of Sidanius and Pratto's social dominance theory in specifying historically evolved power.

Second, Loury rests some of his most important claims upon rather orthodox assumptions of rational choice that close off considering the psychological consequences of the dynamics which fuel racial inequality. We need a better accounting of how attitudes manifest in the actions of the disadvantaged are formed and why they seem to stick. This leads us to another synthetic engagement, with Hirschmann's account of disadvantage and internal lives, and a reprise of social dominance theory.

Third, Loury too quickly discards a substantial role for history in addressing racial inequality. Though history and historical narrative can further complicate a theory by introducing the problem of interpretation, I argue that no attempt to address racial inequality can do without historical engagement. Yet, this in itself does not qualify racial inequality as a case of historical injustice as commonly understood, hence getting clear on the historical nature and the role of history is important. The implications of this last point are introduced below and operationalized in the next chapter.

A note before proceeding. Some might consider the omission of standards in the power literature such as those comprising the faces of power debate or Foucault's foundational work on subject-producing power to be a glaring oversight. But these literatures have shortcomings that require mobilizing outside resources in any case. On the one hand, the faces of power literature[1] has mostly been formulated in the abstract, with no particular social milieu in mind. The result has been a usually ahistorical approach to power. On the other hand, Foucault's genealogical work *is* historical, but remarkably

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[1] See by Michel Foucault: *Madness and Civilization: A history of Insanity in the Age of Reason.* Translated by Richard Howard (New York: Vintage Books, 1988); *The Care of the Self: Volume 3 of The History of Sexuality.* Translated by Robert Hurley (New York: Vintage Books, 1988); *Discipline and Punish: The Birth of the Prison.* Translated by Alan Sheridan (New York: Vintage Books,1995); *Society Must Be Defended: Lectures at the College de France 1975-1976.* Edited by Mauro Bertani and Alessandro Fontana. Tranlated by David Macey (New York: Picador, 1997); *Abnormal: Lectures at the College de France 1974-1975.* Edited by Valerio Marchetti and Antonella Salomoni. Translated by Graham Burchell (New York: Picador 1999).

asocial.[2] The problem here is that relations of power in actual political society are exactly

that – relations. When we want to know why some subjects are produced *differentially*,

Foucault's work offers scant guidance. Rather than try to wrangle a literature towards a

purpose for which it is not best suited, it seems more productive to move away from the

canon. The aim below is to utilize work that operationalizes common themes in the power

literature in order to specify a comprehensive theory of power flexible enough to support

empirical propositions as well as normative prescription, which, in the case of racial

inequality, crucially depend on the former.

§1. The Phenomenon of Racial Inequality Considered

§1.1 THE CONTOURS OF RACIAL INEQUALITY

Glenn Loury's *The Anatomy of Racial Inequality*[3] seeks to account for systemic racial

inequality by considering the mechanics of racial norms and beliefs at the level of

individuals. On his view, since people utilize information in light of categorizations based

on observable markings that serve as (social) guideposts (i.e. race [skin color]), racial

inequality can to a large extent be explained by the persistence of racial norms and beliefs

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[2] See, Peter Bachrach and Morton S. Baratz, "Two Faces of Power" in *The American Political Science Review* 56 no. 4 (1962), 947-952; Robert A. Dahl, "The Concept of Power" in *Behavioral Science*. No. 2 (1957), 201-215; Steven Lukes, *Power: A Radical View*. Second Edition. New York: Palgrave, 2005.

[3] Glenn Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2007_

as motivations for behavior.[4] A strength of Loury's approach is that he considers the social aspect of racial inequality as well as some ways the social aspect can inform practices and processes. However, I call into question Loury's almost exclusive focus on individual level behavior as well as his employment of a typical account of rationality. These challenges are geared towards broadening our view of the problem of racial inequality in preparation for the statement of *historically evolved socially embedded power* (HESEP) as the appropriate analytic tool for confronting it.

As I read Loury, two major ideas are doing the work of establishing his approach to racial inequality. The first is self-confirming stereotype:

> a statistical generalization about some class of persons regarding what is taken *with reason* to be true about them as a class, but cannot be readily determined as true or false for a given member of the class. Furthermore, this generalization is 'reasonable; in the specific sense that is *self-confirming*[5]

Here, part of what contributes to the persistent nature of racial inequality from the point of view of human agency is that when I act on my generalization I contribute to its being the case in fact. Loury thinks this idea is important just in case social hierarchy is expressed in "special circumstance in which those making a surmise about some group of persons have within their power the ability to act so as to influence the population being observed."[6] For instance, if one group has had the ability to shape economic institutions and it is believed by some that blacks tend to default on loans, those so positioned in economic institutions will act in ways that contribute to making that belief a fact such as not granting extensions on credit that would prevent loan defaults.

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[4] *Ibid.*, 17.
[5] *Ibid.*, 23 (emphasis in original).
[6] *Ibid.*, 24.

The idea of self-confirming stereotypes depends on the convergence of two dynamics. The first pertains to non-blacks, as illustrated when they "attribut[e] an endogenous difference (a difference produced within a system of interactions) to an exogenous cause (a cause located outside that system)."[7] The problem with this confusion is that it "leaves one less interested in working for systemic reform."[8] So, as an agent acting in a social world, I utilize information *associated* with a category of persons. The information however, need not be factual – it just needs to seem reasonable to me. In my acting on that information, I contribute to its ultimately becoming a fact hence reinforcing the belief I initially had. What follows is that I have little reason to question the way disadvantage and benefits are distributed since it is "obvious" the problem is with "them." In the above example of explaining bad credit in the black community, the answer will likely refer to low earning power, unsteady employment, and a fickle sense of financial responsibility, rather than the possibility of others taking actions which result in making the stereotype a fact. Hence, non-blacks are off the hook for the beliefs, which inform action, which in turn contribute to making those beliefs fact.

The other half of the equation involves blacks themselves. Specifically, Loury has something to say about the reciprocal dynamic involved in making racial inequality pervasive and systemic. His logic for self-confirming stereotypes depends on three moves: statistical inference (Roberts expects Jones to be late to work since there is a popular belief that blacks are often late for work and Jones is black); there is a feedback effect in which Jones reasons, why hustle to get out the door since I've already been pegged as irresponsible? The cycle becomes complete when a convention forms as a result of the

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[7] *Ibid.*, 25-26 (emphasis in original).
[8] *Ibid.*

equilibrium achieved between steps one and two. Roberts expects Jones to be late because

he is black, Jones gets to work late since Roberts expect him to, hence, as a black man, Jones

confirms that black men do not get to work on time. Thus, a convention is formed – blacks

are not to be counted on for getting to work when they ought. In this way blacks become

the objects of substandard expectations, and outside influences act on that population to

make those expectations a social, economic, and political reality. In this instance, Jones acts

according to the norms of which he is well aware and confirms their truth by behaving in

the expected way. The trouble with a self-confirming stereotype, then, is that non-blacks

see the shortcomings of blacks as lying entirely in their control. This leads to beliefs about

the shortcomings of blacks which interact with a cycle of feedback responses wherein

blacks might confirm those beliefs.

The second major idea in Loury's account is that of racial stigma, which he defines

as "dishonorable meanings socially inscribed on arbitrary bodily marks, of 'spoiled

collective identities'"[9] And, appropriately, he recognizes the deeply social aspect of the

problem of racial stigma:

> Now if...we can see in American slavery not merely a legal convention but also ritual and
> custom defining and legitimating an order of racial hierarchy, then we should also be able to
> see that emancipation [as a formal process] could, in itself, never be sufficient to make
> slaves and their progeny into full members of society. The *racial dishonor* of the former
> slaves and their descendants, historically engendered and culturally reinforced, would have
> also to be overcome.[10]

Here Loury seems to indicate that the norms sanctioning the subjugation of a group are

more than a social phenomenon of a time past, but have become a normal part of how

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[9] *Ibid.*, 59.
[10] *Ibid.*, 69-70.

society operates and evaluates persons. However, where is racial stigma located? This

needs to be ascertained before we can assess what justice requires.

It is worth considering the importance of this question. For above we saw that

expectations and beliefs on both sides of the expectation divide were a constitutive part of

the logic of self-confirming stereotypes: Jones was expected to be late; Jones (somehow)

believed[11] living up to that expectation was reasonable. I don't think it pays to think of

these dynamics in terms of cause and effect, i.e. Roberts' expectation was independently

guided by racist norms and, Jones (somehow explicitly and clearly) realizing this, believed

it appropriate to live up to that expectation. During a time when overt racism is not typical

or the norm, there is some concern as to what motivates not only Roberts' belief, but his

unreflective holding of this belief, as well as what motivates Jones' belief that it is

reasonable to meet Roberts' diminished expectations. This is what I consider to be the

relevant domain of explanation for *socially embedded power.*

To best understand what can be gained from the complete theory of power I offer, it

is worth posing two questions to Loury. First, what is the nature of institutional

development such that racial inequality can be considered in significant part an

institutional phenomenon? Second, what explains racial framing for beliefs and action at

the level of individuals? I want to suggest that Loury offers unsatisfactory answers to these

questions. Yet, it is only with reasonable answers to these questions that the appropriate

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[11] Someone might respond here that I am moving too quickly toward making a psychological claim about Jones. After all, rationality might stipulate that the reason Jones meets lowered expectations has to do with incentives, or lack thereof. On this view, rational agents can be disincentivized from performing so long as it is clear that even if they perform adequately, no rewards will be forthcoming. But this response fails to considers the mandates of rationality under the circumstances all the way through to their full implications. If Jones is rational, he understands that, as a black person, not only are his job prospects likely slim, but so is his job security. The same rationality framework can be employed to show that Jones actually has plenty of incentive, namely, the stability of his (and maybe his family's) well-being.

response to racial inequality can come into view. My challenge relates directly to the two-prong theory of power. First, it is clear institutions wield great power in making racial inequality manifest in outcomes. This power is a historical artefact of a long timeline of institutional development under widely accepted racial norms – the relevant domain of explanation of *historically evolved power*. Second, there is the idea, as introduced in the previous chapter, that this power has a significant impact on the internal lives of persons, the domain of concern for *socially embedded power*.

The need to, and value of, making these concerns analytically distinct comes into view when Loury responds to a pivotal hypothetical question: why don't people simply revise erroneous beliefs? He writes, "We can stick with a more or less rational account of learning, and simply observe that people have to take a 'cognitive leap of faith' with respect to how they specify the environment in which their learning takes place."[12] And while it is not necessarily a rational act, it may be reasonably classified as pattern recognition, in which agents intuitively make fits and order facts in a way that makes intuitive sense to them. If so, we may ask, why doesn't it make intuitive sense for Jones to secure his job and economic well-being and get to work on time? After all it only seems rational for Jones to not affirm others' negative opinion of him and to secure the means for the good of his life. Why does he become a partner in achieving equilibrium? I agree with Loury's explanation for why people on the advantaged side of the equation don't bother to revise their beliefs, and we can imagine that it is quite easy to not be a racist while passively accepting the benefits dispensed by institutions operating along racial lines; and, these might provide incentive to develop implicit beliefs about persons of color. While this in itself is troubling,

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[12] *Ibid.*, 44.

we should be deeply concerned over why the disadvantaged become complicit in their situation. It cannot simply be that Jones does what's expected *because it's expected*, because Jones recognizes a pattern and does his part in sustaining the pattern. This seems to go against our common notions of rationality and self-regarding behavior. Although Loury recognizes the possibility and the reality of racial stigma, his account does not adequately reconcile it with a commitment to rationality or the full range of what counts as intuitive sense.

Consider an example offered by Loury. In thinking about why persons don't revise their beliefs, he offers that a cab driver is arguably justified in not picking up a black male since the payoff of $10 seems paltry when compared to the possible outcome of his statistical inference which guides him to believe that a (possible) robbery by the black male will cost him thousands if not his life. The idea here is that a rational cost benefit analysis in light of statistical inference prompts the (likely non-racist) cab driver to deny passage to the black male seeking a ride.

But now consider another example offered by Loury: a police officer. On Loury's view, the cop in his $50,000 cruiser, $100,000 of training and the power of a massive bureaucracy has no excuse in indulging statistical inference (whereas the cab driver did). While the cop may have no excuse, he may have a *reason*, and that reason refers back to the institution of criminal justice and the law as a significant source of racial stigma. The inter-personal practices involved in racial dishonor don't only contribute to stigma but are indicative of an institutional status quo, of the normal way of assessing persons within institutions. To be clear, this is not a claim that criminal justice is racist, but as we'll see in chapter 3, the history of its development and the moment at which its expansion and

punitive nature grew exponentially indicate that it is certainly bound up with America's racist history. That is to say, it would be a mistake to see the development of the contemporary carceral state as a phenomenon distinct from the racial moment in which it was shaped, as well as apart from the historical racial narrative with which it became bound up. Thus, it is a mistake to frame the cop's actions as a decision point distinct from his institutional context, the historical context of that institution, and his institutionally sanctioned reasons for racial beliefs and actions.

Now, I don't think Loury intends to make such a move. However, his drawing parallels between the cab driver's situation and the police officer's situation does flatten a key nuance: institutions do more than make and implement policies – they perpetuate practices and *normalize* stigma in ways that make the cop's behavior most understandable against a framework which gives institutions this role. Consider that the cop's career is itself a social event, one in which during training or morning precinct briefs tacit understandings on racial profiling are shared, fears of patrolling "certain neighborhoods" are transformed to pledges of being tough on "thugs." Moreover, it happens within a framework in which blacks have become the most overrepresented demographic. It is a social event that finds its support in the very working of the bureaucracy that provides the $100,000 training and $50,000 cruiser. For instance, some scholars have raised concerns over the use and apprpriateness of profiling as a crime-fighting technique. Remarking specifically on the practice of profiling for drug-couriers, Scott Johnson writes: "Since the profile is a police-initiated investigative strategy, the racist history of American law enforcement, the discriminatory social construction of the drug problem, and broad police

legitimacy and discretion create a climate fraught with the potential for abuse."[13] What we need to ascertain, and what *historically evolved power* attempts to address is, why institutions that are ostensibly charged with a mission based on universal values and practices are seemingly a crucial locus of racial stigma? This is important and links these concerns to socially evolved power, given that the cop's actions fueled by institutionally supported beliefs has an impact on a person of color, not merely in terms of how the cop *qua* being a cop offends/degrades/ insults/disrespects that person, but how the cop *qua* being an agent and representative of law enforcement and justice disrespects that person. Additionally, what effect does wielding this power have on the cop, and other persons who are not of color who see the legitimate power of the state brought to bear on the racially stigmatized?

In sum, we need to understand how values become embodied in institutions and how that embodiment affects individuals in their own development, belief formation, frame for action and deliberation. Loury's account helps frame individual actions under general assumptions of rational choice and deliberation, thus reintroduces individual actions into the larger phenomenon of racial inequality, which is typically approached at a strictly structural level. However, Loury does not offer an account of how institutions have developed over time against the background of racial history. Without knowing this, it is hard to know where to begin in undermining the structural aspect of racial injustice, which remains a potent determinant of it. Nor does Loury provide resources for understanding phenomena such as self-confirming stereotypes or racial stigma. Without an accounting of

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[13] Scott L Johsnon, "Self-Fulfilling Prophecy of Police Profiles," in *The System in Black and White: Exploring the Connections Between Race, Crime and Justice.* Eds. Michael W. Markowitz and Delores D. Jones-Brown (Westport: Praeger, 2000), 93-4.

the background dynamics we will have insufficient guidance in specifying the content of the

principles of justice. The theory of power I offer is imagined as satisfying these

requirements by directing our attention to the nuances of institutional development as

well as the relationship *between* institutions *and* individuals, a relationship implied in

Loury's account but which requires conceptualization, bringing into view the dynamics of

racial inequality.

§1.2 *METHODOLOGICAL IMPLICATIONS: THE VALUE AND USE OF HISTORY*

Before moving on, it is worth noting that there is one clear implication of the theory

– it will turn out that our concerns over the historical nature of racial inequality are best

(and only met) by complementing the normative claims we want to argue for with

historical investigation and narrative, which, when guided by the model, allow us to better

understand the processes that have allowed institutions to support such frameworks. To

see why this is so, it is worth revisiting Loury on this matter.

Following Orlando Patterson, Loury suggests the chief problem with connecting

history to extant racial inequality is an *epistemological fog* or the difficulty in making causal

statements between events that have taken place in complex increments over an extended

time frame and with particular social issues today, such as the fracturing of the black family

in urban settings.

I think Loury's hesitation to engage history is understandable so long as we remain

committed to a strict social scientific view of causality. Indeed, there is no way to connect

any one case of a broken black family, or a 'welfare mom' to Jim Crow or racially biased

New Deal policies. But as the historical investigation in the next chapter shows, we can

soundly establish a solid enough relationship between certain aspects of history and certain aspects of racial disadvantage to ground strong claims of justice. I think the hesitation stems from the undeniable difficulty with assessing responsibility for racial inequality. However, on the Loury/Patterson view the difficulty is rooted in an epistemological fog when the trouble is really with a *mnemonic* and *interpretive* fog. By this I mean it is not a matter of what we can't know or assess for the purposes of establishing causality, but rather of what society tends to forget or interprets improperly in light of what *we do know and can reasonably assess* for the purposes of offering an explanation and ascertaining responsibility. The substance of this aim, it is important to realize, does not depend on a strict view of causality for it to do the work justice requires.

First, history is revised in a variety of ways: the North was a good place for blacks compared to the South; the Civil War was chiefly about freeing the slaves. These all have importantly false components but are embedded and propagated public memories. Second, even when we acknowledge certain countervailing facts, there are strong currents against revising our collective narratives – and, these currents are only strengthened by a commitment to uncovering causality. For instance, our regnant ethos of personal responsibility provides ample resistance to interpreting the breakdown of the urban black family as anything but a problem created and unsolved by blacks, although historical considerations indicate otherwise. Consider the following. If we wish to know why Rhonda and James are heads of a broken urban black home, we would be hard pressed to make a causal statement that revolved around Jim Crow, that the evolution of a series of accepted practices many decades ago is the cause of Rhonda and James not paying attention to the educational progress of their children. In some instances, it is just going to be the case that

Rhonda and James simply should never have had a family together: neither is responsible or loving or capable of being gainfully employed for reasons that are arguably entirely of their doing. But when we notice a broad subset of the population (black families) is on average disadvantaged we need to seek explanations, lest we subscribe to the idea that urban blacks are naturally irresponsible and unloving. Here, we are significantly more justified in tying such scenarios to the situation of the distressed population, the identifier of which – black – can be traced out over time to complex and broad historical developments.

The implication of the above example, as it has indeed been the case with welfare policy, is that the effort to employing an interpretive approach, as Loury and Patterson favor, is going to be hampered *in the first instance* by a hesitance or failure to lift the mnemonic and interpretive fog. In this way, the interpretive approach, in the absence of a historical narrative tightly bound to a precise analytic framework, runs the risk of always being transactional and reactive and *not* systemic though Loury recognizes the problem of racial inequality as being systemic and *not* discretely transactional. Note, this hampers the ability to explore the full (or at least a wider) range of justice claims that would normally flow from a more comprehensive understanding of racial inequality. Confronting the systemic nature of inequality on its own terms – institutional and internal lives – is seen as a significant analytic purpose of the theory of power. I begin to cash this out in the following chapter by presenting two policy case studies preceded by a historical précis on our institutional development. This is seen as providing a particular informational backdrop in formulating the conception and principles of justice.

What then of the relationship of racial history to racial justice? It is important here to make a distinction not often made, but which the case of racial inequality prompts. There is a difference between a historical injustice and a contemporary injustice with a significant historical dimension. By a historical injustice, I understand, following Duncan Ivison: "harms or wrongs committed by persons, groups, or institutions, against other individuals or groups who are now dead but whose descendants live on today."[14] It seems this immediately captures racial inequality. But there is a significant point to be made without the establishment of which we are unable to fully theorize racial justice. Though Ivison indicates that the descendants of wronged groups and persons live on today, there is no provision for understanding injustice as a temporally and politically dynamic phenomenon. In Ivison's account, in that of Janna Thompson,[15] and even in skeptical accounts like that of Jeremy Waldron,[16] there seems to be the idea of 'an original' injustice, and the impact of this original injustice is one that could plausibly be measured and corrected for, hence Waldron's concerns over tying justice to counterfactuals.

This framework is evidenced by the examples consistently given in these and other works on historical injustice: indigenous land claims, the holocaust, broken treaties. With specific reference to race, the conversation consistently revolves around reparations *for* slavery (some identify Jim Crow as the appropriate starting place), but not around the idea that current racial inequality has a historical *genealogy*, of which slavery is only a part, albeit a significant part. When we begin with this observation, we immediately begin to see

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[14] Duncan Ivison, "Historical Injustice" *The Oxford Handbook of Political Theory*. Eds. John Dryzek, Bonnie Honig, and Anne Phillips (New York,: Oxford University Press, 2006), 509
[15] Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice*. (Malden: Blackwell Publishers, 2002).
[16] Jeremy Waldon, "Superseding Historical Injustice," *Ethics* 103 no. 1 (1992); 4-28.

the problem: even if we give slavery the status of The Original Injustice, nothing in that designation is capable of exclusively grounding our understanding of the changing role of race and values formed around it and how those values shaped politics and institutions over time, across generations, in the context of political developments and modified interests, or against the backdrop of various struggles. Indeed, the history of slavery as a legally sanctioned construct cannot *alone* gain us much purchase on the presence of persistent racial inequality in the face of legally sanctioned formal equality. If this is right, reparations (in whatever form) are a check written in response to a puzzle; one that will remain so long after the check is cashed, hence injustice is likely to persist (unless we believe that racial inequality can be overcome by economics, a thesis which I have already rejected). We need to solve the puzzle and work on painting a new image of American society. These considerations highlight the tight, substantive relationship between method and prescription.

§2. Historically Evolved Power

§2.1 *Historically evolved power* (HEP) is one component of the theory of power and is imagined as having some explanatory power just in case institutional practices result in differential outcomes that express continuity with historically significant prior patterns of social asymmetries. In what follows I work out the mechanics of this component of the theory. I divide the task into an explication of its constitutive considerations. I specify the idea of institutions, then move on to discuss the relationship between institutions' temporal nature and the prevalent social norms they come to embody.

§2.2 INSTITUTIONS

To this point, the terms, 'institutions' and 'structure' have been used rather liberally, under the assumption that they evoke sufficient intuitive understanding to make ideas such as 'institutional design' or 'structural racism' coherent. However, given the central role of institutions and structure in both the analysis of and prescription for racial inequality, it is worth making the term 'institution' more precise. It seems the best way to proceed is to remain in dialogue with a body of thought with which we have already established some sympathy.

In chapter 1 we settled on accepting, for the purposes of normative theory, a focus on structure and institutions given their ability to effect social and political change, their propensity to embody prevalent norms and make them manifest over time, and their likely impact on the internal lives of persons. In that discussion, we found merit in Rawls' idea of the basic structure: "the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time."[17] Importantly, "the basic structure is the all-inclusive system that determines background justice."[18] We observed that this definition treats the basic structure holistically and in a somewhat explanatory manner – there is something about *how* institutions cohere and act *in combination* with the collective action of persons, with regard to the relevant distributions, that deserves to be the primary subject of justice. To get a grasp on why this is important, let's take a closer look at the idea of institutions.

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[17] John Rawls, *Justice As Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Belknap Press, 2001), 10.
[18] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 271.

By major social institutions, which are constitutive of the basic structure, Rawls understands:

> the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions.[19]

We have here three categories of fundamental socio-political phenomena. First, once we subsume protection of freedom of thought and conscience into the political constitution, we have institutions which ground the moral mandates that shape political society's appropriate disposition toward its members. Let's call these *politico-moral institutions*. Second, institutions such as competitive markets and private property, emblematic of the principal economic arrangements, we might think of as *conduit institutions* – means of production and private property are a conduit for the transfer and creation of wealth and value which variously benefit agents engaged in them (or future generations). Third, an institution such as the monogamous family is Rawls' concession to the argument that the public sphere substantively impacts the private sphere. Following Okin's concerns,[20] the family is considered a major social institution (though Okin doesn't make the case in exactly this way) because it itself is impacted by conduit institutions (such that labor markets favor women as child bearers and men as executives) which structure opportunities for women within their own homes. Let's call these institutions *externally determined private sphere institutions*. The basic structure, then, refers to the way politico-moral, conduit, and externally determined private sphere institutions cohere in a well-

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[19] John Rawls, *A Theory of Justice,* Revised ed. (Cambridge, MA: Belknap Press, 1999), 6.
[20] See Susan Moller Okin, *Justice, Gender and the Family* (New York,: Basic Book, 1989).

ordered society. We recall that the problem of racial inequality is that these consistently fail

to cohere in the right way when it comes to the lives of persons of color.

Each of the categories seems to specify a distinct sector of socio-political life, but

their constituent elements – institutions – share a number of key attributes that signify

them as such. First, institutions are *informed by widely accepted norms*. Private property is a

hallmark of western modernity – no contemporary liberal society fails to recognize the

sanctity of private ownership. Similarly, the family, as a perceived locus of social stability

and a unit upon which recognition conveys certain benefits – consider the importance

homosexuals attach to legally recognized marriage, which itself confers upon it social

legitimacy – has long been a norm of social organization, with the monogamous

heterosexual family as the dominant form. Thus, institutions are founded on commonly

accepted ideas about what constitutes acceptable social, political, and economic practices.

Second, institutions *structure opportunities*. Liberty of conscience allows the fullest

possible range of political engagement. Liberal democracies have a long tradition of being

home not only to mainstream media outlets but also to radical political expression that

tacks more leftward or rightward than the political mainstream. Competitive markets are

an ideal embodiment of structuring opportunity: good ideas or good skills combined with

effort and savvy ideally grant one the opportunity to gain profit as compared to aristocratic

social organization wherein social standing counts more than effort or skill.[21] The family,

on Okin's view, is crucial in shaping what women can or can't do with equal facility as men

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[21] We will shelve for now the extent to which that is actually the case. Indeed, a problem with racial justice is that race seems to override the ideal of fair competition.

since family life has typically meant a division of labor such that women bear and rear children while men provide material stability and comfort.

Third, institutions *constrain outcomes*. Legal protection of conscience sets limits on what other agents in society can do. For example, I might be a radical leftist who believes confiscation of eighty percent of the top one percent of the population's wealth is what "real" democracy requires. I can be publicly debated or even discredited but my character cannot be maligned – this entitles me to sue for libel. Private property in the means of production signifies that one may, for instance, agree to be employed by another in her pursuit of producing saleable goods, but it also means that one may not unilaterally decide that one deserves a share of the profits, absconding with goods at the end of the work day. Conversely, private property, widely taken in its Lockean sense, does provide constraints on the other side of the equation – there is a limit to which one may be disproportionately compensated before it qualifies as exploitation resulting in penalties imposed by the state.

Last, institutions are *large-scale ordering principles* – they are more concrete than ideals but more nebulous than organizations. Let's consider two things that seem to bookend the institution of competitive markets. Free trade is an ideal. It calls for minimum or no restrictions on the flow of goods in exchange for payments over borders or between various agents. On the other side is the World Trade Organization. It is a body that has various states as members that convene to hammer out trade agreements and set standards for internationally accepted trade practices. So, on the one hand is an ideal; on the other, is an organization. In between, competitive markets give shape to and make more specific certain aspects of the ideal - goods should be freely traded in such a way that competetitors who play by the rules may compete for a share of the wealth pie – while they

sit above organizations as something to which organizations aspire to remain true to. We can repeat this exercise with liberty of conscience. On the one side there is the ideal of freedom, and on the other is the Supreme Court. Protection of liberty of conscience gives content to the amorphous and contentious ideal of freedom but is open to constrained interpretation of the judiciary to maintain democracy's integrity. It seems, then, institutions translate ideals into general mandates that give adequate guidance to organizations relevant to a particular category of institutions while simultaneously granting them flexibility to adopt these principles in changing times.

We can now provide a working definition. Institutions are: *determinative large scale ordering principles, variously embodied in organizations, that are informed by widely accepted norms which structure opportunities for and impose reasonable constraints over those parties operating under the purview of the relevant institutions.* We can name other institutions (though not exhaustively done here) based on this definition to broaden our view as to what's at stake: (fair) labor markets, education, criminal justice, the welfare state, and free media are some.[22] The basic structure denotes how institutions cohere resulting in a well-ordered society which abides by the principles of justice. A useful way of thinking about the basic structure is how a constellation of organizational practices, across the various categories of institutions, hang together in a way that allows us to assess the underlying justness of a given society.

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[22]It might be said that this falls under protecting liberty of conscience. I believe it does, but I think it's helpful, for reasons that will be seen during the discussion of welfare in the next chapter, to distinguish between liberty of conscience expressed by an individual and that expressed by organized outlets.

§2.3 TEMPORALITY AND NORMS

Two key facets of any society are its temporal nature – its identifiable continuous existence over time – as well as its moral nature – the standards set for its members to follow in how other members are treated. Institutions play a key role in this dynamic given their power to lead change, embody the status quo, and enforce order in the relevant ways for the relevant spheres. What gives a society its distinctive (moral) nature are the way time, norms, and institutions interact. Therefore, a crucial way of understanding phenomena such as systemic inequality of any sort is to account for institutions' role in it. Our particular concern here is how institutions have come to adapt to new regimes of norms over time while expressing continuity with asymmetries defined by past regimes of subordination. For example, the "triumph" of Civil Rights did represent a sea change from prior institutional practices with regard to sanctioned racial subordination; however, various forms of racial inequality not only persist, but in some cases have widened. Empirical evidence allows us to deny overt, explicitly racist practices; and, we also deny racial inferiority. We then need to ask: how to account for this seeming paradox?

Historically evolved power is essentially a theory of how institutions have been able to change over time while carrying the past with them and making that past manifest in increasingly nuanced and subtle ways in the present. Such an undertaking is a significant task that relies upon accounting for many aspects of institutional development. Therefore, any attempt will necessarily be best served by a synthetic approach. Below I review the core arguments of two conceptual frameworks – Jim Sidanius and Felicia Pratto's social dominance theory and Paul Pierson's account of path dependence. Each taken separately

would grant us some purchase on the issue, but together, they are more than the sum of the parts.

§2.3.1. *Social Dominance Theory (SDT)*. Hierarchy, while often understood pejoratively, is not intrinsically offensive. At base, it simply indicates an order of accountability in the relations of agents to each other. It is a reliable way of organizing persons to achieve ends that everyone can benefit from. This is the underlying principle of corporations, for example. But let's now imagine a scenario where I am not only accountable to my boss, but my being is defined on his terms; my value to the corporation is no longer measured by my role in it but by whether arbitrarily determined norms now determine my worth, not only as an employee but as a person. Let us further imagine that my boss is one of a select few who articulate these norms, and I am among many subject to them. What we have here is a scenario in which those in a position of power, by way of controlling a set of resources and influence, extend their reach of influence into our lives and ways of being that violate our personhood. This is dominance. What SDT seeks to explain is how hierarchies, which are not intrinsically offensive, become relations of subordination, which are.

Three components of SDT are particularly relevant to our concerns. First, "societies tend to be structured as systems of *group-based social hierarchies*."[23] While this is a rather uncontroversial premise, it is of some import. Societies represent a gathering of persons who must ultimately share various resources (wealth, human capital, natural resources) in an orderly way so that a measure of stability is achieved and survival is ensured. But societies are never completely homogeneous. Groups often come to be divided by what the

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[23] Jim Sidanius and Felicia Pratto, *Social Dominance: An Intergroup Theory of Social Hierarchy and Oppression* (New York: Cambridge University Press, 1999), 31.

authors refer to as an arbitrary-set system wherein groups are divided by salient, socially constructed markers such as intelligence, family lineage, or skin color.[24] Concerns arise, then, when a stratum of society, as defined by some marker, comes to occupy a higher position of authority or power.

We might wonder: this sounds rather simple. Why don't more groups occupy ascendant positions or stop those seeking to subordinate them? Sidanius and Pratto offer a two-part explanation for this. We are reminded of Orwell's anthropomorphized farm – one group seems able to set a justificatory narrative as the shared common narrative – all animals are equal but some are more equal than others. The second component, then, is the authors' idea of legitimizing myths, which "consist of attitudes, values, beliefs, stereotypes, and ideologies that provide moral and intellectual justification for the social practices that distribute social value within the social system."[25] Legitimizing myths are important because they are the means by which ascendant groups assign to themselves positive social value while framing others in ways that legitimize lower standing. Without legitimizing myths, hierarchy is merely stratification. With legitimizing myths, hierarchy becomes grounded in superiority and inferiority and formal distinctions become laden with norms.

What allows dominant groups to acquire and maintain their position remains? Sidanius and Pratto offer a rather fascinating observation: hunter-gatherer societies, which gather resources and produce mainly for subsistence, are rarely marked by such systems of stratification. So, third, societies with such forms of stratification generally tend to be those that produce an economic surplus. Post-agricultural societies are marked by the ability to produce more than needed for subsistence; surplus is traded or sold for profit. Let's

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[24] *Ibid.*, 33.
[25] *Ibid.*, 45.

consider this a bit more closely. Among the defining characteristics of modern societies that produce surpluses are technological development, education, infrastructure, political stability. In brief, such societies are *institution rich*. Importantly, it is when ascendant groups have control or great influence over surplus that they are able to be dominant; it is also *because* they have outweighed influence over surplus that they are dominant. I think that it would be mistake to limit the correlation of domination to that of economic surplus. If it is the case that surpluses are present, in part because of the preponderance of major institutions, then it should be the case that ascendant groups not only have disproportionate control of surplus – they must have disproportionate control over how that society's institutions function.

On the basis of the above considerations, we can state the first principle of historically evolved power: *a society marked by morally problematic relations of power is also marked by norm justified ascendant groups with a preponderance of control over society's major institutions.*

§2.3.2. *Path Dependence.* Institutions wield a great deal of influence over the shape of society and its members. They hold an important place in social analysis because institutions are neither monolithic nor benign. They are in constant dialogue with society; they respond to significant developments such as the move from relatively unregulated markets to the welfare state, as well as set out a select number of tracks for society's development – and this development is temporally extended. Institutions become objects of concern when our limited selection of tracks is in part determined by institutions'

limited reflexivity. In other words, they themselves tend to have limited options for progress – they are path dependent. The concern I wish to highlight is, given institutions' power to lead society in various ways, an identifiable tendency to burden progress with remnants of past regimes of unfairness or subordination is problematic and needs to fall within the purview of justice.

Path dependence argues that an institution's future is significantly guided by certain developments in its past. Moreover this determination is made likely by increasing returns or positive feedback – increased benefits with an inverse correlative relationship to the cost of deviance from a set course. Path dependence is defined by four points of interest.

First, the idea positive of feedback – discussed above – is marked by six characteristics:[26] the future importance of early events are unpredictable, as a process becomes fixed it also becomes inflexible, accidental events are not assignable to the category of 'noise' – they may be just as important for future developments, fixed processes may not be efficient thus we cannot analyze institutions with sole reference to ends-maximizing endeavors. Two additional characteristics of positive feedback make path dependence particularly important for political concerns. Unlike free market competition, the political sphere is marked by coercive authority. The fifth characteristic, then, is that later outcomes may be the result of actions of actors in positions of authority. This directs us to be clear on what interests these actors represent for, on the view of path dependency, we are vulnerable to particular interests (informed by beliefs, norms, etc.) becoming embedded within institutional processes and their development. Last, wherein markets are largely determined by the desire for profit and innovation, politics are often marked by

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[26] Paul Pierson, "Not Just What, but When: Timing and Sequence in Political Processes," *Studies in American Political Development*, no 14 (2000): 76-7.

standards of appropriateness. This provides a point of entry for asymmetrically formulated norms to insinuate themselves into political processes intended to regulate all of society.

Second, new social initiatives play an important role for path dependence, simultaneously because of the difficulty in realizing them and the ease with which sub-optimal or simply wrong initiatives can be settled upon. Social initiatives entail large set-up costs. One must gather influence and backing, convince dissenters, and overcome competing entrenched interests. Once in place, they provide learning effects such that these initiatives become easier to use thus require more effort to displace. Social initiatives are marked by coordination effects: "when the benefits an individual receives from a particular activity increase as others adopt the same option."[27] Last, agents develop adaptive expectations such that initiatives perceived as not gaining broad acceptance will lose out to initiatives that seem to be winners.[28] New social initiatives are hard to institute, but once in place or favorably positioned, they quickly gain significant advantages and influence institutional processes.

We earlier followed Rawls in defining the basic structure as in large part determined by how major institutions fit together. This has a direct correlate in path dependency since "Institutional arrangements induce complementary organizational forms, which in turn may generate new complementary institutions" – the third attribute of path dependence.[29]

The last attribute is quite simple: institutions are designed for stability, thus are *intended* to resist change. Institutions play a significant role in granting society its identity and character over time. If the constitution, for example, could be amended by simple

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[27] *Ibid.*

[28] Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *The American Political Science Review* 94, no 2 (2000): 254.

[29] *Ibid.*, 255.

majority votes in the senate, society would lack long-term precedents for contentious issues. Another way of stating this is that our institutions would be at risk of too accurately reflecting the times. Maybe more problematically, the times might in turn reflect swift and possibly destabilizing shifts in patterns of political power: a decade of a liberal congress would be marked by abortion rights and increased welfare benefits, while possibly being followed by a conservative congress that reverses these developments. It's easy, then, to imagine the great impact such initiatives and their reversals would have on the stability of markets, a coherent framework of rights, and so on. Ironically, resistance to change poses the opposite danger – a robust and resilient institutional status quo that embodies certain kinds of unfairnesses or social or political asymmetries.

Path dependence is a way of specifying institutional continuity as well as arguing that continuity is more normal than disruption. The second principle of HEP, then: *once institutions embody certain practices, those practices are likely to either set limits on future developments or set the terms of those developments; this is a central rather than epiphenomenal characteristic of institutions.*

§2.4 HISTORICALLY EVOLVED POWER RESTATED

To recapitulate, we have two principles of *historically evolved power*:

1. society marked by morally problematic relations of power are also marked by norm justified ascendant groups with a preponderance of control over society's major institutions.
2. once institutions embody certain practices, those practices are likely to either set limits on future developments or set the terms of those developments; this is a central rather than epiphenomenal characteristic of institutions.

Thus:

Historically evolved power is the phenomenon of historical normatively grounded group asymmetries finding their embodiment in path dependent institutions resulting in robust forms of contemporary inequality.

It bears mentioning that contemporary inequality is often perceived as a distinct matter from historical relations of subordination. Note that while the above offers a generalizable model of power for any instance of patterned inequalities robust across a number of social, political, and economical spheres, HEP explains racial inequality because of that phenomenon's historical nature, the nature of racial asymmetries in political society, the temporal nature of institutional development, and the continued presence of systemic racial inequality in an era of formal equality.

Additionally, HEP, combined with the historical case studies, grounds the moral notion of complicity. As we observed in the previous chapter, Rawls focuses on the basic structure as a preemptive measure. However, in the realm of non-ideal theory, the ability to respond to injustices depends in part on identifying who is responsible for the injustice, which in turn will very likely inform who bears responsibility for making justice manifest. (It is a happy coincidence that the entities responsible for making justice manifest happen to be best positioned to actually do so.) In explaining the institutional aspect of the development and persistence of racial inequality HEP also settles the question of complicity – if it is the case that our basic structure can be implicated in the history of racial inequality, and it is the case that contemporary racial inequality takes many of its cues from this history and continues to be embedded in institutions, then the moral duties of institutions (and their respective organizations) is settled by their complicity. In the case of racial justice the fact of historical participation in racial inequality – complicity – morally

motivates an argument for the institutional principles of racial justice. HEP provides the argumentative and analytic framework for assessing complicity, hence responsibility, while the case studies to follow affirm the theoretical soundness of HEP while at the same time grounding the moral complicity of institutions and suggesting the proper content of the principles.

§3. Socially Embedded Power

§3.1 Following on Rawls' historical contingency premise (see Ch. 1), we above established the importance of focusing on the role institutions play with respect to the effects of embodying norms at one point have across time, hindering their ability to promote a more just state of affairs. We will recall that a follow-on concern regarding the power of institutions was their ability to impact persons beyond measurable material outcomes. The socio-psychological premise hinged on the idea that institutions can profoundly affect the shape of an agent' aims and desires in pursuing the good of her life. Hence the second component of the model: power is *socially embedded* just in case systemic inequality is also indicative of the mutual construction of disadvantage between institutions and the internal lives of persons.

As in the above, I want to make this idea more systematic for the purposes of the theory of justice. I will below lay out two considerations of *socially embedded power* (SEP). First, I provide a schematic of Hirschmann's framework for understanding gender

subordination.[30] I go on to highlight the internal lives aspect of it, which, once addressed,

allows the social constructivist argument to serve as an analytic tool more faithful to its

constitutive concerns. Second, I revisit social dominance theory to take Hirschmann's

claims one step further. Specifically, I outline some mechanisms that link group based

dominance to social embededness of power relations by exploring how persons positioned

vis-à-vis their group affiliation are internally impacted by those power relations. Moreover,

this internalization itself reflects respective social position. The general phenomenon of

SEP contributes significantly in the manifestation of systemic inequality.

These arguments provide the grounds for claims made in chapter 5 that SEP's

substantive contribution to theorizing justice is that it grounds the social bases of self-

respect as the appropriate primary aim of a theory of justice hence giving the relevant

justice claims content. Socially embedded power states that power affects a wide range of

people under its ambit – not only persons of color. In this sense, provision of the social

bases is seen as important for realigning agents' valuation of persons of color while receipt

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[30] Some may think that Catharine Mackinnon's work is the more appropriate resource here. Mackinnon gave serious thought to this class of issues and did so much earlier than Hirschmann. Nonetheless, I reject the use of Mackinnon for a few important reasons. Mackinnon's foundational claim is that male dominated epistemological constructions produce a male oriented phenomenology which operates to structure women's ontology – they are made by male power. All these are remarkably thick claims which are unnecessarily constraining. Consistent with Mackiinnon's view, there is no such thing as a woman's independent choice to act in pornography – such a decision is forced by male power, and the woman in question just doesn't know it yet – she requires consciousness raising. Such a claim seems to deny the fact that women can come to their own reckoning with male power in their own way, thus any normative prescription following from Mackinnon's view will necessarily be quite overbearing as to what it will mean to lead a good life. Second, Mackinnon often seems to collapse the distinction between male power and the power of men. By this, I mean to say that Mackinnon seems to hold that men cannot themselves be victim to patterns of patriarchal hierarchy, such that they hold these views by default, but would disavow them if confronted with them. There is an obvious parallel here with those who hold racial bias since they've not been forced to reconsider their views because of their racial location in society, what is typically termed 'white privilege.' Because Hirschmann allows psychology into her account, we can rescue agency for both the advantaged and disadvantaged. Alternately, this allows us to pay some attention to the way institutions themselves come to be an important location of these power dynamics. In essence, the philosophical issues in Mackinnon's own account place obstacles in our way, which would require us to engage in a fair bit of amendment or reconstruction. Hirschmann's account, on the other hand, holds the same concerns constant but offers more nuance, thus is ready-to-hand and more appropriate. For example, see Catharine Mackinnon, *Toward A Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), especially chapter 6; "Points Against Postmodernism," *Chicago-Kent Law Review* 75 (1999-2000); 687-712.

of the social basis is seen as realigning the disposition persons of color have toward

themselves.

§3.2 THE INTERNAL LIVES ARGUMENT

In *The Subject of Liberty*,[31] Nancy Hirschmann mobilizes gender inequality and

subordination to revision the debate over the nature and proper conception of liberty. On

Hirschmann's view, the contemporary analytic debate begun by Isaiah Berlin's *Two*

Concepts of Liberty has failed to adequately account for issues surrounding gender. More to

the point, Hirschmann charges the debate with conceiving a masculinist freedom that

prioritizes individualism and rationality at the expense of contextualizing the personal

process of forming preferences.[32] Hirschmann's aim is not to discard the idea of liberty.

Indeed, she holds that, at base, the idea of negative liberty is appropriate for feminism.

Rather, liberty can best (and only) achieve its substantive aims for feminism by being

sensitive to the social construction[33] of the subject of liberty; that is to say, political

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[31] Nancy Hirschmann, *The Subject of Liberty: Toward A Feminist Theory of Freedom* (Princeton: Princeton University Press, 2003)

[32] Hirschmann's own preferred vocabulary is 'desire' and not 'preference.' However, I substitute 'preference' because I believe that the idea of preferences more adequately captures the notion of internal deliberation which is what concerns Hirschmann at base. Desire, on the other hand, too easily evokes a picture of persons propelled by hedonistically motivated compulsions. This in no way is what Hirschmann intends by desires. I believe she chooses desire precisely because the idea of preference itself, with the role it gives reflection and deliberation over intuition and feelings, may seem masculinist. I believe this is only partially true since there is no logical inconsistency with preferences also reflecting desires. In this sense, I believe no harm is done to Hirschmann's framework, and indeed, it may turn out that the idea of preferences is more conducive to her analytic needs.

[33] I take Hirschmann's conception of social construction as thinner than the usual postmodernist conception of it, but thicker than socialization. Because her internal lives view admits of psychology, I take it that she wants to preserve the possibility of agency, hence reject the thesis that social construction 'goes all the way down.' Alternately, socialization doesn't seem strong enough, for that implies we learn behaviors and we can simply unlearn them. While this may be true on a topical level, I take it that an important aspect of these dynamics which concern Hirschmann (and us) is that they do more than teach, but also shape us and our relationship with the world, circumstances, and others. Nonetheless, an aspect of our humanity retains the power of self-emancipation. The goal then is to identify this aspect and provide the necessary resources – the task of a normative theory.

thinkers need to realize that persons are not given prior to the structures which guarantee liberty – persons are constructed by their surrounding circumstances, which themselves reflect certain kinds of power dynamics. But since for Hirschmann liberty is a means for women to more freely articulate their preferences, her project is best seen as emancipatory in a political sense rather than consciousness-raising in an epistemological sense. This is important for this allows Hirschmann to rescue agency from the postmodernist limbo of social construction, thereby allowing entry to the idea that persons can come to the good of their lives in their own way and that this can be represented by a wide range of choices. What's ultimately important is that persons be (en)able(d) to achieve this.

Hirschmann's arguments are theoretically valuable, in part, because they are relevant for theorizing any group's experience of historically extended systematic subordination. For the purposes of racial inequality, they help elucidate the relationship of power dynamics to persons' internal lives

Hirschmann writes: "The idea of social construction is that human beings and their world are in no sense given or natural but the product of historical configurations or relationships."[34] A negative and positive thesis are embedded in this statement. Negatively, Hirschmann, along with many postmodernists, is denying both the world and the subjects inhabited by it any fundamental or essential nature: the world *is* what we make it; we *are* what the world makes of us. But note that Hirschmann actually has made a claim about the fundamental nature of the world. Social constructivism puts forth the powerful intuition that persons cannot coherently be seen as completely distinct from their experiences – we are all significantly shaped by what is around us temporally and contextually. Alternately,

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[34] *Ibid.*, 10.

Hirschmann opens up the way for a kind of dialectic that gives her social constructionist account sociological dynamism, for male power, for example, is the outcome of various processes, and not merely a structurally given phenomenon. This grounds the concern, then, that we need to be aware of the nature of the forces which construct us as well as the way those forces allow us to build an understanding of them.

This last point is the positive thesis: social construction ought to keep us alert for and sensitive to asymmetrically organized human relations. This particular point should resonate given our discussion of path dependence – specifically, the idea that institutions can adapt while conserving certain engrained practices and norms. Recalling the historical contingency premise, we are motivated to specify justice claims when stability reflects unjustifiable inequality or subordination that threatens persons' ability to be authors of the their lives. Hirschmann's work is unique in that a crucial aspect of her social constructivism is the relationship between social construction and our internal lives – it is ultimately the ackowledgment of an internal life that sets Hirschmann apart from many postmodernist theorists and allows her to rescue agency.

Social construction does more than prompt us to consider women more fit to be nurses and men as fit to be surgeons. Commonly held gendered views suggest that surgery requires objectivity and distance from emotions inflicted by sudden developments on the operating table, the kind of developments women are seen as not being able to stifle an emotional response against. Meanwhile, (women) nurses stay by our side in a supportive fashion, providing basic medical attention while attending to our more personal needs, maybe consoling our significant others as well.

Accordingly, those circumstances set the tone for women's internal lives –

preferences and self-conceptions struggle to form independent of these circumstances;

rather, they become entangled with these circumstances. This is a dynamic we will recall

from our example of Rogers' reaction to the city's warning as compared to what we

normally consider to be appropriate. It's important to anticipate what we migh call the

'sour grapes'[35] objection: that all this means is that society favors certain outcomes and

persons adjust their deliberations accordingly – the psychological element here is

extravagant. This objection only stands, however, if we deny persons not only their

affective qualities but the way those qualities merge with one's perception of prevalent

norms. This is to say that we would have to deny, at least in part, that a significant aspect of

what constitutes maximizing one's gain is feeling accepted and as if one is doing what one

ought to be doing. When society so firmly sets the standards that one's personal ethic

mostly reflects society's normative wishes – when internal considerations reflect external

structures by default – we have moved beyond pure rational choice considerations. Thus,

"social construction affects two key aspects of freedom: choice and subjectivity."[36] When

Hirschmann argues that

> This construction of social behaviors and rules comes to constitute not only what women
> are allowed to do, however, but also what they are allowed to *be*: how women are able to
> think and conceive of themselves, what they can and should desire, what their preferences
> are, their epistemology and language[][37]

she is arguing that women's social circumstances place their full agency under threat.

Hirschmann's framework is powerful for theorizing gender subordination. It

provides resources for identifying when society engages in an unbalanced dialogue with

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[35] See Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (New York: Cambridge University Press, 1983).
[36] *Ibid.*, 93.
[37] *Ibid.*, 11.

our internal selves. This prompts us to place great value on finding ways to disrupt this dialogue and make persons more equal partners in authoring their lives. It becomes difficult to develop our preferences and envision the good of our lives outside the normative framework set by social construction.

But Hirschmann goes on to offer another argument that allows us to go beyond an A vs. B, 'us versus them' framing of injustice. Consider the following statement: "But the idea of social construction is aimed at understanding much less overt forms of social production; it is something that happens to everyone, men as well as women, rich as well as poor, at all times and in multiple ways."[38] So, the trouble runs deeper. Social construction goes beyond setting the parameters for persons' appropriate roles and self-understanding, but motivates normative beliefs *about* them. Indeed, the concern over the role of nurse as best served by women is the somewhat socially prevalent belief that nurses *ought* to be women, that nursing is a professional role properly identified with a gender marker. When this kind of belief becomes a standard for judgment and action, social constructivism impacts internal lives, for we will *judge* persons, consciously or unconsciously, by the extent to which they conform to these constructed normative standards. Here, Hirschmann is making the claim that regimes of power, once they are deeply embedded in society, are rarely about one's power over another. Rather, the dynamics produced by these regimes are normalized and evade precise location in one or many agents' intentionality or in specifically designed institutional processes which result in these inequalities.

So, if the issue of gender does not reduce to A vs. B, men vs. women dynamics, how should we think of men's 'part in gender inequality? Consider: the cause of women's rights

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[38] *Ibid.*, 12.

is neither new nor minimal. It has been voiced for some time and has resulted in changes such as gaining suffrage and increased visibility in formerly male bastions of social structures such as finance, science, and diplomacy. However, we have two problems. Women are still justifiably aggrieved over disparities in pay, the shape of discourse over reproductive rights, the shape of the labor market, which continues to favor men as income earners and women as child rearers. Simultaneously, while some men still hold conservative views on "the rightful place of women," it is fair to say that society has generally ceased to overtly subscribe to such demeaning principles. How then to explain the persistence of these outcomes?

As seen in the above discussion of historically evolved power, a significant part of the explanation has to do with institutional practices embodying certain beliefs and values and normalizing them over time; and we recall that institutions are resistant to change. On Hirschmann's view, the other half of the problem is that "male power takes on a character that is independent of individual male action and yet at the same time founds and enables men's specific acts and patterns of behavior,"[39] such that "men, too, suffer from patriarchy, and...have nothing to lose but their chains in giving it up."[40] On this view, when I, in today's society, encourage my daughter to become a nurse, or put in for a transfer at my firm such that moving my family increases my future professional options but puts my wife's career at risk without consulting her first, it might be the case that I am simply lazy with my considerations or selfish in my pursuits. But, it is more likely that I am working from assumptions that not only escape my critical reflection but are made precisely because they *normally fall outside the bounds of necessitating critical reflection* – I hold these beliefs

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[39] *Ibid.*, 89.
[40] *Ibid.*, 84.

because *no internal ethical alarms go off when I initially express them.* In my other duties as father and husband I feed the baby, help clean the house, make dinner as many nights a week as my wife. In brief, I'm no misogynist – I wholeheartedly recognize that none of the above tasks ought to solely fall within the domain of my wife's duties. Nonetheless, I looked at my daughter and saw a nurse first and a neuro-surgeon second; considered my career and saw my wife as a unit of support rather than a partner.

The above suggests the following: a critical component of concerns over long running patterns of social asymmetry are in part due to, as well as a function of, externally normalized frameworks becoming unexamined internal ethical frameworks. There is evidence of power affecting my internal life when prevalent social beliefs become the standard for my grounds for action, since it is power that sets the stage for external factors which act upon all of us – this is a theme picked up by Sidanius and Pratto below. Thus, the first principle of SEP: *social asymmetries that obtain in the absence of overt and explicit subordination threaten to become manifest by the mutual construction of disadvantage in the internal lives of persons.*

§3.3 INTERNALITY AND POSITIONALITY

Above, Hirschmann provided a framework for explaining how power dynamics resulting in subordination can be hard to locate and combat so long as we conceive them as exclusively external to our being. We came to see that such dynamics not only impact the subordinated but also those who gain something from the prevalence of these dynamics; moreover, this latter groups does not necessarily actively participate in subordination. Importantly, this leads to two kinds of disadvantage.

The first is moral disadvantage: when one is implicated in or affected by subordinating power dynamics, one is at a moral disadvantage to the extent that one does not or is not readily able to challenge the affect these dynamics have on one's ability to relate to others in a morally appropriate manner. Notice here, I use 'disadvantage' – it is difficult to do one's duty without the right tools and opportunity, therefore though one may be assignable certain moral obligations or rightly seen as under a certain moral authority, one is morally disadvantaged just in case one lacks the internal opportunity and resources to abide by those obligations or heed that authority. When one is morally disadvantaged, it is every relevant agent's duty to address the problem including the disadvantaged agent once she knows where she stands. I would like to shelve this for a moment only to come back to it after some further considerations.

The second form of disadvantage is ethical disadvantage. On this view, while all those under the ambit of power are morally disadvantaged, those who are subordinately positioned vis-à-vis another group are additionally disadvantaged. Their subordination has impacted thier internal lives in such a way that they may be hampered in appropriately conceiving and fulfilling the good of their own lives. The crucial consideration here is that while those better positioned might be morally disadvantaged, they nonetheless are able to make a go of their lives. Ironically, the baggage of moral disadvantage they carry is made lighter precisely because their moral disadvantage reflects the shape of injustice around them – *there is sympathy between their moral shortcomings and society's own.* While Hirschmann is aware of this kind of consideration, it is worth turning back to social dominance theory to give these considerations a bit more content.

In the course of specifying HEP, we encountered Sidanius and Pratto's idea of legitimizing myths: social narratives that ground differential group positioning in society. There might be a narrative that one group is naturally industrious while the other is lazy, thus, access and mobilization of resources is made a priority for the favorably positioned group. This in turn perpetuates their access to society's goods and resources and contributes to making the myth a kind of verifiable truth. But, while I argued above that many of those under the ambit of certain power dynamics are morally disadvantaged, that is not to say that those better positioned don't benefit. By benefit, I do not mean to refer to advantageous access to resources or opportunities, though surely this will be the case and is a benefit. Rather, I mean to indicate that those better positioned, despite their moral disadvantage, benefit from internalized affects of their social standing.

According to Sidanius and Pratto, groups and group members over time develop what they term social dominance orientation: "a very general individual differences orientation expressing the value that people place on nonegalitarian and hierarchically structured relationships among social groups."[41] What SDO predicts, as was seen in our engagement with Hochschild's work on race and differential commitment to equality in the previous chapter, is that persons variously positioned within a society by dint of a given marker have different levels of acceptance of inequality and social asymmetry. Unsurprisingly, the authors are able to produce copious amounts of empirical verification of the hypotheses that flow from SDO: namely that those advantageously positioned score higher on SDO scales.

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[41] Sidanius and Pratto, *Social Dominance*, 64.

The implications for the internal lives of persons are particularly important for us. Sidanius and Pratto's analysis confirms that while those better positioned are morally disadvantaged, they benefit in a very particular way – they have higher levels of self-esteem and approve of inequality precisely because it enhances their self-esteem. This is a rather intuitive conclusion and I believe requires little more comment save to say that the psychic benefit of self-esteem is a crucial resource for being the author of one's life, such as for the father who feels unencumbered in relocating his career while assuming his wife and daughter will simply come along. Likewise, it is unsurprising that those subordinately positioned score lower on SDO scales. However, we need to be concerned with a phenomenon that preoccupies Hirschmann (such as when she tries to untangle the problem of battered wives who stay with their battering husbands) which Sidanus and Pratto measure. The phenomenon, which I shall give the unwieldy but accurately descriptive term *self-nonregarding disposition*, can be divided into two parts.

The first part is what the authors label asymmetrical ingroup bias, which they illustrate using Clark and Clark's doll experiment in the 1940's – a study that demonstrated black girls' preference for white dolls. In brief, this kind of bias prompts subordinates to have more favorable feelings about those socially positioned above them than themselves and persons in their own group.[42] The second concern is when the attitudes enabling such bias inform inappropriate action, what Sidanius and Pratto refer to as group debilitating behavior. We recall that Shelby was concerned with ghetto deviance in light of the fact that the behaviors constituting that deviance are so 'obviously' wrong. Unfortunately, Sidanius

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[42] Here I do not mean to bring into view the notion of racial self-hatred or that racial envy. I highlight this aspect of Sidanius and Pratto's framework to ground the idea of a certain kind of ambivalence towards oneself in the even that ine is a member of a marginalized group.

and Pratto provide a similarly copious amount of evidence across issue areas such as parenting, criminal activity, attitudes toward education, and personal health choices. The authors offer legitimizing myths, asymmetrical ingroup bias, and group debilitating behavior as explanatory variables for this phenomenon in support of Hirschmann's theoretical explanatory framework – the mutual construction of disadvantage in the internal lives of persons. It should by now be clear that while those better positioned suffer solely from moral disadvantage while benefitting from the attainment of self-esteem, subordinates, under the pull of self-nonregarding dispositions suffer both moral disadvantage as well as ethical disadvantage – they lack the proper relationship with themselves and their purposes to lead the lives appropriately entailed by a self-respecting person.

The second principle of SEP: *asymmetrical group positioning becomes a particular concern at the level of persons, not only when they suffer materially, but when the normative framework supporting the asymmetry does harm to their internal lives to such an extent that they develop or at risk of developing a self-nonregarding disposition; those better positioned are harmed insofar as their other-regarding sensibilities are undermined.*

§3.4 SOCIALLY EMBEDDED POWER RESTATED

To recapitulate, we have two principles of *socially embedded power*:

1. social asymmetries that obtain in the absence of overt and explicit subordination threaten to become manifest in the mutual construction of disadvantage in the internal lives of persons.

2. asymmetrical group positioning becomes a particular concern at the level of persons, not only when they suffer materially, but when the normative

framework supporting the asymmetry does harm to their internal lives to such an extent that they develop or at risk of developing a self-nonregarding disposition; those better positioned are harmed insofar as their other-regarding sensibilities are undermined.

Thus:

Socially embedded power is the ability for social asymmetries to affect the internal lives of persons such that those better positioned tend to hold beliefs and attitudes which only serve to enhance their standing while those worse positioned are at risk of developing a self-nonregarding disposition, thus preventing them from making manifest the value of full personhood.

§4. Implications of the Complete Theory

§4.1   As an explanatory theory for a very significant injustice – systemic racial inequality – historically evolved socially embedded power has important implications for justice as democratic partnership. The implications fall into two categories: methodological and substantive. Methodologically, historically evolved power prompts us to engage in historical investigation. Although race is in the general class of systemic injustice, it has its own contours as compared to other significant inequalities. It has been fueled by its own set of beliefs, has developed over its own time frame, and has informed institutional practices particular to it. The most prudent way to build an adequate and relevant normative theory is not to merely acknowledge the reasonableness of these premises but to take the extra step and have history play a role in grounding and informing normative prescription.

Substantively, historically evolved power grounds two claims. First, the historical evidence offered through the investigation settles institutions' role in making racial inequality manifest as well as the contours of that role, thus clearly demarcates the bounds of their moral responsibility: they take responsibility for historical complicity and accept their role as change agents going forward.

Second, having exposed the role of institutions – as substantially embodying racial norms that in turn informed practices resulting in the perpetuation of certain beliefs and the manifestation of many inequalities – it gives weight to the idea that institutions ought to be the primary subject of justice.

§4.2 So far as socially embedded power goes, the takeaway point is simple but powerful – the most effective way to combat a system of disadvantage founded upon a system of social norms is to identify an equally powerful norm that not only preempts the effects of offending norms, but undermines them. The substantive upshot is that the normative idea of self-respect will do a lot of the heavy lifting in the theory of justice. How so? First, recall that SEP holds that parties under the ambit of power are morally disadvantaged because of the beliefs it spurs. Offering the social bases of self-respect signals to those better positioned that those subordinately positioned are *not* worthy of that position, but that they are inherently worthy of equal standing in society. Moreover, that it is everyone's duty to rectify systemic injustice founded upon an offending normative framework – both the better as well as the worse placed. Additionally, it relieves the ethical disadvantage of those worse placed since self-respect is seen as the most important resource for persons to develop the appropriate relationship with themselves and a set of morally desirable ends.

Note that when those worse positioned in society gain ethical advantage, they also gain moral advantage – the ability to relate to oneself internally supports one's ability to reason about moral actions and relations in the world. In this sense, the social bases of self-respect are dialogical since they are seen as ultimately prompting a partnership between the advantaged and disadvantaged for the purposes of realizing a morally informed scheme of ongoing cooperation.

The methodological upshot is that we will need to give concerns such as Du Bois' over troubled identity precise content. Merely theorizing a relationship between power and identity or self-conception (no matter how intuitive) does not go far enough in specifying principles of justice. Even if we are right to put weight on the social bases we need to understand what those bases will need to be and what they will need to accomplish. Thus, in addition to providing some empirical support for this intuition, we'll need to press past Hirschmann, Sidanius and Pratto to get more clear on what factors might contribute to a disrupted self-conception and what that looks like. These issues are dealt with in chapter four.

PART II – THE BIOGRAPHY OF THE PROBLEM

Chapter 3 – Racial Subordination: Historical Precedent, Continuity and Policy

§1. Marshall's Lament

§1.1 Race matters by the very definition of racial inequality – it is probabilistically determinative of one's chances of conceiving and fulfilling the good of one's life. Historically, race didn't *have to* matter; but, it *came to* matter, and when it did, its reach would extend across time into twenty-first century American society. For while racial subordination 'grew up' with slavery, it continued to mature into a complex phenomenon long after that institution's demise.

Early colonial history suggests there existed numerous paths for America's racial development. Initially, whites and blacks often existed as subordinated servants side by side. So, for Winthrop Jordan, "The question with New England slavery is not why it was weakly rooted, but why it existed at all. No staple crop demanded regiments of raw labor."[1] Similarly, while such staple crops did exist in the South, thus a case could be made for the need for vast amounts of easily acquired labor, it isn't clear that that labor had to be black labor nor that treatment and valuation of blacks had to reach the extremes it quickly did.

No easy explanations exist for why black identity became the object and embodiment of such denigration. However, culture linked to political power seems to have something important to say on this matter. Slavery in the form that we have come to know

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[1] Winthrop Jordan, *White Over Black: American Attitudes Towards the Negro, 1550-1812* (Baltimore: Penguin Books), 66.

it (as more absolute than indentured servitude) was not initially a purely racial phenomenon. For instance, well-documented but less discussed is England's trade in Irish slaves.[2] England emerged triumphant from the 100 Years War, with its power extending globally and further into the colonies. At the same time, Jordan notes that the English moved away from a culturally binary to a concentric worldview. The English populated the center and those considered more alien were assigned to surrounding rings of valuation.[3] Importantly, this development coincides with the racialization of skin-color. The identifying term for most colonists before the end of the 17th century was 'Christian,' but by the 1680's the term 'white' takes its place. This necessarily broadened who was to be considered an insider based on an easily observable marker – whiteness.[4] This seems to mean that the concentric circle was reserved now for various white ethnic and national subgroups while blacks were relegated to an entirely different valuational frame.

The emergence of an explicitly racialized worldview is roughly contemporaneous with its institutional acknowledgment and embodiment; a number of institutional arrangements come into force synthesizing norms with practice toward the end of the 17th century. For example, Virginia, by way of a 1661 bill, becomes the first colony to recognize and institutionalize slavery as lifetime service, inheritable, and *based on race*.[5] Thirty years later, Virginia abolishes Indian slavery, thus "Only for blacks, then, was slavery considered the normal condition."[6] In the same year, seemingly in an effort to achieve total control over the now officially subjugated black population, Virginia passes legislation requiring

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[2] See Audrey Smedley, *Race in North America: Origin and Evolution of a Worldview*. 3rd ed. (Boulder: Westview Press, 2007).

[3] Winthrop Jordan, *White Over Black*, 86.

[4] *Ibid.*, 95.

[5] Michael L. Levine, *African Americans and Civil Rights: From 1619 to Present* (Phoenix: Oryx Press, 1996), 17

[6] *Ibid.*,18.

freed slaves to leave the state.[7] In South Carolina "the planters demanded that their legislative assemblies regulate Negro slavery, but what they wanted and got was unfettering of their personal power over their slaves and the force of the state to back it up."[8]

Developments of this nature were not limited to the Southern colonies. In 1671 Massachusetts passed legislation making slavery an inheritable condition. In New York, as Levine notes, "Under English rule, the slave laws were in many ways as severe as the regulations in the plantation colonies."[9] Moreover, the status of blacks as a general matter seemed to indicate race-based disadvantage: "The poverty of free blacks is...explained by the fact that New York, like all of the colonies, treated [freed slaves] as outcasts and fenced them in with numerous restrictions."[10] For instance, though agriculture remained a primary way for one to earn a living, blacks could not own property, denying them productive entry into the economy. Thus, the emergence of race as a normative category of human valuation converges with the institutional will to reify and sanction racial norms resulting in state supported racial subordination. Moreover, whether by making slavery inheritable or by limiting the property rights of free blacks, the end result would be the same: not only would blacks be disadvantaged at a particular moment in time, but institutional commitments ensured that that disadvantage would be enduring since a means by which any person attained true agency at that time was not only a function of one's will but also the ability to reliably acquire and mobilize resources.

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[7] *Ibid.*, 20.
[8] Winthrop Jordan, *White Over Black*, 85
[9] *Ibid.*, 26.
[10] *Ibid.*, 29.

It became apparent that by the end of the 17th century, not only would blacks be socially marginalized, but that the machinery of government would willingly mobilize to make that marginalization, born of social norms, a political and economic reality. This machinery continued to operate on the terms of the new racial status quo as the Revolution approached; indeed it became strengthened as our democratic institutions began to take shape.

So it should not be surprising that two hundred years later, Thurgood Marshall, the first black to serve on the Supreme Court, was skeptical of celebrating the U.S. Constitution bicentennial. In fact, it might be said he lamented its celebration. In a speech before the San Francisco Patent and Trademark Law Association, he stated:

> "[...] in this bicentennial year, we may not all participate in the festivities with flag-waving fervor. Some may more quietly commemorate the suffering, struggle, and sacrifice that has triumphed over much of what was wrong with the original document, and observe the anniversary with hopes not realized and promises not fulfilled.[11]

Marshall locates lack of moral vision at a particular point in time. Failing to "find the wisdom, foresight, and sense of justice exhibited by the framers particularly profound," Marshall indicts the founders as devising institutional design that "was defective from the start."[12] For example, Thomas Jefferson made a strong case for the inherent inferiority of blacks. In his *Notes on the State of Virginia*, Jefferson considered America's race problem and concluded, simply, that while blacks were to be admired for their vigorous biological fortitude and a surprising level of moral sense, it was without question that blacks were in no way the equal of whites – formal differential treatment of blacks in the law reflected the

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[11] Thurgood Marshall, "Reflections On The Bicentennial of the United States Constitution," *Harvard Law Review* 101, no 1 (1987): 5.
[12] *Ibid.*, 2.

reality of black inferiority, the natural order of things – a substantive, fundamental, thus,

hierarchy justifying difference between the races.[13]

Maybe no U.S. policy at the time captures the convergence of these kinds of racist

norms with institutional sanction than the idea of embodying in law the idea of blacks as

property rather than as human agents. The U.S. first expressed its institutional willingness

to embrace this idea in the Treaty of Paris which included a clause stipulating that the

British were not to withdraw from U.S. territory without "'carrying away any negroes or

other property of the American inhabitants,'" prompting Fehrenbacher to comment: "Thus,

almost casually, in the founding document that confirmed American independence, Negro

slaves were recognized as property by the United States government."[14]

The acceptance of blacks as property belonging to (overwhelmingly white) slave

masters became domestic public policy in the 3/5th's compromise. The sectional difference

resulting in the compromise, which was concerned to settle issues of taxation and

representation, seemed to indicate a moral difference over the role and place of slavery in

the newly formed republic.

However, scholarship has firmly established that the dominant motivation behind

challenging slavery was a matter of political expediency rather than egalitarian concern

with the status of blacks. With Southerners concerned about losing power as a function of

smaller free populations compared to the North, they argued vigorously to have each slave

counted as one free person. When the North resisted acknowledging slaves for the purposes

of representation, it was motivated by a concern over the political power Southern states

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[13] Philip A.Klinkner with Rogers Smith, *The Unsteady March: The Rise and Decline of Racial Inequality in America* (Chicago: University of Chicago Press, 1999), 24.
[14] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relation To Slavery* (New York: Oxford University Press, 2001), 25.

would acquire through legislative representation by dint of owning slaves. Their counter-offer was not a principled denial of blacks being exploited in this way. Rather, they acquiesced to the South by offering the 3/5th's solution, allowing their property claim in blacks to count for some political advantage. On the other hand, the North gained the concession that if the South's property could be acknowledged for purposes of representation it could also be acknowledged for purposes of taxation. So, simultaneously, the property claim in blacks was legitimized by way of providing a federal revenue stream.

What makes the continued presence of racial inequality particularly troubling is the observation that at points history often seemed poised to take America in new and progressive directions. History offers us the benefit of realizing that Reconstruction and black emancipation never got off to a proper start. The conclusion of the Civil War witnessed a newly freed and homeless black population. To deal with this population the military was directed to draw up one year labor contracts that would obligate freed blacks to be employed by members of the planter class. However, it was in practice difficult to differentiate the new arrangement from slavery: wages were meager, workers labored under an overseer and needed permission to leave the property they were contracted to work, resulting in a set of circumstances startlingly familiar to any former slave.[15] Moreover, among the parameters Lincoln set out for the formation of new state constitutions was the ability to put in place measures dealing with blacks "consistent...*with their present condition* as laboring, landless, and homeless."[16]

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[15] Michael L. Levine, *African-Americans and Civil Rights*, 91.

[16] Quoted in Eric Foner, *Reconstruction: America's Unfinished Revolution* (New York: Harper & Row, 1988), 35-36 [emphasis mine]

And although Lincoln became the architect of the Emancipation Proclamation and Ten Percent Plan, each designed for the purposes of including and providing emancipatory opportunities for blacks, racial progress was unable to get a proper foothold. Shortly after taking office Andrew Johnson employed four tactics to first pause, then reverse the possibility of racial progressivism. First, he provided amnesty to former Confederates and restored their property rights so long as an oath of loyalty was taken.[17] Additionally, he recognized a reconstructed Virginia that offered almost no guarantees of rights to blacks. Further, Johnson rescinded the Sherman Act intended to provide blacks with free land, which would in effect "allow them to escape from white domination and achieve economic independency."[18] Last, the Freedmen's Bureau had been created as a temporary measure from the start, but it became apparent to many that the work to be done required more time. Senate Bill 60, proposed by Lyman Trumbull in 1866, was designed to make the Bureau permanent. Johnson vetoed it on the grounds that whites had never received such assistance, the matter should be left to the states, and that such assistance would only encourage irresponsibility on the part of blacks – troubling precursors to 20th and 21st century conservative rhetoric.

So when Marshall is troubled that racial disadvantage endures and resists formal institutional reform he is stating a concern with racial inequality's seemingly historical inertia and ability to shape itself to the times in ways that too easily evoke historical precedent. Marshall further expands our historical institutional view of racial inequality by indicting the institution of which he was a part – the Supreme Court. He observes, for

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[17] Eric Foner, *Reconstruction,* 183; Philip Klinkner, *The Unsteady March,* 77.
[18] Richard Wormser, *The Rise and Fall of Jim Crow* (New York: St. Martin's Press, 2003), 13

instance, that Chief Justice Taney reaffirmed America's commitment to the racial caste system in his *Dred Scott* opinion. We might offer further observations.

At issue in the *Slaughter House Cases*, decided in 1873, was whether the federal government could intervene on behalf of New Orleans butchers seeking to restrict that state from creating a corporation that, among other things, would fix prices. Though the complaint was argued on the grounds of equal protection and due process granted by the 14th amendment, the court decided that police powers were relegated strictly to the states, making the issue a local one. This would impact the lives of blacks most as it left the enforcement of rights up to constituencies that, with respect to race, were hostile to the idea and ideal of equal rights for the races. More explicitly the decision handed down in the *Civil Rights Cases* of 1883 denied the application of the 14th amendment to actions of private entities, thus the complainants' claim that the government was committed to acting against unequal treatment in hotels, theaters and similar accommodations was rejected. These decisions helped set the stage for decades of Jim Crow and provided grounds for claims to "states' rights" during the Civil Rights Era. Marshall observes, though the Civil War eradicated slavery and the fourteenth amendment made equal protection national law, "almost another century would pass before any significant recognition was obtained of the rights of black Americans to share equally even in such basic opportunities as education."[19] It is important, then, when Marshall highlights that the moral tradeoffs made for the sake of maintaining the Union are not frozen in the past, but remain with us today. And they do so not merely as memories but as active factors in determining the racial landscape, factors which arise "from the contradiction between guaranteeing liberty and justice to all, and

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[19] Thurgood Marshall, "Reflections On The Bicentennial," 4.

denying both to Negroes."[20] Thus, "When contemporary Americans cite 'The Constitution,' they invoke a concept that is vastly different from what the framers barely began to construct two centuries ago."[21] It seems Marshall also means to suggest that Americans invoke an ideal that is only incompletely manifest in our society. This is what seems to trouble him.

§1.2   To best understand how that ideal that can be fully realized on the level of institutions, an aim of this project, we need to have a better understanding of the dynamics which fuel racial inequality. The first step was the articulation of *historically evolved power*, one component in the two-prong theory of power. It was above specified as *the phenomenon of historical normatively grounded group asymmetries finding their embodiment in path dependent institutions resulting in robust forms of contemporary inequality*. The second step, the aim of this chapter, is to give content to the theory of power by exploring the relationship between modern policy development, historical institutional precedent, racial norms, and contemporary, racially unequal outcomes. I offer an exploration of welfare and crime policy as two case studies. In brief, we want to gain a better understanding of the relationship of the basic structure to racial inequality.

We will recall that my main complaint against the basic structure was not that it was comprised of the wrong institutions or even that more were needed. Rather, the trouble is that they do not cohere in the right way in their treatment of persons of color. In the previous chapter, I defined institutions as organizationally embodied large scale ordering principles that both provide opportunities and constrain outcomes. In what follows I aim to

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[20] *Ibid.*, 4.
[21] *Ibid.*

sketch in broad strokes the manner in which our institutions fail to cohere in the right way – this failure is prompted by racial norms which became embedded in path dependent institutions, as I shall try to show. Historically evolved power states that this dynamic between norms and path dependency has resulted in evolving political practices that nevertheless seem to reintroduce racial disadvantage. A main theme, then, of what follows is illustrating this dynamic with an eye towards highlighting the manner in which early racism continuously adapted to American politics in such a way as to render itself invisible yet productive.

I rely primarily on the work of Jim Sidanius and Felicia Pratto, and Vesla Weaver in offering a coherent theoretical and historical picture of the development the institution of criminal justice. For welfare policy I turn to Robert Lieberman and Jill Quadagno.[22] It ought to be admitted that these issue areas do have factors that contributed to their independent development over time, and, moreover, that these factors had little to do with race. However, both cases undeniably have significant racial components – it is these racial components, sharing both temporal and cross-sectional attributes, which facilitate gathering them under the theory of historically evolved power.

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[22] It is worth pointing out what is sure be perceived as an imbalance between the presentation of the two cases, namely that the study of crime policy is accompanied by a rather robust explanatory framework while the investigation into welfare seems mostly descriptive. A main reason for this has to do with the nature of the two issue areas. Criminal justice is fundamentally a coercive institution, thus most scholars seeking to explain it, whether intentionally or not, have a theory of power. Welfare is not typically conceived at the theoretical level of criminal justice. Though, as will be seen, it has often been wielded as a tool of coercion, few scholars have theorized it in terms of power. My mobilization of Lieberman's framework of institutional levels in welfare policy is meant to alleviate this to the extent that he lays down a schematic of how welfare came to differ from other New Deal policies. The task of theorizing a deeper explanatory framework for welfare, while worthwhile, is too complex to include in this space. I rely instead on the reader's acceptance that an analytic description has embedded within it an explanation of the development of welfare policy though I will not always be able to stop and make an explicit point of this.

§2. The Political Development of Racial Criminal Justice

Historically evolved power states that groups asymmetries, predicated on the notion of social dominance, become embodied in the practices of institutions, understood as path dependent, exerting powerful influence on the shape and beliefs of society. So it is of some importance when Jim Sidanius and Felicia Pratto say that if outside observers "wanted some quick and easy way to determine which...social groups were dominant and subordinate, they would merely need to determine which groups were over- and underrepresented in societies' jails [and] prison cells."[23] The importance of this observation is that criminal justice is a fundamentally coercive institution. Further, one scholar is concerned that "Institutional arrangements for dealing with criminal offenders in the United States have evolved to serve expressive as well as instrumental ends....In the process [they] have created facts."[24] Thus, if it is the case that criminal justice goes beyond its mandate of controlling crime and functions to exert control over, as well as define a subordinate population under the rubric of controlling crime, then a significant injustice obtains.

As earlier observed, the backbone of social dominance theory is a fundamental anthropological/sociological axiom: "all human societies tend to be structured as systems of *group-based social hierarchies.*"[25] The reproduction of social hierarchy, as well as disproportionate control over and access to institutions, is an indicator of dominance. We're

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[23] Jim Sidanius and Felicia Pratto. *Social Dominance: An Intergroup Theory of Social Hierarchy and Oppression.* (New York: Cambridge University Press, 1999), 202
[24] Glenn Loury, "Ghettos, Prisons and Racial Stigma" *The Tanner Lectures on Human Values* delivered April 4, 2007, 2.
[25] Jim Sidanius and Feliciat Pratto, *Social Dominance*, 31.

especially concerned with race should it turn out to be a very significant ordering principle

that motivates the administration of disproportionate measures of control. Sidanius and

Pratto locate the critical juncture of race and social dominance in the use of official terror –

"the public and legally sanctioned violence and threat of violence perpetrated by organs of

the state and disproportionately directed towards members of subordinate groups"[26] –

while Vesla Weaver helps us understand the political developments undergirding the most

recent major shift in our approach to crime policy; developments that have had serious

implications for present racial disparities in incarceration and punitive severity.

Let us begin with a brief look at the dimensions of this disproportion with regard to

criminal justice as a major institution of the basic structure. With an incarceration rate at

roughly 714 per 100,00, the U.S. is the most punitive nation in the world. The U.S., with only

"five percent of the world's population, has nearly a quarter of its prisoners."[27] While this

indicates a generally overreaching approach to crime control, the issue of social control

arises when we observe that while blacks constitute only thirteen percent of the population,

they make up half of America's prison population. And this development represents the

most recent phase in a trend that saw black representation at a quarter in the 1930's and at

a third in the 1980's.[28] If we acknowledge racially disproportionate incarceration as a

contemporary social and political problematic, is there a way to understand the continuity

of temporally extended racial disadvantage to the present day fact of racially

disproportionate incarceration?

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[26] Jim Sidanius and Felicia Pratto, *Social Dominance*, 41.

[27] Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America.* (New York: Cambridge University Press, 2006), 1.

[28] *Ibid.*, 2

One way to approach this is by noting a general fact: at two important junctures representing the possibility or actuality of improved conditions for blacks, significant developments and innovations occurred within the institution of criminal justice. The first juncture occurred shortly after Reconstruction. Whites looked for a way to regain control over the black population. During slavery, the idea of repression through the use of the penal codes was unnecessary. Slavery was a complete and total form of domination in itself. Further, as Gottschalk notes: "the institution of slavery made it ideologically difficult to acknowledge the difference of a white criminal class and to legislate for its control. The association in the South of crime with race made it impossible to embrace rehabilitation, the purported *raison d'etre* for the penitentiary."[29] However, the freedom obtained by slaves after the Civil War posed a challenge to threatened whites. Rather than seek the aim of rehabilitation, blacks were dealt with through a partnership formed with the private sector resulting in the convict lease system.

Christopher Adamson argues, "convict leasing appealed to governments not simply because of its fiscal utility....In a real sense [it] was a functional replacement for slavery; it provided an economic source of cheap labor and a political means to re-establish white supremacy in the South."[30]   On the one hand, the convict leasing system expressed economic functional continuity with slavery in that free or extremely cheap labor was provided to producers of goods. The synergy between this functionality and criminal justice is illustrated when one scholar observes that it was not uncommon for blacks to be arrested

[29] Marie Gottschalk, *The Prison and the Gallows*, 48.
[30] Christopher Adamson, "Punishment After Slavery: Southern State Penal Systems, 1865-1890," *Social Problems* 30, no 5 (1983): 556. See also, J. Thorstein Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976); Milfred C. Fierce, *Slavery Revisited: Blacks and the Southern Convict Lease System, 1865-1933* (New York: African Studies Research Center, 1994). For a comparative view of the development of criminal justice in the north and south, see Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: The University of North Carolina Press, 1980).

without cause or on false accusations, or for blacks in some instances to receive sentences almost ten times as long as those for whites for the same crime.[31] Indeed, "To supply the demand for convict labor, sheriffs arrested blacks for misdemeanors and vagrancy."[32]

However, Adamson also notes that convict leasing supplied resources for another productive system: white supremacy. Democrats' "coded attack on crime, corruption, high taxes, and big government were subtle methods of promising whites that something like the status quo ante could be restored."[33] Moving beyond coded attacks Mississippi passed the Pig Law in 1876, which extended the number of crimes that could be classified as grand larceny, thus ensuring excessively harsh penalties for crimes that were likely to be committed by blacks. At the same time, spending programs that would have helped now vagrant or destitute blacks were eliminated. This would only increase the chances that they would be the ones running foul of laws, thus falling into a system intended to maintain control over them.

We should take note that convict leasing was not an immediate short-lived reaction to emancipation. Douglas Blackmon tells the story of a young man – Green Cottenham – arrested in 1908 on the charge of vagrancy. An initial sentence of thirty days of hard labor was extended to six months when Cotttenham proved unable to pay the fees all prisoners were expected to pay. Cottenham was subsequently *sold*. U.S. Steel Corp paid Shelby County (in Alabama) $12 a month to cover Cottenham's fees. In turn, Cottenham was sent to a mine where six prisoners died within Cottenham's first four weeks and sixty before the year was

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[31] *Ibid.*, 54
[32] Richard Wormser, *The Rise and Fall of Jim Crow*, 57.
[33] Philip Klinkner, *The Unsteady March*, 91.

out due to wretched working conditions.[34] Not only were state governments literally in the trade of selling blacks, nearly forty years after emancipation, but had mobilized the institution of criminal justice to its cause. Moreover, state officials neglected to enact any oversight – the lives of the prisoners were worth only as much as their monthly fees.

The second significant historical juncture that presented improved prospects for blacks was the advent of the Civil Rights Era. We will recall that the theory of *historically evolved power* states that we can explain much of contemporary racial inequality by positing path dependent institutions that carry over once explicit racial norms and beliefs in policy outcomes. As institutions slowly adapt to new historical and social milieus they also impact society by re-introducing subtle manifestations of historical precedents, such as racism and racial subordination. This period, and the decades leading to today, earn our concern for one reason in particular. While convict leasing was certainly abhorrent, it was, in retrospect, an entirely plausible development. While emancipation had obtained freedom for blacks, we observed earlier that the Constitutional amendments which followed on were not sufficiently substantive. Moreover, those who had been defeated – Southern Democrats – had regained nearly complete political control, and would naturally turn a blind eye to the injustice being perpetrated against blacks. However, while racism was alive and well in the 1960's, its explicit institutional support had eroded significantly. Additionally, as we move forward in time to the late 20th century we admit that the observable racial climate is a vast improvement from Selma, Alabama and Chicago in the 1950's and 1960's. Yet, as noted above, incarceration is racially disproportionate, exhibiting signs of official terror parallel to the period following Reconstruction.

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[34] Douglas A. Blackmon, *Slavery By Another Name: The Re-enslavement of Black People in America From The Civil War to World War II* (New York: Doubleday, 2008), 1-2.

Vesla Weaver argues that a significant part of the origin of the modern carceral state consists in America's racial history. Her argument opens by observing a tension internal to the Second Reconstruction. While wide-ranging legislation was established to provide blacks what they had been promised during the first Reconstruction, the U.S. began its ascent toward its punitive disposition. As she observes, "The death penalty was reinstated, felon disenfranchisement statutes from the First Reconstruction were revived, and the chain gang returned."[35]

Weaver's theory of *frontlash* formalizes the development of this trend into the 1960's, and importantly, the implications that development holds for contemporary crime policy trends and incarceration rates. *Frontlash* is undergirded by the premise that politics can be more than reactionary – politics can be creative, and institutional design may be the canvas upon which pivotal political actors can simultaneously express their adaptation to a changed political and normative landscape while mobilizing that landscape's constituent parts to their own interests and preferences.[36]

The theory has three main components explicating its mechanics.[37] First, though politics is often seen as a negotiated dynamic, there can certainly be clear losers and winners. The victory of the Civil Rights movement meant a clear defeat for conservatives. Second, the presence of what Weaver terms a focusing event can provide a point of entry for losers to use their politically creative abilities in reestablishing their preferences and agenda. She identifies a statistical rise in crime, in part attributable to a growing youth population and better means of measurement. Crucially, another focusing event was the

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[35] Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development*, no 21 (2007): 230.
[36] Vesla Weaver, "Frontlash," 238.
[37] *Ibid.*, 236.

increasing occurrence of race riots. Third, the losing contingent develops a monopoly on an issue which can be mobilized using the newly developed normative language and expectations in order to swing the political process back in its favor. Weaver terms issue capture – conservatives mobilized fear around riots and used the recently ascendant and accepted language of equality and citizen's rights – the same language mobilized by the Civil Rights Movement – to argue that riots were not only disruptive, but a crime. This leads to an aspect of Weaver's account that helps shed light on the historical continuity of the racial mobilization of the institution of criminal justice from Reconstruction to the Civil Rights movement to today, for the mobilization of the crime issue alongside the success of Civil Rights evokes disturbing comparisons to the efforts to control the newly emancipated black population after the first reconstruction. Hence, it lends support to the main idea of historically evolved power – the evolved continuity of racial norms embodied in institutional practice, in this case, that of criminal justice.

While riots are materially destructive and socially disruptive, they are also usually, as were the race riots, indicative of deep-seated outrages against a system seen as responsible for a seriously disadvantageous state of affairs. Rather than seeing riots as a discrete phenomenon of expression, it is better understood at the extreme of a continuum of political and social protest. It is here that maybe one of the most important aspects of Weaver's account plays a significant role – the depoliticization of legitimate political grievances against a severely unjust state of affairs by way of seeking to criminalize riots. This depoliticization was itself, clearly, a political move. For instance, Southern Democrats sought to, and succeeded at, collapsing the distinction between peaceful protests and riots, thus making all forms of resistance a crime against society. The institution of law and

criminal justice is then mobilized to maintain a status quo, the same structural status quo

that was being challenged for it was also the means by which persons of color had been

oppressed for over a century. The ability to frame the norms of legality in synergy with the

newly heralded norms of rights resulted in the initiation of a process that would only go on

to disproportionately affect a recently emancipated population – just as after the first

Reconstruction.

We have good reason, though, to question the sincerity of concern over riots as a

primary motivation for the development of crime policy. Prior to the prevalence of riots,

Southern conservatives in Congress had already been seeking to link crime to race.[38]

Though few official steps were taken, there were signs during the 1950's that race would

come to be associated with crime and lawlessness. For example, there is extensive evidence

from the Congressional Record illustrating the explicit discussions over the extent to which

progress on the Civil Rights issue might be perceived as a reward for blacks' willingness to

disrupt the political status quo.[39] Peaceful forms of protests such as the Freedom Rides of

the 1950's were portrayed as criminal. Senator Russell Long, for example, argued that

Martin Luther King's letter from the Birmingham jail encouraging civil disobedience was

the manifesto which led to race riots.[40] Another argument that linked crime to racial

equality was that integration would lure crime prone blacks to white neighborhoods, thus

undermining the rights of whites. At the dawn of significant social and political justice for

blacks, conservatives began the process of institutionalizing official terror on the grounds of

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[38] *Ibid.*, 240-41.
[39] Naomi Murakawa, "The Origins of the Carceral Crisis: Racial Order as 'Law and Order' in Postwar American Politics," in *Race and American Political Development.* eds Joseph Lowndes, Julie Novkov, and Dorian T. Warren (New York: Routledge, 2008), 234-255.
[40] Weaver, "Frontlash," 248.

racial terror. Ironically, while conservatives resisted civil rights on the grounds of states' rights, their actions simultaneously revealed a strategy to federalize crime control.

This is important, for were we to take Lyndon Johnson's engagement with crime during his first two years as a barometer, measured by legislative activity or public rhetoric, it seemed the federal government was not much interested in federalizing the crime problem.[41] Prior to the 1960's, the federal government had remained uninvolved in the issue, even though crime had risen sixty-six percent in the prior decade.[42] Although Johnson had been initially uninterested in crime, factors such as Goldwater's mobilization of the issue prompted him to pay it political homage, and then, as we shall see below, reverse course and take decisive action. Moreover, riots were a real and frightening phenomenon, with many looking for a strong stance on it.

Despite Johnson's early commitment to a root causes approach to understanding crime, conservatives had proven too successful at first, energizing a concern with crime, and second, binding it to race, both explicitly and implicitly. Not coincidently, Johnson's root causes approach was tied to the concern of our next case study, welfare. The main argument brought to bear by conservatives revolved around the notion of a culture of poverty. As one scholar notes, "These discussions of the behavioral characteristics of the impoverished were consistent with American officials' long-standing preoccupation with distinguishing the worthy from the unworthy poor and were particularly useful to the conservative effort to emphasize and enlarge the latter category."[43] By the time the Harlem riot broke out in 1964, a common rationale for adopting a punitive stance had become that

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[41] *Ibid.*, 240.

[42] *Ibid.*, 239.

[43] Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997), 33-34.

granting civil rights would only reward lawlessness, just as welfare would encourage laziness. In almost lockstep fashion, the pursuit of civil rights became entwined with lawlessness and crime.

However, the Civil Rights Movement had succeeded, and, subsequently, political losers became creative since direct racial confrontation was foreclosed. The Civil Rights Movement had been too strong, momentous, and overdue to be rolled back. The issue of crime was in turn used to link race to a social malady; and the federal government was mobilized to create the infrastructure, processes, and conduits for the U.S.'s punitive turn.

In March of 1965, Johnson, in response to growing pressure resulting from success of conservative issue capture, sent to Congress the most expansive federal crime bill in U.S. history. Within this proposal were provisions for the Law Enforcement Assistance Administration (LEAA). As during the first Reconstruction, when laws were passed that ensured that the least advantaged, a group most likely to commit crimes, would remain disadvantaged, the LEAA developed into an administration that distributed funds to local agencies and states, *so long* as certain benchmarks were achieved, in an effort to get crime under control. The important difference, however, was that while such strategies were openly and explicitly pursued after Reconstruction, the new strategies were put forth mobilizing the powerful language of equality and fairness – language much responsible for the success of the Civil Rights Movement.

The importance of the above "so long as" qualifier cannot be over-estimated: the structure of LEAA funding provided tangible incentives for state law enforcement apparatus to mobilize. Of the many results, local agencies sought to capture and prosecute criminals as proof that the funds were being used properly, and, importantly, as reasons

why more funds would be needed. It is easy to see how this suggests a virtuous cycle of rising crime rates and greater government involvement and expansion in this area. Simultaneously, the LEAA denied funds to agencies tied to anti-poverty, removed provisions for drug rehabilitation programs, all while mandatory minimums were being introduced into crime policy.[44] These developments are perplexing, for as Michael Tonry observes, "In 1967, the President's Commission on Law Enforcement and Administration of Justice concluded that measures directed expressly at crime and criminals could have little effect without much larger simultaneous efforts being directed at crime's underlying social and economic causes."[45]

Nevertheless, the LEAA ultimately and rapidly evolved into a powerful agency, propelling the growth of the carceral state forward at a breakneck pace: in the years 1969 (two years after the commission's report), 1970, 1973, under Richard Nixon's watch, funding for the LEAA was $59 million, $268 million, and $850 million respectively.[46] The LEAA provided block grants to states contingent upon fighting crime; increases in policing, arrest and prosecution rates were taken as a sign that states were earning their funds. In effect, the LEAA funded and motivated every level of government to invest in the carceral state. Since 1973, imprisonment has increased by a factor of six.[47]

Weaver identifies the 1960's as a crucial turning point not only for the openly displayed racial rhetoric coupled with ideology. Rather, as we shall see below, this time

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[44] Weaver, "Frontlash," 254-56.

[45] Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995), 19.

[46] Weaver, "Frontlash," 260.

[47] *Ibid.*, 230.

period resulted in concrete developments that have played a significant role in sustaining

the carceral state to today.

Crime policy is a complex political, legal, and social phenomenon. Thus, the endpoint

of the LEAA should not be taken as solely determinative for the ensuing development in

crime policy and racial outcomes. Rather, I pause there as a way of highlighting the

introduction of certain political interests and social beliefs, that patterned prior

asymmetries, into the evolution of crime policy and the development of an institution that

arguably set us on our current track – this is a rather ideal embodiment of historically

evolved power. Here, one might invoke the democracy-at-work thesis as an objection to the

account that has so far been developed. On this view, the development of crime policy is

indicative of a properly functioning democracy. This is based on the presumption that

voters respond to rising crime, signal their concern to political elites, who *then* ramp up the

government's response to crime. On this view, then, racially disproportionate outcomes are

almost purely epiphenomenal at best, or an unhappy outcome of an otherwise race-neutral

endeavor at worst. But, as it turns out, the thesis is false.

As will be the case with Martin Gillens' research on the relationship between the

media, welfare policy, and public racialization of the poor, Katherine Beckett provides

significant empirical evidence along similar lines in discounting the democracy-at-work

thesis. Indeed, by analyzing patterns of public opinion in relation to elite political rhetoric

and media coverage, she is able to conclude:

> In sum, from 1964 to 1974, levels of political initiative on an media coverage of crime were
> significantly associated with subsequent levels of public concern, but the reported incidence
> of crime was not. From 1985 to 1992, political initiative on the drug issue – but not the
> reported incidence of drug use or abuse – was strongly associated with subsequent concern
> about drugs. These resulted indicate that the extent to which political elites highlight the
> crime and drug problems is closely linked to the subsequent levels of public concern about

them and thus suggest that *political initiative played a crucial role in generating public concern about crime and drugs.*[48]

Thus, if the democracy-at-work thesis is false, it is more likely the case, in light of the evidence, that the historically evolved power account across all major institutions, as supported by frontlash in understanding the most recent major shift in crime policy, is more appropriate in framing the infusion of race into crime policy.

Tellingly, the second time period mentioned by Beckett, 1985-1992, a decade after the LEAA went into full swing, coincides with the War On Drugs, which is notable for its own racially disproportionate outcomes. In the early 1990's, while whites represented roughly 50 percent of crack-cocaine users, they represented only ten percent of the convictions. Meanwhile, blacks were only forty percent of the users and represented over eighty percent of the convictions.[49] The Human Rights Watch reports disturbing continuing trends. In 2003, for thirty-four states reporting, 25.3 per 100,000 whites were admitted to prison for drug offenses[50] compared to 256.2 per blacks.[51] Put another way, roughly 10 blacks were admitted to prison for every white person. Some argue that the War On Drugs (as, in our view, a historical extension of prior practices) was particularly odious because the disparate racial impact was easily foreseeable.[52] There is one particular reason this is problematic: "In the nation's largest cities, drug arrests for African Americans rose at three

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[48] Katherine Beckett, *Making Crime Pay*, 23 [emphasis mine].

[49] Sidanius et al, "Hierarchical Group Relations," 143

[50] The intersection of crime policy and drug offense is certainly not the only point of concern – it is offered here as one potent example of concerning trends. However, drugs are an interesting case in themselves, for, as many have argued, the rise of drugs as a serious problem in America coincides, historically, with the steep rise in urban population. Moreover, the federal government became deeply involved with it just as the Civil Rights Movement is coming to a close.

[51] The Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race In The United States*, May 2008 19.

[52] Tonry, *Malign Neglect*, especially Chapter 3. See also Marc Mauer, "Race, Class, and the Development of Criminal Justice Policy," in *Review of Policy Research* 21 no. 1 (2004), 79-92.

times the rate for whites from 1980 to 2003, 225% compared to 70%. This change is *not* explained by corresponding changes in rates of drug use."[53] If this is the case, and the effects of the War On Drugs were foreseeable, then not only is there an obvious problem with race in criminal justice, but the idea of complicity takes particularly strong hold on our moral motivations as well as the kinds of demands we can make.

Nor, as Beckett's work above indicates, does public opinion explain the severity of sentencing since it seems public opinion trails elite and media opinion-making practices. Nevertheless, the racial subtext of these trends remains powerful today in this realm of crime policy as well. One scholar is perplexed by the fact that white collar crimes rarely result in significant hard time, though these criminals commit crimes that may affect hundreds if not thousands of people, which "is a far cry from the demand for 'three strikes and you're out' for crimes for which most of those will be black."[54] We should be very concerned over elite and media opinion-making. Mark Peffley and Jon Hurwitz show that public support for various levels of support for greater punitive policies is strongly predicted by race.[55] In their study the authors find that support for prisoner furlough significantly falls for blacks. Moreover, to confirm the results are driven by race, the authors randomly assigned the respondents in the furlough experimental to a survey gauging support for punitive policies in general. When racial attitudes (gauged in a separate set of questions) were interacted with evaluation of prisoners, they found race to be a much more reliable and strong predictor of increased punitive dispositions. If we take these results as

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[53] The Sentencing Project, *Disparity By Geography: The War On Drugs in America's Cities*, May 2008, 2.
[54] Andrew Hacker, *Two Nation: Black and White, Separate, Hostile, Unequal.* (New York: Ballantine Books, 1995), 186.
[55] Mark Peffley and Jon Hurwitz, "The Racial Componnets of 'Race-Neutral' Crime Policy Attitudes," in *Political Sociology* no. 1 (2002), 59-75.

reliably measuring their intended phenomenon, then we should notice the convergence between historically evolved power and socially embedded power, for Beckett's and Peffley and Hurwitz's findings indicate both the relative independence of institutional development within its historical context as well as institutions' ability to shape attitudes of citizens towards each other.

Whether it be the differential application of the death sentence[56] or the fact that the likelihood of a black person to be arrested for a drug offense rose from being twice as likely as whites in 1975 to four times as likely in 1989,[57] it is apparent that criminal justice plays a significant role in the lives of persons of color. Maybe the simplest statistical heuristic is that today, one in three black males between the ages of twenty and twenty-nine are under state supervision.[58]

Crime policy and punishment, as the two arms of the institution of criminal justice, are fundamentally forms of social control. Crime policy fulfills this function by way of offering bureaucratically explicit guidelines for the administration of justice. However, as society has liberalized, crime policy tends towards representing itself as a stabilizing factor paving the way for an orderly society that makes manifest individual liberties and takes seriously the idea of individual responsibility by way of rewards and depredation. It identifies what counts as deviant behavior and the right method of extracting society's due as a crucial component to liberal democracy. Punishment fulfills this function so far as it translates the abstract ideals and procedures of policy into corporeal reality by either

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[56] Benjamin Fleury- Steiner *Jurors' Studies of Death* (Ann Arbor: University of Michigan Press, 2004).
[57] Glenn Loury, "Ghettos, Prisons, Racial Stigma," 21.
[58] Vesla Weaver, "Frontlash," 230. For a useful analysis on racial disparities in criminal justice effects, see Becky Pettit and Bruce Western "Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration" *American Sociology Review* 69 (2004): 151-169.

removing deviants (imprisonment) or eliminating them (death penalty). Criminal justice is that institution by which Western societies seek to hold constant a status quo of order so as to facilitate democracy's proper functioning as well as guaranteeing the economic system's integrity. However, we have seen a status quo of group subordination is served almost equally well by the institution of criminal justice.

§3. Welfare as We (Ought) To Know It

When Bill Clinton promised to "change welfare as we know it," he was in conversation with history. Less than twenty years earlier, Ronald Reagan tapped into and reinforced the public's racialized view of the undeserving by invoking the image of the black welfare queen. Though a Democrat, Clinton's promise resulted in the most restrictive and punitive welfare measures since Aid To Dependent Children was initiated. History shows us, however, that welfare reform under Clinton simply came full circle. Although Roosevelt initiated the transformation of the Democratic party into a liberal safe haven for the needy via the New Deal, thereby revolutionizing the American welfare state, the transformation came with historical racial baggage. Social conservatives resisted any possibility of giving blacks the means of reshaping the prevailing social or economic regime. Over time, the processes set in motion by that resistance transformed into a self-sustaining trend of first, opportunity denial, and then, stigma. Below, I trace the arc of the racialized development of welfare in America with particular focus on the ways in which the mechanisms guaranteeing racial disadvantage and stigma have been embedded in the institution and have continually been in conversation with racial history and norms.

The Social Security Act of 1935 established or provided precursors for major social spending programs today. It was conceived out of recognition that free market industrialized societies are capable of producing periods of economic suffering and levels of inequality which threaten the well-being of their own members. These conditions called into question the desirability of *laissez faire* economics and provided a clear mandate for government intervention. Though the Social Security Act was clearly needed, the shape it took wasn't the only option, nor an inevitable outcome. Indeed, its passage was the first sign that America had not quite turned the corner on race.

The Lundeen Bill and the Townsend Bill were contemporaries of the Social Security Act. Each was informed by a slightly populist, egalitarian reaction to the social and economic vulnerability exposed by the Great Depression. The Lundeen Bill explicitly disallowed discrimination based on race while offering unemployment insurance, without restriction on any occupational group, to be funded by taxing the wealthy.[59] Its measures were so popular that thousands of union locals endorsed it while garnering one million signatures in a supporting petition. A New York Post reader survey at the time showed that 83% of the readership preferred it to the Social Security Act. The Townsend Bill had similar redistributive potential. The bill proposed a 2% tax on all financial transactions to be placed in a fund providing a $200 monthly stipend to all persons over 65 years of age. The idea was two-fold. From a normative point of view, financial institutions had been complicit in the greed fueling the depression, and, pragmatically, the stipend would compel older workers to retire and make room in the work force.

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[59] Mary Poole, *The Segregated Origins of Social Security: African Americans and the Welfare State* (Chapel Hill, University of North Carolina Press, 2006), 22

The Townsend Bill would have resulted in a $2,400 a year unconditional grant to recipients, and held particularly emancipatory power for blacks. As an example of the economic dependence of blacks at the time, women in the South earned between $2 and $4 a week for various kinds of menial labor – the only labor blacks were by and large hired for. Sharecropping, which not only provided blacks with no income but often saddled them with year-end debt, absorbed 44% of the black agricultural work force compared to only 16.4% of white agricultural workers.[60] In the North, which also sought to exclude blacks from obtaining jobs requiring skill, women cooks earned an average of $579 a year with men earning $788 a year; the minimum comfortable wage at the time was $1,500 to $3,000.[61] So, given the deep structural disadvantage for blacks proposals such as the Lundeen and Townsend bills were not merely radically redistributive but seemed poised to give blacks equal social and economic consideration.

As one New Deal historian observes, "The Social Security Act was not born from a movement of average Americans." Rather, "it was drafted by government experts in the fields of economics and social welfare....Of the three bills, the Social Security Act was the only one that discriminated against African American workers."[62] The Social Security Act was divided into two categories of programs, one for the industrial labor force comprised of Old-Age Insurance (OAI) and Unemployment Insurance (UI), and the other comprised of means-tested programs, Aid to Dependent Children (ADC) and Old-Age Assistance (OAA).

Considering the labor programs first, OAI was intended to provide retired workers with a means of subsistence after having contributed to a national fund during the course

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[60] *Ibid.*, 18.
[61] *Ibid.*, 15.
[62] *Ibid.*, 25.

of their employed lifetime. However, the mechanics of the system would prove particularly burdensome for blacks. In 1935, the year the act was passed, more than 75% of blacks in the U.S. lived in the South, with a significant portion of them sharecropping.[63] However, the Senate Finance Committee and House Ways and Means Committee were comprised of thirty-three Democrats, seventeen of whom were Southern.[64] Since the South had been a relatively uncontested one party region, Southern Democrats easily attained seniority on Congressional committees placing them in highly influential positions with regard to policy development. They were well aware of the potential these programs held for blacks and, thus, the possibility for upsetting the social dynamic supported by Jim Crow. For instance, OAI, paid directly to recipients from the federal government, offered $15 per month which was more than a sharecropper might see in the course of a year.[65]

So far as benefits go, a program intended to merely stabilize the average American poor held the potential to immediately and significantly improve black quality of life. The programs offered bargaining power for demanding equitable compensation in agricultural work or opting out of the Southern economic system altogether. But a great portion of blacks would not be given that opportunity. The legislation made sure to exclude benefit provisions for laborers in two occupations in which blacks were most overrepresented: farm work and domestic work. Nationally, 65% of blacks fell completely out of the program's guidelines.[66] Even when blacks had managed to pay into the system through

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[63] Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (New York: Oxford University Press, 1994), 21.

[64] Ira Katznelson, *When Affirmative Action Was White: An Untold Story of Racial Inequality in the Twentieth-Century America* (New York: W. W. Norton, 2005), 43.

[65] Jill Quadagno, *The Color of Welfare*, 21.

[66] Ira Katznelson, *When Affirmative Action Was White*, 43.

working in an accepted labor sector, their benefits were lower since they had historically been denied competitive wages.

Given America's racial climate and the ability of influential Southern conservatives to shape policy, it is little surprise that the Lundeen and Townsend bills were never brought to a vote. For example, Mary Poole tells us though "Supporters of the plan had secured enough votes to substitute the Townsend Bill for the Social Security Act on the House floor; they were only prevented from doing so by the passage of a gag rue that prohibited the addition of amendments to the Social Security Act."[67] House Democrats had managed to pass a rule requiring the number of necessary votes for a measure to make it to the floor to be raised from 145 to 218. All other contingents, including seventy dissenting Democrats, opposed the measure. The gag rule, which was the fallback option for preventing the bills' consideration on the floor, was then implemented to protect the Social Security Act in its then current form. It was passed in June 1935, with racial disadvantage structurally institutionalized in its otherwise egalitarian structure.

The New Deal was a program of intervention and aid that extended the reach of government into many aspects of American life, with the reach similarly tainted by racial disadvantage. For example, though the Agricultural Adjustment Agency provided subsidies to promote crop yield reductions in order to stabilize and boost the price of cotton, which had declined dramatically, subsidies were provided directly to farmers with no oversight as to how the benefits were shared with sharecroppers. Needless to say, many farmers denied their sharecroppers any of the benefits. The National Recovery Administration, which allowed employers to pay employees differential wages for the same work, provided

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[67] Mary Poole, *The Segregated Origins of Social Security*, 23.

employers with an avenue of wage discrimination (which would impact benefits received under other programs). Moreover, the NRA also excluded occupations such as agricultural and domestic labor from its program. However, what is most compelling about this series of events is that these programs, over time, as compared to welfare – defined as a means-tested program paying out cash or cash equivalent assistance to the working-age, able-bodied poor[68] – turned out to be relatively fair to blacks. Significantly, none of these programs became saddled with racialization or paid the price that came with remaining at the front and center of public view of government spending.Thus, the case of welfare is instructive for understanding the institutional persistence of racial inequality.

What we know as welfare today began with normative racial imbalances, and that process only accelerated over time, culminating with ADC's (AFDC) transformation into TANF and GA under Clinton. Robert Lieberman's work on the racialization of welfare policy provides the clearest insight as to how welfare was different from other spending programs from its inception, and how its administrative structure would easily provide a policy space for its continual racialization. As he writes: "Attention to the role of institutions in the construction of racial inequality suggests that the status of racial groups in society results not necessarily from the mobilization of racist ideology but from the normal workings of social and political arrangements."[69] Should this turn out to be right, and evidence along with the general history of welfare and race strongly support this contention, its importance consists in the observation that "African-Americans...rarely have been widely included as honorable recipients of broad policies of social provision, and they

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[68] Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Anitpoverty Policy* (Chicago: University of Chicago Press), 12

[69] Robert C. Lieberman, *Shifting The Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998), 11.

are disproportionately segregated into the weakest, stingiest, and most politically vulnerable parts of the welfare system."[70]

Lieberman's main analytic contribution to understanding the racial disadvantage historically built into welfare consists in his doing more than simply parsing out the Social Security Act into labor targeted and means-tested programs. He identifies how various levels of structure combine to provide a range of favorable or unfavorable outcomes for blacks. On Lieberman's account, the policies comprising Social Security have three levels of structure. The benefit structure can range from egalitarian to discretionary. A policy's financing structure can range from contributory to non-contributory. Finally, there is its administrative structure which is comprised of many sub-structures: level of government (national or state); policy permeability (easy access for the purposes of change or closed); policy environment (administratively stable or unstable); and, last, client contact (are taxes withdrawn by the state and automatically distributed at some later time or must clients approach the institution first requesting help). It turns out that of the three institutions Lieberman studies (ADC, UI, and OAI), ADC has all the ingredients for comportment with a deep history of racial bias. ADC is noncontributory so it is the most redistributive of the three policies – it takes from the well-off and gives to the less advantaged; it is open so it is easily amended, which leads to it being the least stable of the three; clients must approach the state for assistance, so it is the most evaluative and punitive; last, and on many accounts, most importantly, it is parochial and entirely discretionary – as assured by Southern congressmen at its inception, it is managed at the most local level of all the other programs.

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[70] *Ibid.*, 3.

How has this structuring of the most visible need-based program continuously interacted with America's racial dynamic over time? What have been the implications of this interaction? Historically evolved power leads us to expect that the explicit racial motivations that subordinated blacks in earlier policies become embodied in institutional processes that slowly adopt over time, but nevertheless carry history with them. Does this hold with respect to welfare?

As American society moved past the Great Depression, one trend continued while another began. First, blacks remained systematically disadvantaged with respect to welfare and this disadvantage had precedent. The Federal Emergency Relief Administration (FERA) could be considered an ADC forerunner (as well as earlier programs aimed directly mothers, as ADC was). It was responsible for coordinating other New Deal programs and providing aid to the needy. Like ADC, it was parochial and discretionary. For instance, as a general matter, average monthly relief in New York was $49.06 per month, compared to Virginia's $17.65 per month which made it relatively generous by Southern standards.[71] In their study, Leslie Fishel and Benjamin Quarles observe that in "Jacksonville, Florida, Negro families on relief outnumbered white families three to one, but the money was divided according to proportions of the total city population. Thus 15,000 Negro families received 45 per cent of the funds and 5,000 white families got 55 per cent."[72] This trend carried over almost immediately in ADC. Lieberman notes that by the late 1930's "seven Southern states that had an ADC program awarded benefits to black children at a lower rate than their

[71] Ira Katznelson, *When Affirmative Action Was White*, 38.
[72] Leslie H. Fishel, Jr.and Benjamin Qualres, "In The New Deal's Wake," in *The Segregation Era: A Modern Reader*, eds, Allen Weinstein and Frank Otto Gatell (New York: Oxford University Press, 1970), 221.

proportion in the population."[73] There is evidence to support this statement: 37% of Louisiana's children were black but only represented 26% of its clients; for North Carolina, the proportion was 30% vs. 22%; in South Carolina 48% vs. 29%; in Alabama 39% vs. 24%.[74] In the 1940's the national average benefit was $13.40 per child per month – in Arkansas, the grant averaged $3.52 per black child, while Louisiana offered $4 per black child.[75]

The second trend was the growing association of blacks with welfare, which did little but make welfare the least favored aspect of the Social Security Act while at the same time, provide a means of portraying blacks as undeserving and lacking in the American ethos of self-responsibility and achievement. From a structural point of view there were aspects of the institution that contributed to its growing stigmatization. First, while the government picked up one half the states' cost for OAA, it only picked up one third of ADC. This evidenced a lesser commitment to welfare on behalf of the federal government while simultaneously providing a cause for resentment among local constituents since their states were picking up a large part of the bill. At the same time, it was exactly because ADC was premised on giving to the needy in general, and that racially exclusionary provisions such as those in UI and OIA had not been built into ADC, that blacks were equally if not more than likely to be ADC recipients.[76] It was not until blacks began to depend on the government for their needs to be met, and that this became publicly visible, that welfare became the bain of the newly developed welfare state.

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[73] Robert Lieberman, *Shifting the Color Line*, 127.
[74] Ira Katznelson, *When Affirmative Action Was White*, 46.
[75] Martin Gilens, *Why Americans Hate Welfare*, 105.
[76] Robert Lieberman, *Shifting The Color Line*, 48.

A significant reason for welfare's increased publicity was the rapid and substantial growth of ADC's rolls. By 1957 ADC had more claimants than any other Social Security program.[77] While blacks were only 2% of the northern population in 1920, that number swelled to 7% by 1960.[78] Specifically, in urban areas – areas associated with ghettos and destitution – blacks were 12% of the population. At the same time, and not without coincidence, blacks became more prominently represented on ADC rolls. While they made up 13.5% of the rolls in 1936, they comprised 45% by 1969.[79] In both instances black representation had ballooned by triple digit percentages. Increases in black ADC representation, however, were not only a function of black migration. For example, the 1939 Amendments to the Social Security Act added a survivor's benefit to OAI which relocated many white mothers from ADC to that program, hence black percentages rose since blacks were significantly underrepresented in OAI. As another example, ADC had been in part regulated by "man in the house" rules – mothers found living with a man could be removed from ADC, but this rule was relaxed in 1961, as were others in 1966. In that year alone, ADC enrollment rose from 7.8 million to 8.4 million.[80]

While we are limited in drawing substantive conclusions from the following statistic, it seems remarkably symbolic, given welfare's increasingly pronounced racial stigma at this time: in 1964 68% of Northern whites supported the government's role in pushing integration, but in 1966, the same year in which ADC roles dramatically increased, 52% now felt the government was pushing integration too fast.[81] However, there is some

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[77] *Ibid.*, 155.
[78] Martin Gilens, *Why Americans Hate Welfare*, 104-105.
[79] *Ibid.*, 105.
[80] Jill Quadagno, *The Color of Welfare*, 120.
[81] *Ibid.*, 30.

evidence that can be brought to bear to indicate that, while there is no causal story *between* the two facts, they do indicate a general racial climate with which welfare became easily bound up. Gilens' research on the media's role in racializing welfare reveals disturbing trends. He points out that though blacks averaged 29.5% of those in poverty from 1950 to 1995, they comprised 53.4% of the images in media stories on poverty.[82] In parallel with the remarkable reversal of opinion on the role of government in pushing racial integration, Gilens finds that "The percentage of blacks among pictures of the poor jumped from 27 percent in 1964 to 49 percent in 1965." [83] In that same two-year time span, media coverage moved from covering Johnson's War on Poverty as a general policy concern to training a critical eye on anti-poverty efforts, quick to focus on mismanagement in the Office of Economic Opportunity and issues in related offices such as the Job Corps program.

From a historical point of view, the years immediately following this period of welfare racialization represented seemingly conflicting initiatives. This conflict indicated a juncture at which welfare seemed caught between fully endorsing aiding the poor or remaining non-committal at best, detrimental at worst for those who needed the government's help. Two initiatives capture this moment well.

The Work Incentive Program (WIN) was established to promote the idea of responsibility among the needy. In recent years, this idea has been rightly associated with conservative rhetoric masking a deeper desire to see persons of color off of government assistance and to deconstruct any social contract the government has entered into with regard to poor aid. However, we should not casually dismiss efforts to encourage ADC recipients to take ownership of their well-being. For instance, WIN instituted the thirty-

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[82] Martin Gilens, *Why Americans Hate Welfare*, 113.
[83] *Ibid.*, 117.

and-a-third scheme, under which recipients would still claim aid while keeping the first thirty dollars and one-third of earnings. Additionally, it was designed to provide job training and daycare for mothers with children.[84] However, and these are reasons why a possibly honest invocation of self-reliance transformed into empty rhetoric, job training never got off the ground and daycare was underfunded. At the same time, caseworkers had discretion to drop recipients who refused to participate in training without good cause or if they determined that there was parental absence from the home.[85] As Lieberman notes, guidelines were so loose case workers could easily come to and justify two opposite decisions about a recipient's eligibility. The welfare system was increasingly becoming the site of a battle over the right response to poverty as well as an ideological battle over who constituted the deserving.

The second initiative, the Family Assistance Plan (FAP), intended for the working poor, was formulated by Nixon early in his term. This plan, too, seemed to hold great promise for welfare recipients. It provided $500 for each of the first two members of a family and $300 for each additional member. It was meant to encourage work since full benefits could be claimed up to an annual salary of $720 and for each dollar past the limit, benefits were reduced by fifty cents until they reached zero.[86] Tellingly, though, Nixon's plan was devised in response to the race riots that had shook America the past few summers. Thus, Quadagno points out an inconsistency when she asks: if FAP was only meant for families and the majority of persons participating in riots were young, black, single males, in what ways did this constitute a response to the riots? Motivated by the

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[84] Jill Quadagno, *The Color of Welfare*, 120.
[85] Robert Lieberman, *Shifting The Color Line*, 169.
[86] Jill Quadagno, *The Color of Welfare*, 118.

Moynihan report which located black instability in the single-parent home, the FAP was in fact an attempt to engineer the black family structure by inducing black males to marry.[87] Moreover, it was deigned to provide enough support to allow women to stay home with their children, thereby institutionalizing black patriarchy. The point became moot – Southern conservatives would not allow the FAP to pass, for their constituents had been wielding welfare as a tool of coercion by removing blacks participating in voting drives or who registered to vote. Ironically, liberals had been completely sidelined and FAP was a competition between racially biased conservative policy agendas.

The mid-term upshot was that by the time Reagan was elected president, it somehow became acceptable to represent a body of egalitarian policy by way of irresponsible, money grubbing, black mothers. Moreover, the 80's saw the re-emergence of culture of poverty arguments fueled by Reagan and conservatives' own disdain for public assistance. But, it is important to keep in view some structural issues with welfare; though people appear on the national stage and even influence policy, institutional practices have staying power. Recalling Lieberman's various distinctions in social security policy structure such as state vs. national and discretionary vs. non-discretionary is helpful For example, the idea of workfare, which at times mandated single mothers to leave the home, hence their children, for training and work, came back. The reason links to our longer historical view: lesser federal support meant states had to carry a larger burden for a program that continuously, and especially during the Reagan years, was seen as helping the undeserving. Workfare programs were pivotal in helping financially struggling states to keep their

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[87] *Ibid.,*124.

budgets in line.[88] As one scholar observes: "despite evidence from previous programs (...) that workfare neither provided meaningful employment opportunities for amny single women nor removed large numbers of them from the welfare roles, it was evolving from a cranky conservative notion to one with increasingly broad support."[89]

However, it turns out that it wasn't the idea of helping the poor that upset people, for when the Reagan recession hit, Gilens' media research finds that the pendulum swung the other way: the early 1980's "saw the lowest percentage of blacks in magazine portrayals of the poor of any time since the 1960's."[90] Moreover, in 1982 and 1983 the percentage of blacks in pictures of the poor dropped to 33%, nearly twenty percentage points below their forty-five year average. Coincidental with the change in visual representation, was a change in the content of the stories: rather than expressing doubt and popular rage with welfare, the news became concerned with how national economic conditions were contributing to the plight of the poor when poverty became white.[91] This development is particularly ironic, for as Jonathan Simon notes: "by the 1980's, Reaganism as an ideology had delegitimized the project of helping the poor. Such assistance was perceived as making things worse. The best thing government could do for the poor on this account, was impress upon them just how responsible they were for their own problems."[92] But, somewhere along the way, responsibility was forgiven and excused when whites were hit by the Reagan recession.

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[88] Walter I. Trattner, *From Poor Law To Welfare State: A History of Social Welfare in America* 6th Edition (New York: The Free Press, 1999), 375.
[89] *Ibid.*, 375.
[90] Martin Gilens, *Why Americans Hate Welfare*, 125.
[91] *Ibid.*, 126.
[92] Jonathan Simon, "Sanctioning Government: Explaining America's Severity Revolution," in *University of Miami Law Review* no. 56 (2001-2002), 227.

In 1994, Republicans took control of both the House and Senate for the first time in forty years, just as Clinton made his promise to "change welfare as we know it." However, while welfare did change, the most familiar aspect of those changes[93] – the aspects embedded in social normative knowledge – were those which would once again call into question the principled integrity of the idea of welfare. Welfare changed from Aid to Dependent Children to Temporary Assisntance to Needy Families (TANF) in conjunction with General Assistance (GA) for the needy poor. As indicated by the term 'temporary,' among the changes wrought upon welfare was the first ever implementation of hard time limits. The idea of training was revived, but recipients were mandated to take a job after one year. The changes also embodied social conservative clauses and causes: teen parents were required to live with a parent or guardian, and states could compete for a $20 million bonus if they could eliminate 'illegitimacy.' Entitlement to childcare was eliminated, and states could choose to institute mandatory drug testing. Maybe the most detrimental of changes was the shift from open funding as needs arose to block grants – fixed sums of money the states were to appropriate as they saw fit. While the parochial nature of welfare had always been problematic, the above changes in conjunction with the shift to block grants gave states even more incentive to exercise the discretion allowed by welfare's parochial nature, including shortening the hard time limits on welfare receipt as well as exercising subjective judgment as to whether a recipient had made good faith efforts to make good on his or her 'individual responsibility plans.'

It is too soon to fairly assess what impact Clinton's reforms have had. But it does seem that not only is welfare racial today, but that its contemporary contours are informed

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[93] Linda Williams, *The Constraint of Race: The Legacy of White Skin Privilege in America* (University Park: Pennsylvania State University Press, 2003), 258-260.

by the historical interaction of racial precedents with policy development. While very recent empirical evidence is not yet widely available, some recent studies confirm this pattern of disadvantage. Engaging in state level analyses of the relationship between welfare policy levels and race, these studies provide strong evidence that today, skin color remains a predictor of disadvantage. Christopher Howard analyzes this relationship by holding income, education, percentage urban, the poverty rate, and party control (which party runs the state) constant. In five separate models he introduces racial independent variables: percentage of black population, percentage of black and Hispanic population, racial attitudes, and the number of black elected officials, and shows that each significantly correlates with reduced benefits.[94]

In another telling analysis, Richard Fording finds correlations between percentage of black AFDC caseloads with the likelihood of a state adopting (what might be considered punitive) restrictive work requirements, time limits, and responsibility waivers.[95] As the percentage of black AFDC caseloads rises, so does the likelihood of adopting a waiver. Fording's analysis shows that "in states where the relative number of black AFDC families was largest (70-90 percent), the probability of adopting a waiver was five to six times greater than that of states where the AFDC population was predominantly white."[96] It bears mentioning that the Clinton administration, in a sign that its welfare reforms were not

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[94] Christopher Howard, *The Welfare State Nobody Knows: Debunking Myths About U. S. Social Policy* (Princeton: Princeton University Press, 2007), 187, Table 9.1.

[95] Waivers allow states to adopt their own policies for which the waiver is applicable.

[96] Richard C. Fording, "'Laboratories of Democracy'" of Symbolic Politics?" in *Race and the Politics of Welfare Reform* (Ann Arbor: University of Michigan Press, 2003), 88, 89 figure 3.1. In same volume see also Joe Soss *et al* "The Hard Line and the Color Line: Race, Welfare, and the Roots of Get-Tough Welfare Reform," 225-253. For a historical account of the impact of fiscal federalism on this policy trend, see in the same volume Michael K. Brown's "Ghettos, Fiscal Federalism, and Welfare Reform," 47-71.

merely the result of Republican pressure, allowed fast-track processing of waiver requests, which encouraged more applications for waivers.

A very unfortunate outcome of this is the collateral damage: not only are persons of color carrying the historical baggage and stigma of race but, since even in those states where they are only 50% of the AFDC cases display a tendency to request these waivers, other groups, including whites themselves, are pulled into the racial framework. Indeed as the American financial crisis became particularly acute at the end of 2008 and beginning of 2009, concerns began to build that states were dropping people from the rolls precisely when the poor needed welfare the most. The New York Times reported, "Ron Haskins, a former Republican Congressional aide who helped write the 1996 law overhauling the welfare system" himself was concerned. He said, "'The overall structure is not working the way it was designed to work. We would expect, just on the face it, that when a deep recession happens, people could go back on welfare.'"[97] In light of the above investigation and prior theoretical arguments, it might not be surprising when institutions operate contrary to the needs of those who depend on them. At this point, racial disadvantage illustrates how it can transcend its own bounds.

§4. Conclusion

Historically evolved power is predicated upon the idea that racial norms, institutional design and development, and path dependence converge to produce robust

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[97] Jason DaPerle, "Welfare Aid Isn't Growing As Economy Drops Off," *New York Times*, February 1, 2009, http://www.nytimes.com/2009/02/02/us/02welfare.html

patterns of racial inequality. This part of the theory of power – the institutional component – is intended to direct our attention, moreover, to the temporal dimension of this convergence. Taken together, it explains dynamic and long-standing injustices – it explains how once overt and explicit racism, openly sanctioned by institutions, can become implicit and unintentional in our institutions, yet produce patterns consistent with historical precedent. In other words, we have given analytic content to Marshall's lament, and operationalized those concerns to provide motivation as well as content for a theory of justice

Here we have explored criminal justice (or the law) and welfare (understood at the more general level of social provision). It is remarkable to see such telling parallels and, if we have told a fair story, affirmations of the theory of power applied to institutions whose purposes are so divergent: one is intended to control and extract punishment while the other is intended to provide to the those in need at various stages of their lives under various conditions. More than remarkable, it is morally problematic that much of what seems to account for development of policy for these two institutions is race. If I am right in arguing that race is a normatively loaded social marker and that the presence of racial inequality (in law and welfare, for example) in the absence of overt racism is a function of patterns of racial valuation explainable by the theory of power, we seem justified in focusing our energies in developing an account of justice that makes a competing normative ideal applicable to institutional design its primary object.

I have also argued that the problem with the basic structure is that its institutions do not cohere in the right way to treat persons of color as moral equals, and with the respect that comes with this normative classification. By illustrating the contours of this in

exploring two diametrically positioned institutions, we seem to be on the right track in understanding the fundamental problem of racial inequality.

However, I want to *further* argue that such persistent and pervasive circumstances contribute to racial inequality in another way – by insinuating themselves into our internal lives and undermining the self-respect of persons of color. When this second dynamic is more precisely brought into view alongside the above investigation, so will the substantive grounds and aims for justice as democratic partnership.

PART III – SETTING THE COURSE FOR A NEW NARRATIVE

If, however, the vistas disclosed as yet no goal, no resting-place,
little but flattery and criticism, the journey at least gave
leisure for reflection and self-examination; it changed the child
of Emancipation to the youth with dawning self-consciousness, self-realization,
self-respect. In those somber forests of his striving his own soul rose before him,
and he saw in himself some faint revelation of his power, of his mission.
- W. E. B. DuBois – The Souls of Black Folk

Chapter Four – Internal Lives and Self-Respect

It must be admitted the idea that a person may live a less successful life than others

by dint of an arbitrary, socially constructed marker such as race, and that one is likely to

see others like herself face similar struggles for similarly unjustifiable reasons will have

some effect on one's sense of self and self-worth. If we a imagine a life surrounded by:

television shows affirming that those who share similar skin color seem (naturally) crime

prone, an economy that systematically transfers wealth between generations of other

groups – just not your own, an education system that denies access to crucial historical

truths about race relations, a housing market that continues to segregate, we might

imagine a kind of burden on the internal lives of persons that must somehow manifest

itself. These seem rather uncontroversial premises. However, they have crucial

implications, for, as I have been arguing, racial justice significantly hinges upon attending to

matters of social valuation. This can be seen in light of the case of welfare: even a more

equitable distribution does nothing to attend to the offensive ways it is racialized. As was

argued at the level of theory in chapter 2, this system of valuation impacts the internal lives

of persons. So, it is incumbent upon us to ask and develop a response to two questions.

First, what are the contours of this burden on internal lives? Second, what is its relation to

the problem of valuation and a theory of justice as its possible response?

The idea that racial subordination poses particular difficulties for the internal lives of persons has played a role for some time. Beginning most notably with W. E. B. Du Bois, the problem was first framed as that of double-consciousness. Since Du Bois, social and political thought has developed a delicate and tenuous relationship to arguments of psychology. Political thought has embraced (intentionally or not; explicitly or not) the idea of the unencumbered self – an agent with a clear line of sight to her own aims, or, at minimum, an unhindered capacity to develop a unified relationship with those aims. Meanwhile, sociological and psychological studies that have helpfully refined our understanding of the impact of social subordination on persons allow us to challenge the appropriateness of this view for social and political thought as well as productively explore the implications of alternative views. It is this line of development, from Du Bois to present, I wish to mobilize in order to clearly lay out what is meant when we claim that systemic racism, as a function of institutional practices, is complicit in harming or undermining the internal lives of persons.

The response to our second question – what is the relationship of this problem to social valuation and justice? – comes into view once we are clear on the forces at work in the above dynamic. I earlier introduced the argument that racial injustice is the problem of the social standing society accords persons of color as well as the social standing they strive to embrace for themselves. I seek to give this argument more precise content and hold that it reflects a basic fact of social existence: illegitimate hierarchy is often grounded in normative beliefs of others that they themselves develop a repertoire of responses and dispositions toward. These responses, as Sidanius and Pratto have shown, are often harmful to no one else save the subordinately positioned agent who enacts them. Our

history of race in conjunction with prominent accounts of the impact the effects of this history have on persons of color allows us to do more than offer this argument as a provocative surmise. It can serve as an analytic peg upon which to confidently hang our normative prescription.

If it is true that the problem of racial injustice is the problem of valuation, it becomes apparent that framing justice in terms of distributions seeking to address inequality will very likely continue to reflect or eventually succumb to this valuation. Indeed, systemic racial inequality in the face of formal equality and fairness offers strong evidence for this proposition. What is needed, then, is a normative concept simultaneously practical and idealistic enough to dismantle this system of valuation.

The appropriate concept, so I shall argue, is self-respect; and, with regard to the aims of justice, the social bases of self-respect is seen as its appropriate primary aim. I earlier stated that the power of the social bases of self-respect consists in two considerations. First, when one has self-respect, she is more fully able to look upon her life as something that deserves proper ethical consideration and as capable of achieving success. Second, when the social bases of self-respect is a public standard of justice, others in society (persons not of color) witness their institutions affirming the value of persons of color and are prompted to develop an accordingly appropriate disposition to their fellow citizens. In this sense, we envision the social bases of self-respect as realigning the moral and ethical compass of society. It might be the case that once this has happened the question of redistribution can be profitably engaged for it might still be the case that other structural factors promote material inequality broadly construed. But, it is almost a certainty that little can be accomplished until persons of color are seen as being of equal

intrinsic value as everyone else. How we conceive of this dynamic and the appropriate response is the concern of this chapter.

§1. Self- Respect

§1.1   In an early article on self-respect, Elizabeth Telfer suggests that the important question is: "what kind of thing is it?"[1] In seeking to establish its metaphysical status, Telfer wants to set the bounds by which we understand what count as the appropriate traits of persons that ought to be the object of self-respect. I pursue an alternative strategy. Unlike many topics important to ethical and moral theory, when we speak of self-respect we tend to have in mind something intensely personal and immediately valuable. It is with these sensibilities in mind that I frame a conception of self-respect. In this way we can best zero in on the importance and value of self-respect for normative theory and its standing with respect to one's internal life.

Below, I wish to establish two points about self-respect.

1. it ought to be seen in the first instance as a personal attribute that revolves around one's disposition towards oneself; it is the 'self' in self-respect which gives it its particular normative character and importance
2. it is because our self-respect hinges in part upon external factors that certain political phenomena can disrupt or corrupt the balance between external influences on our self-respect and on the degree to which we show ourselves appropriate respect

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[1] Elizabeth Telfer, "Self-Respect," in *The Philosophical Quarterly* 18. no. 71 (1968), 114.

To the extent that self-respect is intensely personal and indicates one's sense of self and self-worth, self-respect crucially refers to one's internal life; to the extent that one's self-respect is impacted by external dynamics, such as those of subordinative power, one's internal life becomes importantly linked to one's political context; by virtue of the prior two propositions, any systematic political treatment that damages one's self-respect justifies a justice claim.

§1.2   When we are engaged in the act of respecting, what are we doing? On what grounds do we do it and what is the content of respect? In reflecting on our everyday interactions, it seems reasonable to suppose, as Stephen Darwall does, that there are at least two kinds of respect. First, we might think of respect as a kind of moral stance, something owed to persons by virtue of human personhood – "a disposition to weigh appropriately in one's deliberations some feature of the thing in question and to act accordingly."[2] So, "To say that persons as such are entitled to respect is to say that they are entitled to have other persons take seriously and weigh appropriately the fact that they are persons deliberating about what to do."[3] This first idea of respect not only pays homage to their attributes, i.e. being a deliberative agent, but has built into it the moral mandate that persons just are objects of our respect. Darwall terms this *moral recognition respect* – it sets moral constraints on our behavior towards others.

We also tend to have the idea of respecting persons in virtue of some excellence they possess, hence, the intuitive sense we are able to make of a basketball player's hesitation to take a shot in the post-up position due to his respect for a particular

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[2] Stephen L. Darwall, "Two Kinds of Respect," in *Ethics* 88. no. 1 (1977), 38.
[3] *Ibid.*

defendant's shot blocking ability. Similarly, we may not like the creative content of a literary work, yet we may nevertheless say we respect the author's ability to create interesting and compelling characters – we may even say she does it better than most. On the view of *appraisal respect*[4] it is possible to respect some persons more than others by dint of good-making characteristics of a person.[5] For example, I favorably appraise two of my colleagues, but I may have higher appraisal respect for one because she takes extra care to share her time since she considers it her scholarly duty to read her colleagues' papers should they ask.

The dual notions of respect are coherent, though, only because we have an external view of other persons. We have a moral duty towards them regardless of whether they prove to hold particular excellences. The generous colleague is owed a certain amount of respect by dint of her membership in a (moral) human community. This consequently places moral constraints on our behavior. However, because we have various relationships to persons, relevant excellences manifest themselves. This is what allows us to have appraisal respect for them. One way to characterize the dualist view of respect is to say that all persons are due a baseline moral respect and are eligible for additional appraisal; the latter bears no relation to one's moral stance towards that person.

However, we should be aware of how the move to include 'self' modifies a notion of respect. For instance, Darwall says: "Both recognition respect for persons as such and appraisal respect for an individual as a person are attitudes which one can bear to oneself. Accordingly, these two kinds of self-respect must be distinguished."[6] To my mind, the

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[4] *ibid.*, 39.
[5] *Ibid.*, 46.
[6] *Ibid.*, 47.

addition of 'self' in a notion of respect seems to indicate a different kind of relationship to the object of respect, namely one's self as compared to someone else. Further, this seems to unify self-respect rather than support the dualist view.

Recognition respect constrains one's behavior towards the object of respect. It follows that self-respect requires that one constrain one's behavior towards oneself. I take it that what this means is: as a self-respecting person, I do myself no intentional harm, nor do I place obstacles in my own way. This derives from the moral duty of treating myself as an end rather than a means, and as capable of conceiving and achieving a good life. This largely entails a negative duty, but doesn't seem to capture positive aspects of self-respect, nor the aspects of what conceiving and achieving the good life positively entails. I have in mind here something like: a self-respecting person takes care of his or her family. Here, were one not to undertake this duty, it can't be said that one has done oneself harm. Additionally, we might imagine that one has certain positive duties that attach themselves to one's self-respect. It is hard to imagine a self-respecting father or mother who provides baseline needs for his or her child (so the child receives *adequate* care and attention), but nothing more, though they are able. Our hesitation here seems to revolve around the following: we may externally appreciate the parent's attention to his or her duties, but when we consider the way we internally dispose ourselves to objects of love, they seem likely to motivate and be deserving of something more than the baseline. So, the introduction of 'self' into recognition respect amplifies the original conception of recognition respect by implying a more robust set of positive moral commitments. How does the introduction of 'self' impact appraisal respect?

Let's say that I am the generous faculty member in the above example. Let's also say that I am aware that I possess the excellence of generosity. When I positively appraise myself two things could be happening. The first is arrogance – I'm generous, being generous is an excellence, I am excellent by virtue of my generosity, and that makes me a superior person. But let us imagine that my generosity is properly motivated in such a way that arrogance is precluded from the domain of applicable descriptions of my attitude.

What happens in this instance seems to resemble something closer to pride. But it may be true that the object of my pride is comprised of constitutive elements that may themselves be the object of appraisal respect – I respect myself for maintaining a disciplined commitment to resist alluring temptations that normally undermine generosity as well as the ability to recognize the needs of others. My self-respect prompts me to appraise myself, and when I do so I'm able to make sure I'm turning out to be the kind of person I want to be. This in turn is likely to provide the grounds to further improve myself if turns out I'm falling short somewhere along the way, or, if I am living up to my aspirations, to justify to myself a regimen of actions and decisions in order to maintain my successes, thus my self-respect. The point, then, is that just as the inclusion of 'self' in recognition respect introduces a more robust set of positive duties, the inclusion of 'self' in appraisal respect provides immediate and immediately accessible motivational as well as aspirational grounds to be a better self tomorrow than I am today. And while earning the respect of others is fundamental to our social relations, we never quite carry around the respect others have for us the way we carry around our own.

Now, I will consider the relationship of factors in the external world to one's internal life with regard to self-respect.

§1.3   On Stephen Massey's view, there are two other ways philosophers tend to view self-respect. First as a subjective, psychological concept which assesses one' belief about whether one "acts in accord with this conception of worthy behavior and has confidence that he will continue to do so."[7] Second, self-respect can be an objective, moral concept, meaning "a self-respecting person's attitudes and actions must satisfy independent standards of worthiness."[8] So, "Since each concept points our attention to a distinct phenomenon, I speak of *two* concepts of self-respect."[9] Massey raises alarms over the objectivist view since objective conditions (external factors) can corrupt one's pursuit of self-respect, as well as provide objectionable practical bases for it. Ultimately, Massey wants to say that in such instances, it is incumbent upon persons to align the bases for self-respect with a moral law or code independent of one's circumstances. I think this view is essentially correct. However, we get more value out of Massey's argument by keeping in close view the argument linking circumstances and internal lives. In brief, the pressing issue around self-respect centers on the way objective conditions can place obstacles in one's abiding by an independent moral code. In other words, one might not always have the power to identify a more acceptable objective basis given one's exposure to pervasive disadvantage or subordinations.

Massey offers the following example: there is an Uncle Tom, who, as Uncle Tom's go, is overly deferential to whites. He is also "an honest and trustworthy man, deeply concerned for the welfare and happiness of his family, friends, and others in his

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[7] Stephen Massey, "Is Self-Respect a Moral or a Psychological Concept?" in *Ethics* 91. no. 2 (1983), 248.
[8] *Ibid.*, 251.
[9] *Ibid.*, 247.

community."[10] Further, "He may not regard his values and the fulfillment of his desires as having an importance equal to his master's, but he thinks they have some importance and respects himself for meeting what he regards as his obligations."[11]

In this example, the Uncle Tom seems to exhibit subjective self-respect since he acts to fulfill what he considers to be his obligations. However, his self-respect seems to falter since one ought not subject one's rights to the kind of abuse to which this particular Uncle Tom succumbs. Massey argues that even though there seem to be two kinds of self-respect at stake here, he believes it a mistake to conclude that self-respect should be accepted as an objective phenomenon because "the Uncle Tom's failure to recognize and properly value his...rights...might plausibly be on the ground that the Uncle Tom's self-respect lacks certain morally desirable bases..."[12] When Massey locates the trouble with the Uncle Tom's self-respect as being founded upon morally bad bases he means to indicate being deferential to whites counts as morally bad since it ostensibly undermines one's bases for agency. Massey goes on to reject the objectivist view for it is founded on external measures of what counts as self-respect rather than one having morally appropriate beliefs about oneself. Here, the issue is that *within the Uncle Tom's social milieu, objective standards direct him to do exactly what we think he ought not* – undermine his self-respect in being overly and unnecessarily deferential. I want to draw attention to the fact that the Uncle Tom exists under a regime of social power wherein the norm is blacks are/deserve to be/ought to be lower than whites in social standing, and that this undercuts the subjective conception we might be tempted to favor.

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[10] *Ibid.*, 252.
[11] *Ibid.*
[12] *Ibid.*, 253.

The real problem is that the Uncle Tom's bases for self-respect are indeed founded upon the objective aspects of *his particular context*: he exists in one of the few spaces society has carved out for him. To the extent that he is deferential, we want him to *purposefully* be so in employing this behavior as a tactic rather than as expressing a disposition towards himself. However, if he lacks the ability to do so, it is precisely because his self-respect has been undermined by the external/objective factors of his social and political life. So Massey is correct in being concerned about the objective conception of self-respect since these only reinforce subordination rather than providing a path towards personal freedom and autonomy.

If we take the power of social regimes seriously – especially with respect to identity roles and subordination – we will be concerned that the 'objective' bases for self-respect in such instances are asymmetrically legitimated fronts for subordination. Moreover, this will be, as we explored with Hirschmann, and Sidanius and Pratto, closely tied to political power and the structure and arrangement of major institutions. For example, Michelle Moody-Adams argues that there are two components to self-respect. "The first involves the conviction that one best affirms one's own value by using one's abilities and talents to contribute to one's survival."[13] The second reflects the manifestation of one's will to develop one's abilities.[14] The idea behind social construction is regimes of power and social norms act to shape us in ways that we might 'objectively' choose not to develop. Recall the well-intentioned, fully engaged, gender egalitarian father whose first instinct was to prompt his daughter to consider nursing as a career rather than neurosurgery. If he were

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[13] Michelle Moody-Adams, "Race, Class, and the Social Construction of Self-Respect," in *Dignity, Character, and Self-Respect.* ed. Robin S. Dillon (New York: Routledge, 1995), 272.
[14] *Ibid.*, 273.

faced with his own misogynistic tendencies, he would wholeheartedly disavow them and similarly commit to correct himself.

Moody-Adams' stance is that it is a mistake to think self-respect is something we work out or fail to work out on our own. Indeed, self-respect is as prone to social construction as our desires. She imagines a person consistently prevented from properly exercising her will in developing her abilities – "Such a person may begin to distrust her abilities; severe frustration and disappointment can make the exercise of one's talents and abilities seem antithetical to preservation."[15] Here, Moody-Adams is thinking of a person whose station in life, whose social status, places her in a position to be consistently prevented from making her will manifest, and this prevention has everything to do with her self-conception and perceived value of her life-plans within that society's major institutions and social practices. Moody-Adams' general point is that our actual self-respect and what we will sometimes conceive to be the proper grounds for our self-respect can be altered by social dynamics that lie outside the bounds of our agency but which nonetheless hold powerful sway over our view of ourselves and our aims. Moody-Adams' concerns bring into view the dynamic relationship between the political and the internal. For, as our argument in chapter 2 concludes, the political often embodies patterns of asymmetric relations bound to a normative framework that set the stage for social construction, and as Hirschmann states it, the mutual construction of disadvantage in the internal lives of persons.

Returning to the Uncle Tom: he lives up to his obligations to his friends and family, and that is because he can consider these obligations on their own accord – these mostly

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[15] *Ibid.*, 274.

exist separately from the racist power that makes the Uncle Tom as such. We easily imagine that his obligations are formulated and motivated in the appropriate way – by his wholehearted love and care for family and friends, which expresses itself in the kinds of action such motivations ought to prompt. However, the Uncle Tom exists in a social milieu that prompts him to behave in a particular way before whites, so when in *that* situation, his considerations and proclivities change accordingly – he doesn't seem to be the same man who has the integrity to look after his friends and family. More pointedly, since the Uncle Tom doesn't seem to embrace subordination as a tactic, we are concerned about the extent to which he seems to embrace subordination. Put yet another way, the problem is that the norms given by his society as to how blacks should act when around whites seem to have been embraced by him as the bases for his sense of self.

The point here is that by separating the objective from the subjective, we risk losing sight of the relationship between persons' internal lives and the world that impacts their self-respect and its bases. The idea to keep in view is that while the Uncle Tom seems a quaint, but extreme example, the general frame of the problem holds just in case society is structured in such a way that some persons are marginalized by dint of race, such as is the case, so I have been insisting, with the presence and persistence of racial inequality. It is problematic when certain groups in society, more than others, are at risk in having their self-respect socially constructed in ways counter-conducive to their well-being, in ways that seem to offend against what we might normally take to be an appropriate moral or ethical code.

This should recall our engagement with Shelby – it is surely the case that oppositional attitudes or criminal acts are objectively objectionable, but we hinder our

analytic insight if we stop at simply observing that such acts are objectionable rather than inquiring into what external factors conspire to make such behavior an unfortunate norm. We will recall our line of argument that the circumstances which undermine self-respect are appropriately imagined as falling under the purview of justice precisely because they impact the persons we want to be as well as possibly distort our self-conception.

I want to suggest that were we to consider the Uncle Tom's predicament as a purely objective/moral one, we place undue burden on him, and this burden stems from our failure in conceiving him as maintaining full, unencumbered agency despite the social and political forces at work around him and within him – it ignores how these forces undercut the subjective/psychological conception of self-respect. It seems then, for our purposes, Massey's concerns come fully into light by recognizing that objective/moral standards cannot in many instances be simply rejected, for on Hirschmann' and Moody-Allen's view, they harmfully insinuate themselves into our internal lives; thus, their rejection denies us a crucial resource in more fully understanding the Uncle Tom's attitudes and behaviors. This relationship between the two aspects – the way the objective/moral undercuts and undermines the subjective/psychological – means that removing this burden is a matter of justice, and it is a matter of justice because the 'objective' norms which give content to the Uncle Tom's faulty self-respect are a product of asymmetric social and political power. In this way, we relieve the Uncle Tom of his undue burden while our moral energies are productively redirected to the structures and practices which shape the Uncle Tom's circumstances, hence his faulty self-respect. Additionally, and very importantly, introducing the interplay between political and social power and the objective/moral conception of self-respect alongside establishing the social bases of self-respect as the

appropriate aim of a conception of justice grounds our institutional approach against the background understanding of how the sociology, history, and politics of race converge on American political society and structures.

§1.4   In framing self-respect we have laid the grounds for a conception of it: *one's disposition towards oneself such that plans and perceived purposes are reflectively developed in line with an autonomously articulated morally appropriate conception of the good life.* We should make two observations. Often, self-respect is closely identified with self-worth; while the above conception makes no mention of self-worth, its constituent considerations – one's plans, perceived purpose, and good life – are meant to indicate that one both considers oneself and one's aims as worthy and acts to realize that worth. Second, while it is specified as a personal disposition that requires reflection, the idea of the good life is sure to place objective constraints on what counts towards that endeavor. While this is not the space to work out an ethical theory of the good life, we commonly hold certain intuitions about what the good life constitutes. For instance, we would find one's nonchalance in obtaining an education to be less good than someone who made an honest effort to do so. Note that this doesn't determine a self-respecting person's plans for her such as she must go to college or even that school is the necessary primary avenue of education – it merely restates the cliché, "a mind is a terrible thing to waste." Further, the idea of the good life provides intuitively appealing content to one's reflective processes – it would seem incongruent for one to employ a principle of laziness to determine the good life, if the good life entails not squandering one's opportunity to make something of one's self.

My argument here, and which I will forward in the course of the next two parts of the chapter is that when we understand self-respect as something of deep value for persons, both functionally and affectively, and we see that it can be adversely impacted by regimes of power, then there is a moral issue at stake. When those regimes reside within our major social institutions there is a political issue at stake. To the extent that these can be theorized and specified, we can say we have an issue of justice. I will now argue that racial inequality, fueled by a certain valuation framework embedded in our major institutions (argued in the prior two chapters), poses certain problems for the self-respect of persons of color, and hence, is an appropriate object of justice.

2. Race and Self

§2.1   W. E. B. Du Bois introduced the idea of double-consciousness into America's racial dialogue over one hundred years ago with some fanfare among black thinkers but to wide discredit or exploitation among the prevailing white power structure.[16] For Du Bois the idea of double consciousness was meant to bring into relief the extent to which blacks, under continuous and pervasive oppression, were constantly forced to negotiate and renegotiate their selves in light of that oppression. The idea was and remains powerful for it raises the basic yet crucial issue of how power and subordination throw into jeopardy for some what is taken for granted by others – the circumstantial stability, hence the personal ability, to make oneself into the person one desires and deems appropriate.

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[16] Mikhail Lyubansky and Roy Eidelson, "Revisiting Du Bois: The Relsationship Between African-American Double Consciousness and Beliefs About Racial and National Group Experiences," in *Journal of Black Psychology* 31. no 3 (2005), 3.

Though the idea of double-consciousness is foundationally crucial for Du Bois, it is given relatively little space or specification in the text which made it notable. Below I offer a reading of double-consciousness as presented in *The Souls of Black Folk* and seek to systematize Du Bois' argument by identifying two major theses implied by the argument. I then examine these theses in light of the theory of historically evolved socially embedded power in order to mobilize them as premises for the value of the social bases of self-respect as the appropriate primary aim of a theory of justice intended to respond to racial inequality. In what follows, through engagement with sociologist Mary Waters' fieldwork and Claude Steele's socio-psychological experiments, I move to ground the foundational value of the social bases of a conception of justice appropriate for racial inequality.

Du Bois begins his exploration of double-consciousness by identifying the social status of blacks in America: a problem. The description of blacks as a problem is a surprisingly comprehensive analytic move made by Du Bois in two ways that give us purchase on the idea of double-consciousness. First, Du Bois is thinking over the status of blacks at a crucial historical crossroads: the end of Reconstruction and the dawn of Jim Crow. As we saw in Chapter 3, the great hope Reconstruction held out in elevating blacks to a status of social and political equality was quickly dashed, initially by Andrew Johnson's resistance, then by Ulysses Grant's knowing complicity, followed by the Republican Party's capitulation to the Democrats in the compromise that placed Hayes in office, and subsequent Supreme Court rulings such as the *Slaughterhouse Cases*. When it was clear that Reconstruction was a failed project there came to be the question, what now to do with the black population? The reneging of land grants to blacks and the increased focus on black criminality were merely two of the many precursors of a salient concern in the polity. The

freedom of former slaves motivated the agenda of devising new forms of social control. A problem was born anew.

Second, the fact that the black man or woman was a problem to the world outside now made that same person a problem unto him- or herself. On the one hand, the fact that society could contemplate 'what to do with you' presents a rather alienating set of circumstances to the person whose destiny is to be determined by others, by a community other than their own. On the other hand, one nevertheless had to make her way in that world – there was no escaping the reality of daily existence.

Du Bois describes the idea of double-consciousness as "this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity."[17] It's easy to see the dilemma this poses for a person of color. On the one hand, as society decides 'what to do with you', one's sense of agency is diminished at the same time that it is apparent that one is simply not welcome in the halls of political and social equality. On the other hand, even if one adopts a rebellious disposition, and even if it motivates a sense of purpose and mission, it does so primarily from morally problematic conditions and premises – that one must triumph simply to establish oneself as a minimally acceptable human being before the polity. Additionally, it is a result that is forced upon a person.

§2.2   Now I would like to highlight two major these offered by Du Bois on the implications of double-consciousness and then examine them in light of HESEP. Then, I will explore how these theses have been operationalized and "tested" by Mary Waters and Claude Steele.

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[17] W. E. B DuBois, *The Souls of Black Folk*, Eds. Henry Louis Gates, Jr and Terri Hume Oliver. Norton Critical Edition. (New York: W. W. Norton, 1999), 11.

This will help set the stage for introducing and exploring the value of self-respect as a normative ordering principle as well as ground my claim that it ought to be the primary aim of a theory of justice attentive to racial inequality.

Bearing witness to a pivotal point in history, Du Bois anticipated the conservative move to mobilize formal equality with a call for responsibility for one's life. This is an idea that is not inherently offensive save for those instances where the call for responsibility is actually a call for neglect of others who find themselves in circumstances that *are* inherently unfair, disadvantageous or harmful. Reflecting on the economic and social plight of blacks he writes: "A people thus handicapped ought not to be asked to race with the world, but rather allowed to give all its time and thought to its own social problems."[18] Interestingly, Du Bois seems to be calling for the provision of space so that blacks can attend to their problems. But he perceives a significant amount of slippage between the space to take care of one's own life and the ability one has to do that successfully. Du Bois' first thesis is contained in this lament: "But the facing of so vast a prejudice could not but bring the inevitable self-questioning self-disparagement, and lowering of ideals which ever accompany repression and breed in an atmosphere of contempt and hate."[19] Here Du Bois is arguing that *the situation of blacks by way of their social context is sufficiently disadvantageous that many are at great risk of having their sense of intention and self-respect undermined if not eradicated.*

The above thesis seeks to make the case that blacks bear a substantial burden that weighs down on crucial aspects of the self such as confidence, a sense of purpose and respect. But it is important to note that having one's internal life undermined or burdened

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[18] *Ibid.* ,14.
[19] *Ibid.,* 15.

is not an argument for false consciousness. Du Bois argues, "The history of the American Negro is the history of this strife...to merge his double self into a better and truer self. In this merging he wishes neither of the older selves to be lost."[20] By "older selves" Du Bois here means to indicate the black person's constant negotiation of self through the double-consciousness of being an American and being black. While what is being argued here is somewhat historically specific there is a way to consider this in general terms.

The idea of the black individual seeing herself through the lens of American-ness and the lens of blackness signifies the following: a systematically subordinated person seeing oneself through the lens of identity which represents political and social legitimacy as well as through the lens of an identity that, for better or worse, has come to define one's sense of group belonging and station in life but which has been normalized as subordinate or a problem. Put plainly, to see oneself as an American is to be divided with oneself as a black person precisely because of what being an American entails. Conversely, seeing oneself as black, because of the social station given blacks, almost precludes the ability to envision and enjoy American-ness. In this way, the black individual is at pains to be a coherent self because of the division pre-determined by American-ness and blackness. In this sense, there is the dominant political identity that, if only it could be fair to you and your group, would represent an attractive ideal and resolve this tension. This is a dynamic that will become particularly apparent in Waters' study. However, it is an identity that now defines your own subordination and signifies those with real advantage. On the other hand, blackness is your anchor for you have always been identified as such Moreover, because blacks in general have been subordinate, this itself has provided a source of social bonding

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[20] *Ibid.* ,11.

such that despite the disadvantage it comes with, its salience in your life cannot be denied and is not easily cast off. Thus the second thesis: *the subordinated black person constantly finds herself positioned and negotiating between an American identity which is defined as legitimate and desirable from without one's circumstances and a black identity which is seen as valuable and legitimate in its own right but seen as undesirable from without one's circumstances.* Importantly, the undesirability is not simply a sociological phenomenon of group competition but is linked to a deep history of social strife such that one group has consistently been framed as subordinate.

§2.3 We will recall the general argument of HESEP. First, institutions have historically developed under the auspices of racial norms which have subtly become a part of how those institutions operate and impact persons. Second, the power of institutions consists not only in their ability to secure rights and regulate distributions but to be purveyors of norms thus shaping the normative nature of society at large. Third, institutional sanction of norms affects persons' internal lives – as Rawls argued, their sense of purpose and their general view of themselves is greatly impacted by the station granted them by major social institutions. We are now concerned with the impact of this dynamic on persons of color and what that impact means for a theory of justice.

The argument of HESEP is anticipated by Du Bois' two theses. The value of HESEP is that it analytically tightens the relationship between disadvantage, power structures, identity and social status, and how one develops as a person. It is worth noting two contributions that the theory makes toward grounding and giving content to Du Bois' concerns over problems surrounding black self-definition and -understanding. First,

because historically evolved power is premised on a temporal component, it is applicable to the present situation of inequality in its own context but with a view to its historical nature and development. In this sense, it seeks to work out how institutions impact persons with an eye towards how racial dynamics have evolved over a time period ranging from before Du Bois' writing, to his own time, to today. Second, socially embedded power allows us to investigate the impact on the internal lives of persons of color during a historical period where overt racism is not the dominating ordering principle and is not a socially or politically tolerated motivation for action. It allows us to link Du Bois' and others' psychological concerns directly to political practices and America's political development, provide the ground for interrogating normative political theories built on certain assumptions of responsibility, as well as make racial inequality about the way people are valued and treated by dint of their race in light of history and power. To give content to these concerns I contextualize Du Bois' two theses against the empirical backdrop provided by Mary Waters and Claude Steele.

§2.2.1 BEING AMERICAN BLACK

Mary Waters' *Black Identities* provides a particularly advantageous point of view into our concerns over the relationship between valuation, race, and self-conception.[21] Waters offers a study of the similarities and contrasts in the life paths, experiences, and beliefs of first- and second-generation West Indian immigrants. Specifically, the study inquires into the identities taken up by the two generations.

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[21] Mary Waters, *Black Identities: West Indian Immigrant Dreams and American Realities* (New York: Russell Sage, 1999).

Of particular value in Waters study is her attentiveness to the historical backdrop against which West Indian societies have developed (along with variation within that broad category) and its relation to social practices and beliefs on race and skin color. A central point is that West Indian societies certainly have notions and stereotypes about race, but the colonial history of West Indian countries provides for a background importantly different from that of the United States. Among the factors Waters highlights, a few stand out in grounding the importance of studying American racial identity utilizing West Indian immigrants as the sample group. First, these countries have white minorities, and while these minorities are highly influential in political and economic circles, their numbers do not easily allow them or their skin color to be seen as the most prevalent aspect of those societies. Second, what follows is that power in these societies is represented more evenly across the skin color spectrum. Last, these societies lack a notion of the "one drop rule" that has come to define the American black/white binary. In these societies the simple idea of blackness holds comparatively less sway.

What matters for us is the way blackness insinuates itself into and impacts the lives of West Indian immigrants, particularly the second generation. Here, I want to highlight a significant trend: first-generation immigrants tended to hold the negative view that American blacks allow race to define their fortune in life, which immigrants believe prevents blacks from working harder to improve their lives. When immigrants arrived in the United States, a high premium was placed on family life, education, and self-driven success and effort, all of which they perceived as being undervalued by American blacks.

However, the second generation, growing up in mostly segregated and poor areas of New York City began to exhibit key differences in their views of race. It is worth noting, as

Waters does, that the children of immigrants were immediately exposed to conditions American blacks have come to know as normal parts of their lives: segregated housing, crime, lower incomes, and poor educational environments. Further, "The dilemma facing the children of the immigrants is that they grow up exposed both to the negative opinions voiced by their parents about American blacks and to the apparently more favorable responses of whites to foreign-born blacks."[22] Notice here that there is already exposure to a "standard" view of blacks – as a group of persons whose identity character traits are fundamentally undesirable, as of lower value.

The dilemma here is important because as Waters points out, the children of immigrants ostensibly have options; they can choose to identify with American blacks, or they can choose, to varying degrees, to prioritize their ethnic heritage and keep American "blackness" at a distance of their choosing. I want to focus on the group that chooses to embrace an identity of American black and then strengthen my argument by taking up an objection to this choice.

Mary Waters observes:

The first generation is likely to believe that while racism exists in the United States, it can be overcome or circumvented through hard work, perseverance, and the right values and attitudes. The second generation experiences racism and discrimination constantly and develops perceptions of the overwhelming influence of race on their lives and life chances that differ from their parents' views. These teens experience hassles by police and store owners, job refusals, and even attacks if they venture into white neighborhoods.[23]

Importantly, "While the American-identified young people come to terms with their parents' images of American blacks, they do not do so in a vacuum. It is not just their

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[22] *Ibid.*, 285.
[23] *Ibid.*, 309.

parents who criticize black Americans. These youngsters are very aware of the generalized negative view of blacks in the wider culture."[24]

The concern becomes that "These [teens] adopt some of the 'oppositional' pose that American black teenagers have been observed to show toward academic achievement, the idea of America, the idea of opportunity, and the wider society."[25] Thus, for instance, the American-identified teens, sitting in underperforming, mostly black high schools, tend to conclude that the Civil Rights era has resulted in few actual gains for blacks today. Maybe more crucial is that they tend to reverse many of the gains or undermine the efforts made by their parents to provide a better life for them in the U.S. than they might have gotten in their country of origin. The point here is two-fold. First, second-generation immigrants are seemingly exposed to negative views of blacks from multiple angles. Second, they can "choose" their identity, and in choosing to be American black, they adopt dispositions that immediately work against their own betterment; seemingly, these dispositions are significantly motivated by the normative racial dynamic to which they are constantly exposed. Waters concludes: "The result of the these different worldviews is that parents' view of an opportunity structure that is open to hard work is systematically undermined by their children's peer culture *but more important, by the actual experiences of these young people* [.]"[26]

It will be objected that by focusing on teens that chose to identify with American blacks I have stacked the argument in my favor. Someone taking this view will point out that second-generation immigrants who either chose to maintain close affiliation with their

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[24] *Ibid.*, 301.
[25] *Ibid.*, 307.
[26] *Ibid.* 310 (emphasis mine).

country of origin as well as those who embraced American society but prioritized their ethnic heritage over American black heritage often, for instance, were top performers in their classes. The argument would conclude that persons of color can achieve as they please, so responsibility for their lives lies with them. However, I argue that the strength of this objection is only topical. Indeed, once we understand the basis of this argument, we more fully appreciate the problem at hand.

It is true that ethnic-identified teens (those who, like their parents embraced the promises of American society and the value of hard work) tended to do well for themselves. However, notice what this required – almost wholesale distancing from the idea of American blackness. These teens reported taking pains to signal to others, particularly whites, that they were of 'a different stock' than American blacks. Strategies included cultivating an accent normally not spoken with in preparation for a job interview and carrying a map of one's home country on a key chain in hopes to prompt a question of racial/ethnic origin. The life of these teens is tinged with oppositional attitudes – they define themselves in opposition to a framework they perceive as very willing to make a judgment of them on the questionable basis of their skin color, hence the development of cues such as an accent. I suggest that two aspects of this situation support the concern over internal lives.

First, we should appreciate the potency of norms, beliefs, and values prevalent in society such that the very idea of (American) blackness is nearly repugnant to first-generation and second-generation ethnic-identified immigrants. While it might be said that this group of teens chose to identify otherwise, the power of race had enough of an impact to signal to those who have a choice that a certain kind of danger attends being black. In

this sense, the identity of blackness maps on to disadvantage and overall lesser standing. In choosing to embrace this identity, the social baggage with which it necessarily comes must be born by these teens.

Second, I think we should be compelled to say that the internal lives of even those who choose to not be American black are also impacted, *regardless* of their choice, by virtue of being of color. When we consider the strategies employed by these teens, we realize the kind of perpetual internal deliberation to define oneself against "an other." This ought to bring to mind exactly the kind of problem that concerned Du Bois – seeing oneself through multiple lenses in ways that the dominant or privileged group does not, or maybe more importantly, is never forced to. So even though these students achieve success where American blacks do not, Waters seems to have highlighted the existential situation for these teens regardless of their success or failures – a problem. This is brought into particularly sharp relief in the studies of Claude Steele and Joshua Aronson.

§2.2.2. RACE AND STEREOTYPE THREAT

A discussion of Claude Steele's theory of stereotype threat is best contextualized against the following statement:

> From an observer's standpoint, the situations of a boy and a girl in a math classroom or of a Black student and a White student in any classroom are essentially the same. The teacher is the same; the textbooks are the same; and in better classrooms, these students are treated the same. Is it possible, then, that they could still experience the classroom differently, so differently in fact as to significantly affect their performance and achievement there?[27]

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[27] Claude M. Steele, "A Threat in The Air: How Stereotypes Shape Intellectual Identity and Performance," in *Confronting Racism: The Problem and the Response.* eds. Jennifer L. Eberhardt and Susan T. Fiske. (Thousand Oaks: Sage Publication, 1998), 202.

Steele's social-psychological research ultimately answers this question in the affirmative. If it is the case that stereotype threat undermines persons' ability to achieve, then we have reason to believe that certain social norms play a significant role in one's disadvantage and impedes one's ability to have an appropriate disposition to one's life – they adversely affects one's internal life.

The theory of stereotype threat can be specified as the following: "a socio-psychological predicament that can arise from widely-known negative stereotypes about one's group....the existence of such a stereotype means that anything one does or any of one's features that conform to it make the stereotype more plausible as a self-characterization in the eyes of others, and perhaps even in one's own eyes."[28] Further, "Their prevalence in society raises the possibility for potential targets that the stereotype is true of them and, also, that other people will see them that way. When the allegations of the stereotype are importantly negative, this predicament may be self-threatening enough to have disruptive effects of its own."[29] Steele and Aronson proceed to test the theory by focusing on two groups, women and blacks, in academic test settings.

There are a few ideas behind the authors' studies. First, the variable doing the work is stereotype. This means that there is a commonly held social view of certain groups that expresses a judgment against their abilities in certain domains. The threat is activated when the subject is given a task being performed at the same time that they are given a cue that prompts recognition of the stereotype.[30] Second, the threat is most measurable in a

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[28] Claude M. Steele and Joshua Aronson, "Stereotype Threat and the Intellectual Test Performance of African Americans," in *Journal of Personality and Social Pschology* 69. no. 5 (1995), 797.

[29] *Ibid.*

[30] It is important to note that when I say the subjects recognize the stereotype, I do not mean to invoke a conscious activity. Rather, as is the point of the study, certain cues, on some psychological level, bring to the fore the stereotype in question.

setting in which the subjects are identified with the given task. In this instance, the authors chose Stanford students – Stanford is a selective school which means that students have very likely already identified with academic achievement. In the studies on gender, the authors took the extra step of including women who had a strong track record in mathematics. It is worth anticipating a key point here: these studies focused on persons already well-positioned to achieve and who we might reasonably think are less predisposed to be internally burdened. Further, with respect to race, it is likely that these students, given the kind of preparation a university such as Stanford requires, have *not* grown up in particularly adverse circumstances. Thus, their sociological milieu is very likely to have been less obviously disadvantageous than those worse positioned. The point I want to draw out is that if the stereotype has observable implications for persons who are less likely to have lived in bad circumstances (recall the discussion of Chapter 1, section 4) and who already positively identify with the task (as compared to our earlier examples in that discussion of students who 'keep it real' by failing out of school) then it seems we are dealing with truly powerful social norms that speak to the relations between power and our internal lives.

It is not necessary to recount the studies in great detail, but I want to lay out a few of their parameters and the results of the studies on race and stereotype threat to contextualize the general conclusion reached by the authors.[31] First, a major premise of the theory is that the stereotype of poor performance for blacks (and women, in that study) will be triggered by simply indicating that the test is diagnostic, meaning that the test is being administered for purpose of assessing the student along a particular dimension. A

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[31] The following studies and their conditions were all presented in Claude M. Steel and Joshua Aronson, "Stereotype Threat".

point we will come back to is that in the case of gender, participants were told that the tests were intended to offer some findings on gender (though no further particulars were offered). However, in the case of race, participants were given only a general diagnostic condition that made no mention of race. In the first of four studies, a thirty minute exam was administered which extracted some of the toughest verbal examples available from SAT exams. One group was given the exam under the diagnostic conditions mentioned above while the other was told that their efforts would help the researchers solve some other problem; this was the non-diagnostic condition. As it turns out, significant racial differences were found when participants were given the test under the diagnostic condition. However, those differences mostly disappeared under the non-diagnostic condition. In brief, this began to suggest that the idea of excellent scholastic performance somehow interacted with race to undermine exactly what the students had exhibited prior to the exam and with which they were likely to identify – excellent scholastic performance.

The authors now wanted to know whether there was a level of anxiety connected to race that mirrored the differences in performance under the diagnostic condition. Another study gave the same exact test (with fewer questions) and imposed a shorter time limit. Here, under the diagnostic condition, blacks answered fewer questions and evidenced lesser accuracy in their responses, while they performed more or less equal to whites under the non-diagnostic condition.

In a very interesting follow-up study, the researchers wanted to begin to measure to what degree race was really doing the work of impairing students' abilities. This was done in two steps across the third and fourth studies. In the third study, the researchers administered a verbal exercise that had two components. One component had words that

could be completed in a variety of ways, including racially (for example, _ _ C E [pace, face, lace, *race*]), while the other had words that potentially indicated terms of esteem and confidence (for example, L A _ _ [lack, last, land, *lazy*]). Black students tended to provide answers with racial terms and terms indicating lack of confidence or esteem respectively. Interestingly, seventy-five percent of blacks in the diagnostic condition of this study refused to record their race when prompted.

The last study presented the test from the first study but dropped the diagnostic condition. However, one group of students was race primed – given the option of stating their race in a questionnaire – while another was not primed. The results here are telling. Blacks in the race prime condition performed significantly worse compared to whites under the same condition as well as blacks in the non-race-primed condition. This provided strong evidence that the race of participants operated to destabilize students' sense of self (since they did poorly at a task with which they identified). The question now is: what is going on here?

Let's begin by considering a point made by Steele and Aronson that seems to speak against my internal lives argument. Their study is predicated on the idea that persons who identify with their task in a particular way will find their identity threatened or undermined under conditions that invoke a stereotype. Specifically, the authors state, "The present theory and research do not focus on the internalization of inferiority images or their consequences. Instead they focus on the immediate situational threat that derives from the broad dissemination of negative stereotypes about one's group."[32] Then, again: "Stereotype threat...refers to the strictly situational threat of negative stereotypes, the

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[32] Claude M. Steele and Joshua Aronson, "Stereotype Threat," 798.

threat that does not depend on cuing an internalized anxiety or expectancy."[33] But doesn't it?

We can clearly understand my challenge by comparing the gender study to the race study. In the gender study participants were told "that the test generally showed gender differences,"[34] while in the race study, participants in the diagnostic condition were told, "'various personal factors involved in performance on problems requiring reading and verbal reasoning abilities.'"[35] Notice that while both blacks and women performed worse under diagnostic conditions in the respective studies, women were the only group to have the variable important for self-evaluation invoked – *they were told* that the test usually showed gender differences, and as a gender group they did worse. But in the race studies, all that was said was that certain personal attributes mattered. Let's consider this a bit more.

What is true for both cases is that neither was specifically prompted to think that *their* group was the one already suspected as being the worse performer. In the gender case, the one that speaks comparatively weaker to the theory of stereotype threat, the statement on gender differences could have been equally applicable to men as to women. However, the theory stands because the stereotype isn't random. Recalling examples such as Lawrence Summers' remarks some time ago about the possibility of women simply being less adept at math and science, we realize that there is a general perception of women as particularly skilled in humanistic studies relying on verbal skills rather than in the sciences. Moreover, this perception is public meaning many people know that many

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[33] Claude M. Steele, "A Threat In The Air," 211.
[34] *Ibid.*, 215.
[35] Claude M. Steel and Joshua Aronson, "Stereotype Threat," 799.

others have such a view. Most importantly, women know that people have this view of them. Last, over the course of their lives, women tend to be treated in ways that reinforce such a divide, whether it be given dolls rather than construction sets as children, or encouraged to be social workers or teachers rather than nuclear physicists.

However, the race study is particularly concerning. What kind of norms must one be sensitive to such that merely being told that a test assessing certain personal attributes causes one's race to be a predictive independent variable on test performance? Why not one's height or eye color? If women performed worse being told that the test was about gender in light of the stereotype, then what kind of power do racial norms have that such a thin prompting making no mention of race can have such a distinct racial impact? The point I am driving towards is that on the account I have been constructing, the most reasonable way to explain these results is by referring to ones' internal life. For a black student's proven abilities to be undermined by simple personal assessment linked to scholastic abilities speaks volumes to the more general phenomenon we saw in Waters' research: being black in our society realigns persons' view of themselves. This view can't merely be functional. For a stereotype as minimally invoked as the one in the above study to have the effect it does, persons must *be prepared to be primed* – they must already have some view and/or fear of both the way race is viewed in their society as well as that they must be vigilant about how they perform as raced agents.

§3. The Idea and Value of the Social Bases of Self-Respect (for Racial Justice)

§3.1   The main argument I have sought to advance throughout the preceding chapters

and above is that the problem of racial injustice is the problem of valuation: how society

values persons of color and how they value themselves. It is an issue of society's disposition

towards persons of color's lives and their disposition toward their own lives as worthy

objects of the good. I have sought to link the problem of valuation to the idea of respect and

justice by indicating that racial inequality in an era of formal equality and fairness, in light

of our history, can only be explained by the normative status of persons of color in society,

and that this normative status is variously embodied in major social institutions. It is this

status that guides the way others view and value persons of color and the way they view

and value themselves; it informs the respective relevant dispositions.

In developing these arguments for the purposes of specifying *justice as democratic*

partnership, which holds that the social bases of self-respect is its appropriate primary aim,

the first section of this chapter argued that the moral value of self-respect hinges in a

particular way on recognizing the way 'self' modifies the notion of respect. In defining self-

respect as *one's disposition towards oneself such that plans and perceived purposes are*

reflectively developed in line with an autonomously articulated morally appropriate

conception of the good life, I further argued that self-respect is an indicator of the shape of

one's internal life, and that this shape can be adversely impacted by external factors,

namely social frameworks which deny or undermine persons' founding self-respect upon

morally appropriate bases.

I then grounded these claims by tracing out a line of thought that takes race as its

point of departure. Beginning with Du Bois' concept of double consciousness and then

reviewing the manifestation of the general phenomena of troubled black identities in Mary

Waters' study of West Indian immigrants and Claude Steele's work on stereotype threat, I showed that there is a concerning relationship between racial identity in America and one's sense of self. Specifically, the mere fact of being a person of color in America is to be at risk of not being able to conceive and/or achieve the good life, or doing so under a kind of weight that typically does not burden others. I have argued that this is by dint of treatment informed, at some level, by a certain framework of valuation. This framework is supported by evolved institutional practices carrying forward previously explicit racial norms and beliefs. I have further argued that one's internal life is disrupted in such a way that a person of color is at great risk of failing to see his life as a project worthy of success or of achieving the good life appropriately conceived.

If these arguments hold in the way I say they do, then we are positioned to recognize the value of the social bases of self-respect as the primary aim of a theory of justice appropriate for racial inequality. If the problem of racial inequality is a valuational problem that reflects how society and its major institutions respect persons of color and how this impacts their self-respect – especially the condition that it be autonomously articulated – then this seems to make the idea of respect, generally, a rather political one. But there are good reasons to frame the problem with specific reference to the social bases of self-respect.

One good reason consists in a fundamental liberal ideal, to which this project initially committed itself: persons ought to be the arbiters and authors of their lives, and government must be a good partner-in-standing in both protecting and promoting these aims. Indeed, it is only when we can lay claim to our efforts, purposes, successes, and even failures, that we can rightfully say we lead meaningful individual lives. However, as has

been explored above, this opportunity is put at risk when one lacks self-respect, for this is a necessary condition in persons developing exactly this disposition in an ethically and morally appropriate manner.

Power dynamics, normative frameworks, and systemic disadvantage can undermine one's ability to properly be the arbiter and author of one's life. More precisely, social, economic, and political practices embodied or supported by major social institutions can systematically put at risk one's ability to achieve self-respect in just this way. Our particular concern has been the extent to which this dynamic obtains in the lives of persons of color. In engaging Du Bois, Waters, and Steele, I have tried to show not only that this takes place to a troubling extent, but that this has been a feature of American society throughout most of its history. Moreover, this set of conditions persists because practices and processes in this history have become normalized in institutional functions reflecting historical social asymmetries – the explanatory domain of historically evolved power. So how do these concerns indicate the value of the social bases of self-respect as the primary aim of justice?

§3.2   First, we should be clear as to what is meant by the social bases of self-respect. Self-respect indicates my disposition towards my life, but becomes political when my ability to develop a morally and ethically appropriate disposition towards my life is corrupted or at risk of being corrupted by the way society and its major institutions value and treat me – this proposition derives directly from the way historically evolved power feeds into socially embedded power, the way institutional power impacts internal lives. The social bases of self-respect, then, ought to indicate the relationship between norms and institutional practices. So, by social bases of self-respect I shall mean: *the public commitment and efforts*

made by major social institutions to embrace and affirm persons of color as substantive equals in a way that reckons with both the history and contemporary reality of racial injustice.

§3.3   The foregoing investigation and arguments have led us to this definition. At this point it is worth directly engaging Rawls, for he made an early move to articulate an idea of the social bases and give them some weight in the theory of justice. Indeed, on Rawls' account, the social bases of self-respect are the most important primary good. So two questions arise. First, what is the added value in my distinct articulation of the social bases? Second, what is important, in light of my conception of them and the nature of racial inequality, about making the social bases the primary focus of justice as democratic partnership as compared to it being the most important primary good in justice as fairness?

Rawls conceives of the social bases of self respect as follows: "The social bases are things like the institutional fact that citizens have equal basic rights, and the public recognition of that fact and that everyone endorses the difference principle, itself a form of reciprocity."[36] In beginning to answer the first question: this idea of the social bases is overly formal in ways that parallel the content of the first principle of justice (we have already discussed the problems the formal nature of the principles introduces). My argument on this count is that Rawls' characterization of the social bases is an operationalized, normativized restatement of the publicity condition alongside what Rawls terms the strains of commitment – put plainly, the social bases of respect hinges on the

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[36] *Ibid.* p. 60.

publicity of the conception, everyone's continuing public agreement to it, and the operation of the difference principle. This seems such an abstraction of what we might otherwise consider a bases of self-respect (especially with regard to the many variants of disrespect) that it's hard to imagine exactly how this could speak to racial inequality. In contrast, the conception I offer is specifically geared to deal with injustice – racial injustice in particular. By making the public embrace of persons of color as substantive equals conditioned upon the reckoning with history and the nuances of contemporary racial inequality, the social bases, as I conceive them, address themselves much more directly and, as I will show in the next chapter, effectively in responding to racial inequality.

The above point leads directly to answering the second question. Rawls' formulation of the social bases of self-respect deprives it of the content necessary to respond to deep injustices – I have shown this is not the case with my conception of it. It follows that if the social bases of self-respect are as powerful as I say they are in responding to racial inequality as a problem of valuation, then my conception of it, as the primary aim of the justice as democratic partnership, serves as a substantive normative ordering principle in a way that Rawls conception cannot since the social bases are one element in the schedule of primary goods that are imagined as discrete goods. Stated differently, because I have given the social bases a particular content, placing it as the primary aim of my conception gets to the root of a particular injustice, whereas Rawls positioning of the social bases, as he conceives it, doesn't explicitly (nor do I think implicitly) indicate sufficient moral weight in aligning society's ability to fully embrace persons of color as substantive equals. Rawls writes: "Once we understand the content of these principles and their basis in reason and human attitudes, we may be in a position to decide whether substantive and formal justice

are tied together." On the view I have sketched above, it becomes apparent not only that they are tied together, but that formal justice will not have sufficient moral content without securing substantive justice first. This is the benefit of making the social bases as I have conceived them the primary aim of justice as democratic partnership.

§3.4   The value of the social bases of self-respect, then, turns on three features. First, by imposing its own standards for a reckoning test, my conception of the social bases of self-respect is well positioned to dissolve the objectionable aspects of race as a socially constructed identity. While an identity such as one based on race is always going to be socially constructed, the social bases of self-respect can be considered as a morally appropriate fund[37] upon which society draws in re-constructing this identity.

We might imagine this by considering two examples, one negative and one positive. Negatively, we might develop a punitive disposition towards certain practices such as overrepresentation of blacks as defendants on crime shows on television. Though Jerry Kang's[38] work will be discussed in the next chapter, it is worth previewing his argument. By fusing psychological research with legal doctrine, he shows that since media representation actually has an impact on persons' cognitive reactions towards identities represented in socially stigmatizing ways, it is entirely reasonable to require either the provision of services such as Public Service Announcements that seek to reverse the impact negative media images provide or cap the number of crime stories in the news. In this sense, Kang is arguing that these representations contribute to a fund of beliefs detrimental to equal

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[37] The idea of a fund is borrowed from John Rawls. In *Political Liberalism* Rawls defends the possibility of widespread agreement on important moral mandates and principles by invoking the idea of a public fund. By this he means a body of beliefs that come to be accepted over time, such as slavery is wrong, religious intolerance is bad.
[38] Jeremy Kang, "Trojan Horses of Race," in *Harvard Law Review* 118. (2005), 1489-1593.

respect; thus state coerced action is intended to remove these beliefs from the fund. Positively, we easily imagine a situation in which the social bases of self-respect go farther than measures stipulated by arguments for recognition. It is arguable that while national holidays such as Martin Luther King, Jr's birthday pay a kind of homage to the Civil Rights Era, they also serve to simplify a complex and tumultuous time; and by embodying the movement in such a fair-minded and tolerant leader, we might conclude that an ongoing struggle to recognize his principles is to a certain degree preempted by emphasizing his successes and focus on consensus rather than on a certain kind of ongoing failure and continuing dissonance over how best to address this failure. On this view, then, the social bases might require education programs that detail one of America's most important moments with full disclosure and less romance.

Second, the social bases mandate that major social institutions publicly affirm the substantive equality of persons of color – in this sense, the social bases of self-respect are concerned with status. Recalling our arguments for the primacy of the basic structure (the socio-psychological premise in particular), it follows that this public commitment ultimately not only prompts persons of color to develop appropriate self-respect, but also prompts others to realign their beliefs and the way they value persons of color. This directly follows from jointly considering the power of institutions with respect to the psychological development of persons alongside the normative fund upon which society would now draw. It is important to note here that when I refer to affirming the identity of persons of color, what I am calling for is affirmation equal to the affirmation of other citizens. Often, when identity is made the basis of affirmation, it is done to ground affirmation of group differences, and to then gain concessions on *those* grounds. We are

concerned with persons of color receiving the same affirmation due *all* citizens precisely because persons of color are systematically precluded from receiving it qua equal membership and respect. In this sense, when I invoke identity, I am actually concerned with sameness; and when I invoke respect qua identity, it is not racial identity I am looking to affirm, and to then gain concessions based on a thick description of racial culture, but rather recognition that substantive equality is at risk precisely because persons of color are often not affirmed in this way – as substantive equals to others in shared society.

Last, and following directly on the first two points, because it is primarily concerned with the normative baggage racial identity carries, and recognizes that this is predictive of disadvantage, the social bases of self-respect are preemptive and transformative rather than reactive. Taking the idea of a normative fund to its logical next step, we move away from identifying instances of status disrespect and towards undermining the web of beliefs and practices that drive racial inequality. We should think a society that successfully preempts injustice rather than waiting for it to manifest itself is our best chance at realizing a morally appealing vision of society as an ongoing scheme of cooperation among moral equals. Again, we are to see the totality of this web as more than the sum of the inequalities and unfair practices attached to it. To the extent that these arguments for the value of the social bases are true and hold together in the right way, and that racial inequality is fundamentally a problem of the disvalue attached to racial identity, then the social bases of self-respect justifies itself as the appropriate primary aim of justice concerned to alleviate racial inequality.

"Human nature being what we know it to be, there were, inevitably,
examples of selfish fancies, feigned distractions, treacherous appeals to an
all-too-easy sentimentality, deceptively seductive maneuverings, but there
were also cases of admirable selflessness, of the kind that still allow
us to believe that if we persevere in these and other such gestures worthy of abnegation
we will, in the end, more than fulfil our small part in the monumental project of creation."
- *Jose Saramago,* Seeing

Chapter 5 – Racial Justice

§1. Justice as Democratic Partnership: The Conception

§1.1   So far, I have argued that the fundamental problem of racial inequality hinges on the

problem of valuation: the value accorded persons of color and the value they accord their

own lives. More specifically, I have identified two components of the problem of racial

valuation. First is that of institutions, both in terms of their ability to shape social norms

and their complicity in having carried over historical racial norms that continue to impact

the shape and outcome of policies. Second is that of individuals, namely the way the

dynamics which prompt racial inequality affect the internal lives of persons of color, in

terms of their disposition to the good of their lives, as well as others in society in their

attitude towards persons of color.

Two key, closely linked theses follow. First, no effort of redistribution to equalize

either opportunity or resources is likely to meet success so long as the underlying dynamic

of racial inequality continues to be informed by this valuation framework. More

importantly, distributions without the guidance and support of appropriate moral

principles will be ineffective in undermining the fundamentally normative nature of racial

injustice. Let us call this *the non-distributive solution thesis*: a theory of justice must look beyond goods and towards a normative ideal or ideals as the primary tool of racial justice.

Second, we remain concerned over how we realize substantive equality. Reparations or material redress for wrongs committed against persons qua the diminished status assigned them fails to restore equality precisely because to disrupt someone's aims, intentions, obligations by way of social and political subordination is to slight their respect, and respect itself is not a compensable thing. On this view, compensating me for interfering or undermining my plans or ability to fulfill my duty, even if assigned some seemingly reasonable value, is a harm that bears directly on my personhood precisely because it is motivated by an identifying marker – race – which ought have no bearing on how I am treated or what status is assigned me. The value of my respect and self-respect cannot be captured by distributive measures.[1] While I will have more to say on this below, let us call this the *affirmation of persons thesis*: an injustice which revolves around a diminished standing of persons must address that standing rather than merely addressing the measurable outcomes of that standing, i.e. lower wealth or fewer opportunities.

It is important to anticipate an objection to the way I've framed the problem as well as developed its solution. One might wonder how the conception offered here is different from a distributive theory of justice. Why have I made a point of saying that the problem is valuational and that a distributive theory is inappropriate? In the end, won't we need to distribute some resources to meet the principles of the conception? I believe there are two responses.

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[1] See Gerald Gaus, "Does Compensation Restore Equality?" in *Injustice and Rectification*. Ed. Rodney C. Roberts. (Peter Lang: New York, 2005), pp. 83-104.

First, we might think that the language we use is important in how we understand our aims, as well as providing motivation. If we say that someone is less well off, thus we should give her X amount of some discrete good, then we are left to argue over why she should get X and not X-1 or X+1 or why it should be X at all. If we say that someone is treated poorly qua an arbitrary disadvantaged identity marker, thus we should figure out a way to make sure they are treated better, we are very much likely to have a dialogue that considers mistreated persons as such rather than merely the objects of distribution.

Second, we may rely on a previously stated argument: theories that focus on distributive justice tend to take the basic distributive framework as fundamentally well-ordered and fair. On this approach, the problem consists in merely adjusting distributions to be consistent with principles of fairness. It should be clear by now that the fact and contours of racial inequality prove this approach to racial injustice misguided. Indeed, racial inequality is what it is because the basic structure is fundamentally unfair in certain respects – this is what prompts Shelby to deny that the principle of reciprocity applies to ghetto residents. Seen from this point of view, it becomes apparent that justice must attend to the ways in which this fundamental unfairness reproduces itself and disproportionately impacts some members of society. Principles of justice must be developed with this aim in mind. It will nonetheless be true that this will require some distribution, but this simply indicates that nothing in political society can be done without the allocation of finite resources. This doesn't necessarily qualify the theory as distributive justice proper. Rather, the theory relies on the fact and necessity of allocation. It might still be the case that material inequality will obtain to a degree requiring a complementary conception of justice,

but the main goal here is to develop a way for persons of color to be valued by society in a certain way they currently do not enjoy with any consistency.

§1.2   In response to the two facets of racial inequality, I have offered historically evolved socially embedded power as an explanatory theory: historically evolved power *is the phenomenon of historical normatively grounded group asymmetries finding their embodiment in path dependent institutions resulting in robust forms of contemporary inequality*; socially embedded power signifies *the ability for social asymmetries to affect the internal lives of persons such that those better positioned tend to hold beliefs and attitudes which only serve to enhance their standing while those worse positioned are at risk of developing a self-nonregarding disposition.*

The theory of power and the evidence which I have brought to bear in describing and explaining racial inequality leads to a preferred conception of justice: *justice as democratic partnership.*

§1.3   Justice as democratic partnership turns on two considerations. First, as argued at the end of the previous chapter, it must make the social bases of self-respect its primary aim given the contours of racial inequality. Second, it is a bilateral conception of justice. On the one hand, the conditions of justice are being met when institutions take responsibility for their historical complicity in racial inequality and simultaneously embrace their capability to imbue democracy with integrity by offering the social bases of self-respect. The conception as it stands offers no substantive principles on what this entails. We are now concerned with its formal statement and its mechanics, whatever the content of the

social bases of self-respect might be. To this end, I below offer four institutional principles designed to respond to racial inequality and be reflexive to whatever demands the content the social bases of self-respect might make upon them. It is worth stressing that the institutional principles set parameters for the ways institutions will be compliant with the needs of the social bases of self-respect. In this sense, these are not principles of justice, but principles necessary for institutions to abide by so that the social bases of self-respect are able to make the appropriate demands upon them.

On the other hand, persons of color must take seriously what the idea of self-respect entails and take ownership of being persons of equal value. As Shelby argued in the first chapter, self-respect is to be considered a natural duty, and without it, we can only incompletely be the persons we otherwise could be. When both these conditions are met, justice is realized. The three personal principles offered below are imagined as setting the parameters for persons to meet their end of the conditions of justice.

However, it is important to note that justice as democratic partnership, as a dynamic response to a dynamic moral problem, is meant to be a process of ongoing human reconciliation, rather than a conception aiming to lead straightaway to a state of affairs, such as resource or opportunity equality; nor do we anticipate immediate compliance.[2] One thing we can say with confidence is that persons' beliefs about others or themselves are not easily revisable. Thus, their actions are not likely to immediately reflect the moral direction given by the conception. But, we can be sure that immoral beliefs can be revised nonetheless, especially if given the sanction and support of institutional policies, processes,

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[2] Note the important implications here derived from rejecting strict compliance. We accept social division as a fact, a starting point, and as itself an issue of justice, and by acknowledging its unfortunately robust nature, we adopt a different countenance toward the idea of justice as a result of this acceptance and acknowledgement.

and treatment. Rawls depends on exactly this idea in constructing the moral fund upon

which public reason depends,[3] and he is right to do so, for it certainly comes to be the case

that particular moral questions become settled rather than matters for dispute i.e. slavery

or whether women have a 'proper' place in society. Moreover, this point derives directly

from the socio-psychological motivation for making the basic structure the primary subject

of justice. Thus, by focusing on institutions, I am offering a way of supplying that fund more

quickly and definitively for the benefit of a democracy that strives for integrity. In making

persons of color a party to the conception, I am acknowledging that part of what justice

depends upon is what we make of it, what we do as moral agents in a scheme of ongoing

cooperation. Then, as a bilateral conception, justice as democratic partnership is seen as

addressing a particular injustice for the better of all who share in that scheme while

cashing out the idea of cooperation and participation in a way that more closely addresses

our human relations and dispositions within that scheme.

§1.3.1. INSTITUTIONAL PRINCIPLES

What exactly does it mean to say that institutions have a duty to embrace their

capability to imbue democracy with integrity by offering the social bases of self-respect? To

imbue democracy with integrity, we simply mean to say that institutions must make good

on a set of liberal commitments already embodied in our constitution and political culture

– fairness, equal liberty, equal protection of rights. This is an important notion. The

problem of social justice with regard to race is not a problem regarding which institutions

we do or don't have, or whether it is an open question as to whether persons are to be

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[3] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996),

considered equal. These are already settled questions about how our society is ordered. Rather, racial inequality is particularly concerning because it obtains in light of a certain history and under a formal framework of equality that is meant to pre-empt the possibility of exceptional kinds of inequality.

If we recall our two motivations for making the basic structure – major social institutions – the primary subject of justice, as well as keep in view the theory of power along with the historical evidence presented, we can work out the principles by which institutions must abide. The historical contingency thesis (Ch. 1) states a concern about whether an agreement reached at one point remains fair and in force regardless of social trends, so long as that agreement is still fair by independent reasonable criteria. The socio-psychological thesis (Ch. 1) states that institutions are important for a theory of justice insofar as they impact persons' sense of their own value and purposes and that of others. These considerations are exactly why major institutions are seen as playing a key role in the process of human reconciliation.

The duties of institutions are given by the contour and nature of racial inequality, the stipulation that the social bases of self-respect are the primary aim of racial justice, as well as this key role. It will be important to keep in mind that we defined institutions as *determinative large scale ordering principles, variously embodied in organizations, that are informed by widely accepted norms which structure opportunities for and impose reasonable constraints over those parties operating under the purview of the relevant institutions.* This means that the duties of institutions are really institutional principles: mandates that the organizations relevant to certain institutions are to abide by. For example, an institutional principle that refers in the first instance to freedom of conscience is applicable to the

modern media in a way appropriate to the idea of 'the media'. I also argued that the problem of racial inequality in society today hinges on the fact that institutions do not cohere in the right way when it comes to the treatment of persons of color. With these considerations in mind, I offer four institutional principles for justice as democratic partnership.

HISTORICAL REVIEW A major argument throughout the preceding chapters has been that the theory of justice must be sensitive to history. The reason is rather straightforward. The injustice in question, racial inequality, is one that has its roots prior to America's founding, played a pivotal role at its founding, and continued to explicitly do so well into the twentieth century. Additionally, I suggested in chapter 2 that historically evolved power, in explaining the institutional aspect of the development and persistence of racial inequality also settled the question of complicity – if it is the case that our basic structure can be implicated in the history of racial inequality, and it is the case that contemporary racial inequality takes many of its cues from this history and continues to be embedded in institutions, then the moral duties of institutions (and their respective organizations) is settled by their complicity – their complicity is itself settled by the theory of HEP as well as the empirical facts of the case.

Historical review means that relevant organizations must endeavor to assess their own role in racial inequality and injustice with respect to the relevant institutional history. For instance, organizations which fall under the institutional rubric of free markets must face up to their role in practices such as redlining neighborhoods, a common practice in real estate, or in salary discrimination. Historical review does not offer a substantive mandate. It simply grounds the basis for action and responsibility. Further, it opens the possibility of a public accounting that can be accessed by all interested persons and parties. At this point, one of many options become available, and these options rest on the will of public action. An apology may be deemed satisfactory and hence demanded. Or, our procedures of legal suit may be brought to bear. It might be case that historically complicit organizations are innocent of participating in racial subordination today, and knowing this

also helps to clear the historical record and aids us in developing a more full understanding of our society. The important part of historical review, however, is that it makes public a certain amount and kind of information that provides a reason for action as well as a basis of assessment of citizens of each other and their society and their feeling of belonging in that society alongside others who share in it.

Some may be concerned over how we understand the temporal nature of institutions. From a philosophical view, what does the principle of historical review require for its coherence? I don't believe the issue presents quite the problem first imagined. Consider the following offered by Thomas McCarthy: "Correcting this legacy of past injustice...seems clearly to be a requirement of justice as fairness, for the United States is a continuing constitutional undertaking (...) an enduring 'corporate agent[.]'"[4] David Miller holds that typically corporate identity over time is problematic, but "The UK and USA are unusual in having states whose evolution has been gradual and unbroken."[5] These views seem uncontroversial for an important reason, namely the idea of the US and its basic structure being coherent entities over time is itself sufficient grounds for assigning temporally grounded responsibilities. While US culture, trends, and political policies have changed over time, few would be confused by the idea that, nevertheless, it has been the same country through all these developments. Indeed, we might say that it is because of the stability of the idea of the US that these changes can make sense and take place at all. It seems, then, there is nothing inherently incoherent about assigning temporally motivated duties and responsibilities to institutions and their respective organizations.

PROCEDURAL URGENCY Injustices rooted in history have the power to make a certain kind of urgent claim on us. Imagine a friend has owed you money for months while he has owed another person a reasonably similar sum for days. All things being more or less equal, it will seem somehow unjust to receive your due last. Now, when it comes to issues that seem to indicate preference for groups in a pluralistic liberal democracy, this kind of argument is

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[4] See Thomas McCarthy, "Coming to Terms With Our Past, Part II: On The Morality and Politics of Reparations For Slavery," _Political Theory_ 32, no. 6 (2004): 753.
[5] David Miller, _National Responsibility and Global Justice_ (New York: Oxford University Press, 2007), 141.

bound to run into serious difficulties not long after leaving the starting box. It will be natural to wonder whether certain kinds of preferential treatment actually result in injustices of their own. This is a reasonable concern, yet, we must acknowledge that given limited resources, we are always prioritizing one effort over another. Indeed, a major complaint of feminists has been that large defense budgets significantly hurt social programs upon which women depend.

It seems what's needed here is a decision rule or set of criteria that can be relied upon as a guide (which would require rather stringent circumstances to stray from). Racial inequality has three characteristics. It is historical in nature. It persists in contemporary times. It is highly diffuse and embedded in institutional practices. Here, I believe it is useful to rely upon the theory of power. A measure complying with democratic partnership satisfies the principle of procedural urgency if and only if it can be reasonably and adequately described by the theory of historically evolved power. That is, we must be able to argue that the practice in question has its bearings in certain racial norms and that institutions embody these norms, purposely or not.

However, this leaves open the question, what other claims will these kinds of claims be able to trump? I offer the provisional answer: any claim which does not represent a broader and more immediate public interest. By making 'broader' a criterion of the decision rule, I do not mean to invoke a notion of utility, i.e. if another measure is understood as satisfying more people than that required by democratic partnership (though the two ideas may certainly coincide). The fact that persons of color are a minority immediately endangers the attainment of justice. Rather, 'broader' is meant to pay homage to the idea of a pluralistic democracy that embodies a wide range of interest, desires, and needs. For example, if we imagine that there is some tension between a measure that fulfills justice as democratic partnership and one involving an economic bailout that threatens the fabric of a whole industry (which would itself perpetuate even greater economic uncertainty and significant job losses) it seems reasonable to say that we must consider this as a trump claim. It must be stressed, however, that the principle of procedural urgency requires the original justice claim to remain in close sight and as taking the next available space (in accordance with the above considerations) in the policy queue.

EQUAL MORAL BENEFICENCE The principle of equal moral beneficence indicates negative and positive moral mandates.

Negatively, equal moral beneficence requires that, although a racial justice claim may in some instances trump other claims (i.e. religious justice claims) it ought do no harm to those claims. That is to say, if realizing justice as democratic partnership entails a dis-benefit to members of a religious group who are pressing a justified claim of their own, the claim supporting justice as democratic partnership must either stand down, and, preferably, be reformulated to eliminate the harm it causes. This may be done in negotiation with the group in question so that an outcome can be equitably and fairly agreed to. In this sense, the costs and benefits are made public and the object of a fully informed agreement. If no agreement is to be reached, then only the claim that does not perpetrate an injustice is to be pressed. It should be noted that this is imagined as both a constraint that upholds democratic integrity as well as an incentive for claimants to adopt the appropriate democratic disposition to competition of limited resources as it will surely be in their interest to have their claim met, even if it's to a lesser degree than originally desired.

Equal moral beneficence, however, is imagined as having a powerful positive component. We will recall that the social bases not only provide persons of color with the bases for self-respect, which in turn contribute to them appropriately envisioning and pursuing the good of their lives, but also provide others in society with the normative resources to properly realign their normative valuation of persons of color. The principle of equal moral beneficence translates this postulate into a mandate. Any policy or disposition to be adopted on behalf of justice as democratic partnership in terms of providing a social basis of self-respect must also be able to enhance the lives of all citizens to some degree. An example we will revisit below is that of Philadelphia's move to make black history mandatory for all students. As I shall argue below, this provides a social basis of self-respect, if pursued properly, since it offers a broader and more broadly truthful informational basis for persons of color to contextualize their life experiences. However, it is a moral benefit for all democratic citizens to be aware and knowledgeable about conditions of injustice that obtain in their society. First, this allows them an appropriate

context to assess their fellow citizens. Second, it provides an informational basis upon which citizens can assess the integrity of the society of which they are active members.

COMMENSURABILITY and PROPORTIONALITY There is a thin, but important line separating a justice claim from a mere complaint on the one hand or revenge on the other. Commensurability requires that any policy intended to provide a social basis of self-respect must be reasonably imagined to do so. Publicly exposing practices resulting in unequal rates on home loans or illegitimate rejections for those loans, and mandating rate or approval adjustments is deemed appropriately in line with justice as democratic partnership. However, racial discounts on those rates or loans to make amends for prior practices are simply not commensurable though reassessing the original applications and offering, where appropriate, fair market rates is appropriate and in line with the conception. The reason is rather straightforward. The nature of the injustice revolved around the denial of the loan, not the fair rate that would have been attached to the loan. Similarly, a course on black history is reasonably imagined as an important public good for everyone and as an appropriate basis for black self-respect, but affirmation of black power in the classroom is not. It is no duty or business of a public school to prioritize the worth or doctrine of an ethnic, religious, or racial group at public expense (beyond what justice may require).

Proportionality operates similarly. Suing media outlets for false representation of black racial character might reasonably be deemed appropriate by the conception of justice such that this supports the social basis of self-respect by publicizing the moral wrong of racial misrepresentation. However, there is no provision for shaming the relevant agents. For example, a condition of the suit cannot be that the executives who approved the show must make a yearly public appearance for some specified number of years, to apologize and make amends for their poor choices. Here, again, we cross the line from appropriate redress to something approaching shaming or revenge, neither of which are a part of any morally acceptable conception of justice.

I previously noted two reasons for making institutions a focus of the conception of justice, and the above principles make clear how these two reasons cash out. First, I claimed that an institutional focus performs a significant explanatory role while simultaneously satisfying the need to establish historical responsibility for racial injustice. The value of grounding historical responsibility consists, as I have shown, in the continued influence and presence of such historical dynamics, which fuel racial inequality. The principle of historical review combined with publicity requirements is a strong first step in satisfying this requirement.

Second, I claimed that institutions needed to be the focus because of their ability to lead social change by impacting beliefs. Here, the measures taken up in accordance with procedural urgency guarantee that issues pertaining to racial justice remain a legislative priority. When citizens see their government expend genuine effort to correct society's wrongs, barring very strong feelings against such efforts, they are likely to amend their views of fairness in line with what major institutions put forth as just. Again, the role of publicity is key in cementing the important of achieving racial justice.

An additional condition of the conception of justice was that it must be able to achieve two seemingly contradictory aims. First, it must manifest in racial justice by providing what the social bases of self-respect require. This means that special measures are undertaken for the ostensible benefit of one group. Second, it must reconcile diverse interests to its aims while treating all fairly. However, if I have formulated the institutional principles the right way, we have less to be concerned over. The equal moral beneficence principle insures that any measure taken up for the benefit of racial justice provides substantive moral benefits to others as well. Similarly, the principle of commensurability

and proportionality, as well as the limits of procedural urgency are a further check on the limits of achieving racial justice – this principles' express purpose is to balance priority and preference with fairness and inclusion. If this is achieved, persons have less complaint.

There are two objections to be addressed. First, one might object that I am overly generous in my expectations of what persons will accept. After all, I criticized Rawls for assuming strict compliance precisely because of the nature of racial inequality. I think there are two responses here. First, persons are less *likely* to be opposed to certain measures so long as they can be justified within a moral framework to which they already are committed, especially in light of full disclosure. The job here then is to make sure that this is done genuinely and with integrity. Further, this is why the conception is offered as an ongoing process of human reconciliation, for there will always be those who are more open to change than others, thereby setting social precedents for others to follow. Second, though the idea of consensus is often considered important for legitimate democratic governance, I do not make it a requirement here, precisely because many oppose racial justice though it is obviously needed. Some may not comply, but policies that are justified by the general democratic principles to which people *are* generally committed are justified on the strength of that alone. Again, the ideas of equal moral beneficence, commensurability and proportionality are intended to signal to persons that policies abiding by justice as democratic partnership will not undermine their interests nor their stake in their society.

It might also be objected that instances in which providing the social bases of self-respect requires explicit redistribution of quantifiable resources, persons are not likely to care much about equal moral beneficence. On this view, persons will cry foul over the fact

of redistribution for a purpose that does not tangibly benefit them. If so, equal moral beneficence is a fine moral principle but one not likely to mean much to persons on a meaningful level. Here, also, I think we have two closely linked responses available to us. The principle of equal moral beneficence is exactly that – a moral principle. Moreover, it is one that expresses fidelity to a first principle of a just democracy – equal respect for persons and their well-being. So long as this is achieved, the objection devolves into the following: persons compete to make claims on resources and this preempts certain claims or takes certain resources off the table before they can be gotten to. However, this brings us back to a current political fact in any case: it is never the case that everyone is happy with their share of the pie. Our concern then is to be sure that we've apportioned a justified piece in a moral manner. The second response is as follows: being that this is a moral principle, citizens may remain bound to it in any case. Though not to everyone's satisfaction, we might say: it is no concern of the principle whether some are *unhappy* with a required distribution.[6] A commitment to equality is just that, and the principles seek to make that commitment a living reality.

§1.3.2. PERSONAL PRINCIPLES

Justice as democratic partnership requires that persons be a party to social justice. While I hold that it is everyone's duty to uphold a fair and just society, I below focus on personal principles that apply to persons of color. Though it is worth thinking about what

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[6] This point introduces a very important problem, namely the possibility of tension between democracy and justice, and it is one that requires substantially more space than can be devoted to it here. I want to say, then, that the idea I mean to invoke in the above statements is that the possible offensiveness of the what justice requires is imagined as mitigated by the idea that the conception is lookng to make good on commitments already embodied in our society, thus we are first committed to making them more fully manifest than with whether everyone can be happy or satisfied with what that requires.

personal principles would apply to others in society, I submit two propositions. First, because the institutional principles are seen as regulating and constraining much of the activity, policies, and processes which further racial inequality, I take it that persons seeking to further racial agendas will be duly constrained. Second, the bigger problem seems to be that of implicit racism – racial beliefs held just below the level of our conscious reflections and deliberations about ourselves and racial others. As will be seen below, much of what counts as implicit racism is supplied and supported by nuanced aspects of our social world: media representation, urban blight, concentrated poverty, and so on. An important role of the social bases is to first blunt, then reverse implicit racism. A portion of justice as democratic partnership rests on the idea that with the end of widespread explicit racism and drastic reduction of implicit racism, attitudes towards and beliefs about persons of color will come into line with the conception's aims since much of what we do, i.e. calling in a person with a white sounding name (Leonard) compared to a black sounding name (Lakeysha) for an interview, is motivated by our implicit biases. In this sense, increasingly fair perceptions and beliefs mirror themselves in morally acceptable action.

Though the idea of responsibility has been put to unfortunate conservative uses that tend to blame victims, it is nevertheless true that part of respecting persons entails placing a fair portion of responsibility on their plate. Providing the social bases of self-respect free of conditions and obligations fails to be consistent with our consideration that self-respect is a natural duty. Moreover, self-respect requires an active disposition one has towards oneself. Just as the 'self' in self-respect makes the idea of respect a particularly personal and immediately valuable concept, the 'self' in self-respect requires a kind of internal performativity – it is incoherent to say that one respects oneself without that being

manifest in one's attitude, disposition towards oneself, or in the actions which are imagined as cohering with such attitudes and dispositions. This is what grounds the claim that persons of color are to be made party to the conception.

SELF-RECOGNITION As has been mentioned, self-respect is appropriately understood as a natural duty. However, for those who lack self-respect (or at least do so based on acceptable principles) this idea is likely to lack force. We may yet take comfort in the fact that those who lack self-respect still retain the capacity for reflection and reason. This means that a person who lacks self-respect is able to reclaim a certain value of self. The social bases of self-respect are intended to provide the necessary resources for doing exactly this. It nonetheless remains a duty of persons to engage the process by trying to understand the value of their humanity and the basis for that value. It is important to realize that this doesn't mean they come to any particular conclusions. Nor does this entail conceiving of the good life – this is the role of self-respect. Rather, when persons realign their reflective capacities towards this end, they recognize their own humanity and its value. This is an important requisite of self-respect.

FAIR ASSESSMENT In chapter one, I offered the example of Roger: he, his friends, his children had developed a certain disposition towards their local government because of a history of poor treatment. Of the many things this disposition resulted in were oppositional attitudes, such as rejection of education. The principle of fair assessment holds that persons must more fully consider their contextualized decisions. We may psychologically understand the reason for oppositional attitudes. They nonetheless work to one's detriment in a society which presumes general fair treatment of all persons. I mean to say here that persons of color are obligated by this principle to reconsider the ramifications of their contextualized actions; similarly, they are to endeavor to release their opposition to structures of power as justification for objectively harmful behaviors. The principle of fair assessment closes off the path to unjustified oppositional attitudes. Since the only thing that might justify such an attitude is neglect or contempt, these are now forestalled since

the basic structure is actively mobilized to acknowledge racial inequality and provide the social bases of self-respect. The object of contempt has changed in nature so that to express contempt towards it is to express contempt towards a crucial resource designed to enable the betterment of one's life.

One might object to this principle on the grounds that I seem to be introducing a fatal inconsistency to my own argument. Put simply, if it is this easy to release these attitudes, then why do institutions need to do so much in helping persons of color with respect to the social bases of self-respect? Two answers can be offered. The first has to do with motivations. Following Shelby, we might think that persons living under patently unjust circumstances are not obligated to do any of the above (as a duty of justice) until institutions do their part. The second has to do with resources. The principle of fair assessment does not in itself rely upon outside resources to be activated. It simply relies on the idea that, with the exception of truly extreme circumstances, we all retain the possibility of seeing our lives as worth *something*, thus as worth living in the pursuit of *something*. However, as Shelby points out, the content of that something can be radically impacted by circumstances and their ability to impact our internal lives, thus, our calculus. The principle of fair assessment, then, is offered under the presumption that justice is progressive rather than instant, and that the principle of development alongside institutions' public commitment to provide the social bases of self-respect are enough to support persons' effort to comply with the principle of fair assessment. Put another way, we hope to make a vicious circle into a virtuous one.

DEVELOPMENT. The principle of development is one of the most important principles as well as likely to be one of the more controversial given its perfectionist undertones. The principle of development, to re-invoke a cliché, is meant to convey the idea behind the slogan, "A mind is a terrible thing to waste." The principle holds that persons are to regard their lives as projects with the potential for and worthy of success. What exactly does this entail?

When we say that a mind is a terrible thing to waste, we are acknowledging the special powers that a mind holds, and that these powers are part of what makes a life

worth living. To waste a mind is to in part waste a life. So the principle of development is merely a principle that states that one is to take seriously the fact that humans have certain powers and abilities which make them human; these are the things we intuitively refer to when we try and conceive of the idea of humanity.

The principle avoids an overbearing brand of perfectionism because it is a thin principle. Nothing in the principle indicates that there is one best way to use your mind. While formal schooling is the social norm for intellectual development, the principle is equally open to homeschooling or traveling the world and learning as Socrates might have. Whether these are most prudent is not the concern of the principle. From the point of view of justice as democratic partnership, the most important consideration is that one actively takes seriously one's potentiality. In this sense, a person who remains idle while an object of the social bases of self-respect is in poor standing with regard to the conception.

We will anticipate an obvious objection here: if part of what counts toward fulfilling the conception of justice is that persons are to make use of the social bases of self-respect, what to do when they don't or refuse? First, the social bases of self-respect are seen as particularly powerful in activating the relevant attitudes and dispositions (given their grounding in historical fact and contemporary circumstance) such that persons are very likely to abide by the three above principles (since the principles seem to speak directly and intimately with their lived experiences). Second, should it turn out to be mistaken that persons will neither willingly nor be encouraged to utilize the social bases, then we are left to say that an ideally just society is not realized. Nevertheless, other aspects of the conception, driven by historical complicity, may justify the continuation of some measures until certain benchmarks are met. When this happens, major social institutions are no longer bound by justice as democratic partnership. At that time, it is plausible that a quite distinct conception of justice is formulated to address racial inequality, but it is not likely to resemble justice as democratic partnership. It is important to note here, that from the view of political thought, it is important to accept the idea that theories, while constructed for success and accuracy, ought to be plausibly imagined as failing. This is to say, any theory that can accommodate any objection or challenge, is no theory at all, but rather, a doctrine dressed as a philosophical argument.

A final word on the personal principles. The reader may have noted the motivational asymmetry between the institutional and personal principles. The former are in part grounded by the idea of historical complicity while the latter are not. This raises the question whether this mean persons of color are not historically complicit? The short answer, is no, not by the conceptions' standards. Here's how we should think about this. Part of my argument regarding racial inequality in the present day depends on relaxing the assumptions and mandate of responsibility with regard to persons of color. We will recall that this was motivated by the idea of the mutual construction of disadvantage in the internal lives of persons. A somewhat crude way of making the point is to say that the original injustice of racial inequality did not and does not originate with persons of color, therefore if they're not responsible today, they weren't responsible yesterday. A more nuanced way to look at it follows from the above formulation of the problem. If it is the case that (1) racial inequality has been a persistent feature in the lives of persons of color and (2) that the nature of racial inequality justifies relaxing responsibility because of the effects it has on persons then the same reason we don't hold them responsible today for racial inequality is the same reason we don't hold them responsible at an earlier time because we ought to assume that pervasive racial inequality has always set up the same disadvantageous circumstances. Indeed, we should think that if this holds true, it does so with particular force the farther back in America's history you go.

This, then, sheds light on the forward-looking nature of the personal principles, and in particular, the role of the principle of fair assessment. When we assume persons are moral equals and capable of developing and pursuing their conception of the good life, we reintroduce responsibility so long as the circumstances of racial justice are adequately met.

If persons of color fail to do so under *these* conditions, *then* the idea of complicity begins to work its way in at the level of persons as well as the at the level of institutions.

§2. The Content of the Social Bases of Self-Respect

§2.1   The value of the social bases of self-respect turns on three features. First, by imposing their own standards for reckoning with the history of racial disadvantage, the social bases of self-respect are well positioned to dissolve the objectionable aspects of race as a socially constructed identity. Second, it mandates that major social institutions publicly affirm the substantive equality of persons of color. Last, and following directly on the first two points, because it is primarily concerned with the normative baggage the identity of race carries, and recognizes that this dynamic is predictive of disadvantage, the social bases of self-respect are preemptive and transformative rather than reactive.

The first two features of the social bases are formal features while the last is imagined as more thoroughly substantive. The reckoning test embodied in the first feature simply mandates that the consideration of the social bases with respect to racial justice must have in view the history of racial subordination for it to count as full consideration. In this way, the social bases have a more secure foundation in the context of racial life; consequently, they are better positioned to accurately and efficiently identify what the most important bases are.

The publicity feature is a fairly intuitive one – the value of a moral democracy rests upon the idea that all, in principle, have access to the decisions and the reasoning behind decisions made on their behalf. There are good reasons to value publicity. First, it

engenders trust in the polity – transparency offers few places to hide ulterior motives, bad reasons, or poor justification. Here, publicity is considered an important component of what counts as a justified and legitimate effort put forth on the behalf of a polity and with that society's limited resources. Second, it is difficult for a scheme of cooperation to function without a common view of the object of cooperation. If we envision justice in a society as putting forth claims that must be met, even minimal coordination requires access to information so that the principles of justice may be made manifest.

The last feature – that the social bases of self-respect are preemptive and transformative – indicates the parameters for their content. It is worth noting that while by definition a conception of justice concerned with responding to our history of racial inequality is in some ways the paradigm of reactive, I mean something different here. To say that the conception is preemptive means that we don't wait to assess particular instances of injustice – unfair employment practices, disproportionate incarceration rates, etc. – to justify the social bases of self-respect, that is, to react; we actively seek to reshape the social and political fabric which supports and results in racial inequality. The fact and nature of systemic racial inequality already justifies provision of the social bases if my argument coheres in the right way. The purpose of the supplemental historical accounts, policy case studies, sociological and psychological accounts, besides bolstering justification, is to indicate what the contours of the social bases ought to be. So by preemptive, we imagine the social bases as working to realign the way persons of color are valued and perceived with the understanding that we are undermining the fundamental factors promoting racial inequality.

The institutional principles set the bounds and guidelines for enacting the social bases. We will recall that the social bases of self-respect were specified as: *the public commitment and efforts made by major social institutions to embrace and affirm persons of color as substantive equals in a way that reckons with both the history and contemporary reality of racial injustice.* So, now it is natural to ask: what *are* the social bases of self-respect? What is their content? The response to the first question is embodied in the definition of the social bases.

The answer to the second poses an interesting difficulty. If we give the social bases fixed and determinate content, we satisfy our desire for specificity and finality, but we risk ignoring the dynamic and contextual nature of racial inequality. Moreover, there is the problem of logistics: the phenomenon of systemic racial inequality indicates that the problem resides in a daunting number of practices, traditions, and processes. To give an adequate cataloging of the social bases requires a separate space, and even then the task may not be reasonable, for it will surely be the case that the philosopher's practical reach will ultimately fall short of his conceptual range. It seems to me, then, that it suffices to give racial inequality definitive shape and the tools to "know it when we see it," and then to know what the appropriate response is – justice as democratic partnership, the mechanics of which are explored in the next section. If this is right, the more appropriate thing to do is to offer parameters by which particular content ought to adhere. I offer two paradigmatic examples in the following section to give more guidance as to how the parameters might shape the content of the social bases with respect to appropriate policies promoted by justice as democratic partnership,

§2.1.1 The content of the social bases themselves are bound by four parameters or conditions.

BETTERMENT OF HUMAN EXISTENCE Following from above, the first parameter of the social bases is that they must address themselves and be formulated with relation to how they improve human existence. This is likely to strike some as either romantic or empty or maybe both. To see what is meant, consider urban blight. We might think that the social bases require us to engage in neighborhood improvement and restoration. Although this surely requires an amount of material redistribution to pay for labor and resources, the social bases mandate that the effort not be stated or envisioned as a budgetary outlay, but as a response to a web of human needs. Let me elaborate.

Hurricane Katrina had a disproportionate effect on blacks. New Orleans' Lower 9th Ward, historically black and poor (with these two variables substantively linked) was hit hardest, thus blacks were hit hardest. Billions of dollars have been committed to rebuilding the area. The first issue is that money has been committed but little progress has been made. The problem here is that many are likely to take the commitment of funds as tantamount to recognizing the need and maybe even the preexisting fundamentals of the problem without realizing, or maybe accepting, that offering funds is not the same as *helping*.

Second, even in those instances where money is being made available (and let's assume that somehow the effort is efficiently coordinated) there are concerns with the quality and context of the aid. It is recently reported that more privately funded chartered schools are opening, and more quickly, offering more productive and stable educational environments, than public schools. Though few can dispute the functional benefit and utility of this development, exactly what does this say about one's government and society, and their commitment to addressing disadvantage? Separately (but crucially related), much has been made of the rising crime rate in New Orleans. This is particularly problematic given the taken-for-granted linkage of race with crime (see Ch. 4) and the overrepresentation of blacks in the hardest hit areas. What has gone unsaid or unreported (or under-reported) is the fact that much of the crime can be directly traced to a lack of

mental health services combined with a larger homeless population. In this instance, efforts at renovation and renewal must bear in mind that what is being provided is more than some fixed number of dwellings, but the reconstruction of a social fabric that places people in relation to each other and the good of their lives, and that success in this means success in defining a group in a more positive light and providing them with the bases of integrity and self-respect.

When we lose sight of this we are bound to make a number of seemingly appropriate discrete decisions that do not necessarily add up to improving *human lives* seen as a whole. And while the Katrina example might be a bit extreme, for it is not everyday that whole neighborhoods are destroyed in short order, it represents a pattern of policy-making and treatment of predominantly minority neighborhoods from New Haven to South Side Chicago. Moreover, it exposes underlying historically continuous patterns that tend to be subsumed under a veneer of contemporary normalcy, thus when these patterns surface, they tend to appear to most as aberrations or anomalies rather than systemic racial problems.

PROMOTION OF TRUTH One of justice as democratic partnership's institutional principles is that of historical review, which mandates that organizations under various institutions must take a longer historical look when assessing their possible complicity in racial inequality. This provides an informational basis for developing policy. The social bases of self-respect must be, in the first instance, concerned with *promoting truth*. Our previous example of misrepresentation of character illustrates why compensation is insufficient, for money does not change the status of information; it merely prompts us to forget what bothered us or acts as a salve on our violated sense of self. However, neither is likely to comport with our moral convictions on the appropriate course of action in such instances (unless, for quite exceptional reasons, this presents the *only* viable option). Here, we already have models for this parameter: truth commissions, congressional investigative committees, financing of non-profit research organizations. I am not arguing for what truths should be presented, nor when. I am only concerned to point out that an important aspect of self-respect is having the right information to contextualize a sense of self. On this

view, promotion of truth becomes a matter of justice, especially when responding to the dissemination of harmful falsehoods.

REFLIXIVITY The social bases of self-respect are to be *reflexive* to the particular dimension of racial inequality of concern. For instance, given previous arguments, we are likely to think that systematic character misrepresentation in the popular media fails to comport with our idea of respecting persons of color, especially given our racial history. The social bases of self-respect are reflexive insofar as measures are undertaken to correct the misrepresentation rather than to offer monetary compensation. However, the appropriate measures can come in many acceptable forms: an apology, a recalibration of group representation through media or some combination of these and other measures. Similarly, if certain minority school districts are systematically underfunded, then it seems that material redistribution is the appropriate step to take since not much else can be done to bolster the self-respect of students if adequate schooling is unavailable and symbolic gestures fail to function in the way and on the level of providing the public good of education However, even in this instance, the goal is not the redistribution but a focus on improving human existence, as per the betterment of human existence principle.

SCALABILITY Finally, the content of the social bases must be *scalable*. Racial inequality is a thoroughly complex phenomenon, and as a recently vogue saying puts it, one cannot fix with an ax that which requires a scalpel, and vice versa. In the instance of media representation, the response prompted by the social bases of self-respect must be up to the task of reversing the power of the medium which offended racial justice in the first instance. If a particular show offends against the character of persons of color, then a thirty second commercial offering an apology that is run once in the middle of the afternoon is inadequate. This is not to say that running it three times a night during prime time for months is appropriate either, but here it is clear a more muscular response is needed. Similarly, if certain neighborhoods are "famous" for their crime rate or blight, then the solution must take on a local tone. Here, we might seek to address the issue by supporting the opening of community centers with after school programs, or provide incentives for local businesses to open while promising increased patrols in order to initially stabilize a

particularly dangerous area. Here, it is clear, again, that some form of redistribution is required, but note that no one person or even group is the recipient of some material goods – we might best conceive of this as morally justified public investment which supports the idea of society as a scheme of ongoing cooperation with integrity. This speaks directly to the parameter requiring us to improve human existence rather than providing merely providing budgetary outlays.

§3. Justice As Democratic Partnership: In Practice

§3.1   Four roles are suggested for the social bases as the primary aim of democratic partnership (in light of their three features outlined above). First, they allow institutions to fulfill their responsibility under the idea of complicity.[7] Second, they open the way for the systemically disadvantaged not only to pursue the good of their lives but to develop the proper relationship with themselves as persons of worth in a democratic society. Third, the social bases are conceived as dialogical. Given my arguments to this point, we might reasonably surmise that by institutions leading change on the sites of injustice, those more advantaged over time come to properly see the disadvantaged as persons of equal worth and standing and, importantly, come to internalize that view in the appropriate way. Last, so long as the first three roles are satisfactorily realized, the social bases of self-respect stabilize the integrity of a substantively fair and inclusive democratic society by righting society's moral compass towards all of its members. In this way the dialogic nature of the

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[7] It is worth considering that the idea of complicity sheds interesting light on the idea of luck. We might readily concede that to be born into bad circumstances is a matter of bad luck. However, what complicity helps bring into relief is that those circumstances obtain is not a matter of luck – events took place, decisions were made or not made to prevent or improve certain circumstances that would be the context of luck for some persons. The problem is when unluckiness becomes a constitutive property of racial identity and/or is a constitutive property of institutions' relation to persons of color.

social bases of self-respect as well as the bilateral nature of justice as democratic partnership treats society more genuinely as a scheme of ongoing cooperation.[8]

We can make these considerations more concrete by example. Below, I first consider an argument offered by a legal scholar who ties media representation to the psychology of group perception. The second example I offer is a slight idealization of a policy measure currently in effect that represents a paradigmatic actual practice of provision of the social bases of self-respect under justice as democratic partnership.

§3.1.1 MEDIA AND JUSTICE AS DEMOCRATIC PARTNERSHIP

Does media's representation of blacks contribute to racial beliefs? If so, what ought we do about it, and on what grounds? These are the questions raised by legal scholar Jerry Kang. In "Trojan Horses of Race," Kang offers an elegant four-step argument for a complex problem. Racial schemas shape our perception, values, and expectations of racial others; these schemas are in large part informed by passive images we receive from various sources; to the extent that we can reasonably attribute which beliefs might be provided by particular sources, we have grounds for either removing or counteracting the information which shapes the racial schema; and we wish to do so because they alter our racial mechanics.

By racial schema, Kang means "a set of racial *categories* into which we map an individual human being according to prevailing rules of racial *mapping*."[9] Moreover, we care because of the racial mechanics our society: "the ways in which race alters

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[8] See John Rawls, *A Theory of Justice*
[9] Jeremy Kang, "Trojan Horses of Race," in *Harvard Law Review* 118. (2005),1499 (emphasis in original)

intrapersonal, interpersonal, and intergroup interactions;"[10] so, "Once a person is assigned to a racial category, implicit and explicit racial meanings associated with that category are triggered."[11] Here, Kang's presentation will prompt a recollection of Loury's interpretation of this kind of phenomenon. What's at work in each account is the basic notion that we tend to order information in ways that allow us to process that information quickly, make assessments, and form judgments. The problem is that while this is acceptable and non-offensive in the vast majority of instances, the interjection of race does pose problems, for it tends to direct people's attention in the wrong direction, which leads to morally offensive judgments as well as undermining self-respect.

The bulk of Kang's contribution consists in moving beyond this common sense framework. First, rather than relying on speculation over whether the above dynamic does or does not hold in society, he provides copious amounts of evidence, by way of psychological studies and surveys, that not only help to ground the general claim of racial schema, but traces its contours and what contributes to its content. Second, he synthesizes his conceptual framework with the evidence at hand to motivate a new understanding of certain practices and how they perpetuate harmful racial schemas, which in turn allows him to offer some possible solutions that otherwise might not come into view.

Kang covers a great deal of ground in reviewing the available literature and evidence – it is sufficient to note the following: most of us carry some implicit racial biases that affect our beliefs about and actions towards others as well as towards ourselves. Crucially, these implicit biases can be formed and perpetuated through the consumption of

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[10] *Ibid.,*1493
[11] *Ibid.,* 1499

media and the images combined with certain information they provide. Here is where

Kang's contributions become apparent.

If it is the case that racism, and particularly implicit racism, is in part fueled and

shaped by media representation of blacks, how can we more precisely diagnose the

problem, and what can be done? In approaching the first question, Kang sets up a basic

framework for addressing the role of the media. A study of local broadcasts in Los Angeles

reveals that crime tends to represent about twenty-five percent of local news coverage;[12]

although violent crimes represent on average thirty percent of typical crimes that result in

arrest, they account for nearly three quarters of crime news; last, blacks tend to be

overrepresented in crime news, thus perpetuating the image and idea of 'black criminality.'

Kang locates the problem in the FCC 2003 Media Ownership Order, which relied

upon the idea of the "public interest" to mandate increased representation of the local

news. On Kang's view, the main problem is that the local news tends to disproportionately

cover crime news. Kang uses the metaphor of the modern day Trojan Horse: a computer

virus that attaches itself to a seemingly harmless or trustworthy source, only to disrupt

how one's computer operates or captures certain capacities to send messages the owner

otherwise wouldn't once it infiltrates the computer's systems.

A few themes are worth emphasizing. First, the (local) news tends to be one of the

most trusted sources of information about one's world and, in the case of local news,

immediate social environment. Kang's concern is that people reasonably tend to take the

news at face value while consuming images that actively and significantly contribute to

perception and belief formation. The second point has two sub-components. The very idea

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[12] *Ibid.*, 1549-50.

of implicit racial bias is that persons may truly not wish to be racist, and when they are prompted to consciously engage their racial beliefs, it can be said that they harbor no overt racial animosity or racial beliefs. Indeed, this is what makes implicit racism problematic, for our implicit beliefs hold great sway in how we treat others and even ourselves (recall our internal lives concern). The other, related, component, is that since persons trust the news, they are at risk of consuming images, and in a way, that they might otherwise reject or disavow. This is what qualifies the news as Kang's Trojan Horse: a trusted source that acts as a medium for offensive racial framings that attach themselves to our belief system and apparatus of judgment.

The upshot of Kang's presentation is that if the media fuels and perpetuates racial bias in this way, which in turn affects how we treat ourselves or each other, we may have legal grounds and precedent for doing something about it. Kang argues that policies set by Congress and the FCC, such as relegating adult-oriented entertainment to the midnight to six am time slot, show that the FCC is willing to intervene in freedom of expression if the content is deemed harmful to the target audience. Kang offers that though this original policy was meant to safeguard minors, who, hence, are not considered as fully autonomous (compared to the adults who would now have their news shows altered for their benefit or "protection"), the research presented on the formation of racial schema and its impact on how we form beliefs and dispositions towards race motivates a powerful reason to draw the parallel nonetheless. He offers two possible solutions. After presenting these, I will suggest that there is one more solution at our disposal that seems well within reason to consider and then tie Kang's concerns to the overarching aims of justice as democratic partnership.

First, and I believe the weakest of Kang's suggestions, is that we might be justified in placing a cap on the percentage of a news broadcast crime takes up. The idea here is that by doing so we reduce the frequency with which we are confronted with (racialized) crime stories. There is some merit to the idea, but to my mind addressing frequency doesn't go far enough in addressing the core problem of crime news: the disproportionate and unflattering representation of blacks during a news broadcast focused on crime. Kang's second solution is novel and I believe potentially potent. We leave the news as it is, but we mandate the airing of public service announcements. Here, Kang has in mind someone like Denzel Washington offering a brief message such as "Be Fair," while showing positive black imagery in the background. The intuitive idea is that if images shape perception and belief, and we have a possible concern about overbearing censorship, then the alternative is to provide countervailing images sanctioned by the state.

A third option, which Kang omits, is simply a more punitive stance: suing for libel. There is precedent for such action in our current legal system: misrepresentation and malignment of character are grounds for suit. The picture Kang paints for us seems to powerfully endorse this idea: the news is a purveyor of the black criminal image in unfair ways, which, according to the research he brings to bear, shapes society's (including blacks') beliefs about black criminality. Though this idea is sure to make some uncomfortable, there seems to be no prima facie reason to discount it so long as we are correct in pressing the claim that black character is maligned in these ways. Further, we will recall the fairness constraints in the principle of commensurability and proportionality – when we sue for libel, it seems reasonable to conceive of the action as based on the demand for an apology or public amends rather than monetary compensation. In this way,

we might consider it a form of a truth and reconciliation proceeding. The reason we choose to embody it in the legal system is to publicly signal that the state will not abide by racial malignment. The power of this is given in our basic structure argument from the first chapter: public institutional support or denial of certain norms has a significant impact on the place those norms occupy in our society.

It should now be clear in what ways Kang's inquiry and framework for a solution, including our proposed third solution comports with the conception of justice. Consider first the conception's institutional principles: historical review formally motivates and informs the right actions; procedural urgency is appropriate; given the evidence on the nature of implicit racial bias and the concern that it may in fact disrupt our autonomy, the principle of equal moral beneficence is met; last, whether we adopt a crime news cap, air PSA's or open the way for suit, each solution is both commensurate and proportionate. It should be noted that the principle requiring proportionality keeps the reward or punishment for libel within reasonable constraints, which in turn is imagined as preventing suit from becoming a tool of vindication or revenge.

Next, consider the parameters for the social bases: the improvement of human existence, promotion of truth, reflexivity, and scalability. The human existence condition seems to endorse Kang's original two proposals more strongly than my third, particular the proposal for PSA's. In brief, such public and publicly endorsed positive imagery speaks directly to the value of persons of color and allows them a degree of respect in society. The truth parameter again seems to only weakly endorse Kang's first option while more strongly endorsing his second and my third: blacks can be a force for the positive, and respectively, we make public other false representations. To my mind, all three possibilities

are reflexive since they all speak appropriately, in their own way, directly to the offense in question. Last, all three options meet the scalability requirement since they confront onerous media representation on its own terms and offering equally strong responses.

It should also be clear how such a solution performs the four roles of the social bases of self-respect. First, especially if we attach a publicity condition to any of the possible three solutions, media (and the FCC) take responsibility under the idea of complicity when acknowledging their historical role in perpetuating harmful racial stereotypes. Second, in seeing either fewer representations of black criminality or equal amounts of positive service announcements featuring blacks, persons of color gain a resource for having a more positive and constructive relationship with themselves, since a source of stigma and low self-respect is either diminished or countered. Third, it provides a more accurate informational basis for others in society to assess their fellow citizens of color. And, last, this is imagined as greatly contributing to society being a scheme of ongoing cooperation with a greater level of integrity: its members are fairly represented to each other in ways that support cooperation, communication, and fraternity.

Let us look at another example in a different issue space which represents a paradigm for providing the social bases of self-respect under the conception of justice.

§3.1.2. EDUCATION AND JUSTICE AS DEMOCRATRIC PARTNERSHIP

In 2005, the Philadelphia board of education made African American history a mandatory course for all students entering high school. The basic justification for the mandate followed from a realization that has been hovering over pedagogical professionals for some time, namely, history courses as usually taught tend to gloss over the complex

nuances of slavery and the Civil War on the one hand (by romanticizing Lincoln's motivations, for instance). On the other, the particulars of the struggle for Civil Rights tend to be neatly encapsulated in discussing the contributions of Martin Luther King Jr. Left out of black history is any accounting that might help black children understand the continuing racial dynamic in the society of which they will increasingly become a part of. Narratives such as Lyndon Johnson's roots approach to poverty giving way to the conservative crime movement would provide the basis for black students, as they grow older, to better contextualize the reality of exorbitant black incarceration rates, for instance. This in turn might be imagined as an intervening fact in deviance, thus help to align choices with universal morally acceptable norms.

The offering of the course, I believe, represents another model for what providing the social bases of self-respect entails and how justice as democratic partnership could become manifest. First, if the course is taught accurately, American institutions are necessarily exposed for the role they've played in black history. Second, while pure knowledge alone will not open up opportunities for black youth nor alleviate their poverty in the short term, they can become active members of society with a more truthful informational base to draw upon when assessing their social circumstances. Third, since such classes are mandatory for students of all backgrounds, this more truthful accounting contributes to a balanced assessment of blacks by non-blacks over the long term for the same reason blacks themselves will be better positioned to assess their context more fairly. Now, for the purposes of illustration, let's consider that these students are part of a closed system in which their interaction is iterated over a considerable span of time. As per the last role imagined for the social bases, we might imagine that over the course of years, as

students from all backgrounds share this experience and enter society together, and as they come to judge each other's situation from an adequately informed view, policy issues which are commonly contentious and divisive might be judged from the point of view of society sharing responsibility for the issue rather than as grounds for the competition of interests. In other words, we might envision a significant contribution to the idea of society as a scheme of ongoing cooperation.

§4. A Competing Account

§4.1   Above, I presented a conception of justice meant to adequately respond to racial inequality as driven by normative valuation. I began the inquiry by arguing that racial inequality posed particular problems for the theory of justice because of its persistence in the face of formal equality. Moreover, I said that part of racial inequality's practical and conceptual difficulties consisted in a fundamental aspect of its nature: its historical character. After laying out some points on an adequate methodology for approaching racial equality I proceeded to construct, first an explanatory account that began with the development of a two-prong theory of power that kept in view both the institutional as well as the individual problematics associated with racial inequality. Second, I offered historical case studies to demonstrate racial inequality's historical continuity and then proceeded to offer an account of self-respect alongside reflections on empirical evidence that bear directly on identity and self-respect. The synthesis of these concerns, arguments, and conceptualization, so I argued, were necessary for the articulation of an appropriate conception of justice – justice as democratic partnership. Its response is a focus on the

social bases of self-respect as its proper aim with principles articulated at both the institutional and individual level.

The above might seem idiosyncratic if not unnecessarily elaborate. Such a person may say that there are accounts that seem to get us close enough to addressing the injustice of racial inequality, and that what I offer is either misconstrued or superfluous in light of the existence of these accounts. I want to conclude this inquiry by taking up this challenge and directly confronting a particularly strong candidate: Fraser's *parity of participation*. I will begin the discussion by laying out its substantive conclusions and measuring them against my own. As I have insisted throughout, it will turn out that the value and appropriateness of any theory's conclusions crucially hinges upon the method employed. I will show that the account I have offered is stronger because it takes its cues directly from the particulars of the problem and expresses greater consistency across its various arguments through to the principles formulated, a shortcoming that hampers Fraser's account.

§4.1.1. FRASER, PERSPECTIVAL DUALISM, AND PARTICIPATORY PARITY

I have argued that racial inequality is primarily driven by the problem of normative valuation. I earlier showed that Rawls' theory is insufficient on account of its formal nature as well as its ultimate commitment to associating advantage with class. Fraser's approach to injustice strongly recommends itself in virtue of its insistence on pairing issues of distribution with issues of recognition: "It is my general thesis that justice today requires

both redistribution and recognition....I shall argue that the emancipatory aspects of the two

problematics should be integrated in a single comprehensive framework."[13]

There are two tightly interconnected foundational motivations for Frasers solution,

participatory parity. First, Fraser argues that most offenses that register as injustices

usually are a matter of misrecognition (which for Fraser denotes diminished social status,

rather than predicated on thick descriptions of cultural attributes and practices) *and*

maldistribution. Gender income inequality is in part a function of how markets work but

also is part of a set of practices in which "male" labor skills are more highly valued. Social

discrimination against gay marriage feeds into the inability to transfer holdings as

heterosexual married couples can. Second, despite the *actual* interconnectedness of such

injustices, theorists in both camps have remained insular in addressing social injustice,

thus their accounts do not go far enough in realizing a truly comprehensive social justice.

Fraser contends that a coherent integration of both approaches leads us to prefer an

account of what she terms participatory parity: the ability of all citizens to equally partake

of and participate in their own society.

On the face of it, Fraser's ambition to integrate recognition and redistribution into

an account of justice holds great promise for racial inequality. In arguing that racial

inequality is primarily driven by the problem of normative valuation (rather than a

disrespect of black culture per se), it would seem that I agree with Frasers' thinner account

of recognition hinging on status rather than cultural, ethnic, or racial affirmation as such.

Similarly, the principles I have specified would in some instance require the mobilization of

public resources for the purpose of supporting the social bases of self-respect as I have

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[13] Fraser p. 9.

conceived that idea. An observer might then be led to conclude that Fraser's account is a formidable competitor if not superior. I believe there are many problems with Fraser's account that prevent it from meeting the needs of racial justice. I shall raise four points in response to Fraser's challenge that cohere into a particular line of criticism.

First, Fraser argues that an account of the relationship between redistribution and recognition (economy and culture, in her own terms) must be historicized. On Fraser's view, this means: "that understand[ing] the relations between maldistribution and misrecognition in contemporary society....entails theorizing the relations between class structure and the status order in late-modern globalizing capitalism." We immediately, wonder though, whether locating the problem in this way does not itself give too much explanatory power to relations of production, labor, and distribution. In short, a purportedly dual perspectival approach seems relegated under the banner of one of those perspectives: the history of economic relations.

Second, and following from the above, the focus on capitalism is a metatheoretical move that speaks against theorizing the injustices that trouble Fraser in a more nuanced manner. In offering an argument for the general relation between distribution and recognition, Fraser violates her own pragmatism, thus negates the value of historical investigation. In our case of racial inequality, the historical investigation speaks against giving the rise of global capitalism the pride of place Fraser's account does. We will recall that though slavery was initially non-racial, the development of a racialized worldview worked in tandem with the racialization of slavery (whites had initially been forced into servitude, holding more or less equal diminished status as blacks). As blacks were increasingly denigrated and blatantly dominated, it was the identifier of black, not the

capitalist needs of plantation owners which imbued blackness with servility and complete denigration. The genesis of racism, on its own terms and consistent with its own nature, continuously reproduced itself in various ways in institutional practices.

This point is brought out most sharply in Fraser's brief discussion of welfare in America. On her view, welfare is a good example of how redistributive policies harm recognition by stigmatizing recipients. However, the case study presented in chapter 3 calls into question the more precise contours of welfare and stigmatism. We will recall that there is significant evidence that welfare policy in America was *initially* and *primarily* stigmatized with regard to race: the occupations which were consistently excluded from New Deal programs were those in which blacks were over-represented. Moreover, citing Gilens' work, we also saw that in the 1980's, the public's hostility to welfare as the refuge of the lazy and non-industrious subsided when poverty hit the white population. This is not an outright denial that there exists a general ideological opposition to welfare on the grounds of individual responsibility, nor that there is not some general non-racial stigma attached to it. However, without investigating the historical record, Fraser moves too quick to attribute characteristics to a problem that are not adequately representative of its relationship to injustice.

Third, Fraser's account is substantively monist while being analytically dualist. That is to say, she does not believe that each sphere of injustice can be addressed discretely, but that a full solution comes from giving each sphere its own analytic frame. Thus, participatory parity is best served by perspectival dualism. There are two concerns here. First, there is a problem of theoretical consistency, for on Fraser's own account, "economic

structure generates racially specific forms of maldsitribution."[14] She goes on to conclude: "These distributive injustices can only be remedied by a politics of redistribution."[15] This seems to speak directly against Fraser's own carefully and insistently argued point about substantive monism. But let us suppose that this inconsistency is anomalous and that Fraser would not endorse this point if pressed on it in light of her own account.

The follow-on concern follows from my second major objection above: when we look at the particulars of an injustice, we may very well see that economics and culture are fundamental to the injustice in question, yet that does not mean there is necessarily parity between the two views. Going back to the issue of racial income inequality, we must ask, what, in an age of formal equality, drives racial maldsistribution? I have throughout argued that racial inequality is predicated upon normative valuation. So, on this view, we might say that Fraser's concern with status is spot on. But, that status explicitly or implicitly works to justify various forms of maldistribution does not mean that distinctly analyzing the economic mechanics of maldistribution will necessarily lead to its resolution. My thesis here is that classes of injustice – gender, race, immigration, sexual orientation – each have their particular story. In investigating the story of racial inequality, I have supported the conclusion that while redistributive measures are inevitably a necessary part of a robust conception of racial justice, considerations of redistributive measures are subordinated to a normative ideal; an ideal that itself is a response to the problem of normative valuation. I want to say here that careful consideration of the problem of racial inequality leads to a parity between the nature of the problem and the nature of the response. Put yet another way, the problem is defined in terms of its ordering principle with the response centering

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[14] Fraser, p. 22.
[15] Fraser, p. 23.

on a commensurate ordering principle. Just as the contours of racial inequality are a function of its own ordering principle, so are the institutional and personal principles of justice I have specified.

My last objection to Fraser is as follows: the reader will have realized Fraser's consistent deployment of economy and culture (a dualistic trope often employed by Marx influenced theorists, which itself calls into question Fraser's fidelity to theoretical pragmatism). But, where is the political? Fraser recognizes this oversight, writing:

> The most plausible candidate for a third dimension is "the political." "Political" obstacles to participatory parity would include decision-making procedures that systematically marginalize some people even in the absence of maldsitribution and misrecognition – for example, single-member district winner-take-all electoral rules that den voice to quasi-permanent minorities. The corresponding injustice would be "political marginalization" or "exclusion," the corresponding remedy, "democratization."[16]

I don't believe whether these constitute political injustice is in doubt. But Fraser goes on to accommodate a Marxist concern by disaggregating injustices and then attributing these to rights of capitalist property owners, such as the right to exclude workers from the surplus of value they produce or the right of property owners to exclude workers from the decision-making process. Does this Marxist accommodation of political concerns capture the relevant universe of "the political"?

To see the problem, let us, again, revisit history. On the face of it, the 3/5th's compromise seems firmly rooted in the capitalist system, with the issue of fair taxation at stake. One reading of it is that the North wanted to gain maximum revenue from a prosperous business class, while that class resisted the appropriation of their surplus value. But two things are at stake here. First, a more insightful reading ties the compromise to politics and power: the South wanted slaves counted for the purposes of representation,

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[16] Fraser, p. 68.

hence, political power, while the North wanted to impose limits on that power and gain a revenue stream at the same time. Second, absolutely none of this ever brought into question *whether* blacks *ought* to be considered as something more than property. The diminished status of blacks as property was never in dispute – in fact, this was a settled question. This question was first settled quite apart from the capitalist system. Indeed, the content of the laws passed in the late 17th century were grounded in socio-political constructs. Moreover, it is this socio-political status that is carried forth long after slavery collapses as a mode of capitalist production. Crucially, it persists because of its embededness in a *diversity* of institutions, economic only one among the various classes. It seems then, that Fraser has weakened if not undercut her own account by first holding "the political" in reserve for so long, and then accommodating it to a Marxist framework that prioritizes economics over sociology and politics.

In sum then, Fraser's account suffers in the first instance by being inconsistent with its own commitment to pragmatism. The result is a meta-theory that ties all instances of injustice (recognitional and distributional) to the historical development of global capitalism while subordinating politics and political development. These methodological missteps conspire to deprive Fraser's account of the kind of substantive acknowledgments which would allow her to adequately and appropriately be consistent with her own sincerely stated moral concerns over the nature of and proper response to injustice. Moreover, so I have tried to show, she does this in a way which my account not only avoids but which draws lessons from, resulting in a conception of justice more tightly responsive to the contours of racial inequality.

§5. Conclusion and Responses To Objections

§5.1   Although I have offered a series of arguments intended to cover and coherently

bring together the complexities of racial inequality under one framework, there might still

be those who object to the conception I have developed. I take up five objections in turn. It

might be said that the practicality of my prescription is questionable. On this view, one

would hold that an idea such as the social bases of self-respect is too vague, and, in any

case, not in step with how we typically discuss policy, so is not likely to garner support. I

think there are a few possible responses. The job of the philosopher, even one concerned

with empirics and history, is to imagine a better world. Because a better world often entails

a departure if not a rupture from familiarity, we can often be hard pressed to immediately

see the path to action. Moreover, in providing an explanatory and prescriptive framework, I

have tried to provide adequate guidance for actual policymakers to fly by. The principles

combined with the examples are formulated and structured with policy in mind more than

abstraction or idealization. Upon reflection, we are sure to recognize the presence of some

of these principles in our current politics. For the purposes of racial justice, it becomes a

matter of marshaling them for a particular purpose coherently and consistently.

§5.2   One might object to the idea that some agent today is to be held responsible for

some injustice in the past. This is a problem that scholars concerned with historical

injustices often struggle to reconcile with liberal motivations for approaching an injustice

in the first place. We have a way out. The first step is to reinvoke the distinction made in

chapter 2 between a historical injustice and a contemporary injustice with a historical dimension. When we argue for something along the lines of reparations for slavery, we are identifying a discrete historical occurrence perpetrated long before any of us were alive, thus, the questioning of our responsibility.

But consider the latter kind of injustice. I have been arguing, first, that institutions are the primary subjects of justice. On this count, as observed earlier in discussing the principle of historical review, there are few problems since institutions *do* endure over time in a way that makes historical responsibility coherent; and, it turns out to be the case that certain institutions and their respective organizations *are* historically responsible. However, when I've made individuals a party to the conception, notice that I have done so in the spirit of prospective progress and improvement rather than in the spirit of remediation or restitution. On this view, then, historical responsibility is assigned to the institutional sphere while individuals are responsible for their own attitudes, actions, and development so long as the background conditions of justice (according to justice as democratic partnership) obtain. Thus, on my view, persons have no need to be alarmed for paying the price for something that occurred before their time; rather, they only need to be concerned with cultivating ethical and moral excellence – something coherently and justifiably assignable to them here and now under present, actual conditions. One might challenge this on the grounds that justice, especially under a conception which focuses on institutions, always incurs a cost to be paid, so all I've done is merely relocate it. I don't think this is quite right, and it's easy to see why. Our democracy is already committed to a number of moral ideals consistent with justice as democratic partnership. Since the injustice of racial inequality is current and ongoing, it is crucial to realize that the costs

incurred for dealing with contemporary racial inequality – whether the solution is informed by history or not – already falls under the purview of our ongoing commitments.

§5.3   A third objection might acknowledge the insufficiency of distributive measures but simply argue that self-respect is the wrong kind of thing to focus on. Nancy Rosenblum seems to hold this view; an extended quote is illuminating, for she seems to think that liberal theorists have gone too far in tying self-respect to public standing (which I take to be analogous to the problem of valuation). Her claim seems to hinge on two very weak arguments. First, in her own words: "The assumption that second-class citizenship inexorably injures self-respect...is even more troubling than the automatic identification of second-class membership with second-class citizenship. *It is not just that self-respect is too subjective a state of mind to be the ground for public policy* (...). Beyond that, the two are independent."[17] It seems that what troubles Rosenblum, were we to take her argument to its next step, is the possibility of wielding the power of government for what seem to be strictly psychological benefits. However, it's not clear exactly what the claim here is. Is it that since self-respect is subjective, we can't know whether it's been attained or not making it an elusive aim? Or, is it that because self-respect is subjective, even when we can assess it, issues dealing with ostensibly psychological affairs have no place in government? In what seems to be a separate objection, Rosenblum at once leads us to think that her concern is the latter; also, this objection provides a crucial point of entry which undermines her general objection to self-respect as a central concern of justice.

Rosenblum writes:

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[17] Nancy L. Rosenblum, *Membership and Morals: The Personal Uses of Pluralism in America* (Princeton: Princeton University Press, 1998), 176 (emphasis mine).

Self-respect is rightly characterized as a "primary good," vital to well being....[But] [w]e know little about the conditions that instill self-respect, though, apart from the genuine need for attachment and basic trust in early childhood (a deficit at this stage is said to be irreparable.) We know even less about how self-respect is damaged or reversed; in particular, what conditions exacerbate or mitigate the effects of the public stigma of second-class citizenship.[18]

Is that so?

In the above passage, it seems Rosenblum signals that her concern with self-respect is not so much whether we can know if one has it or not, but whether it can appropriately come within the purview of government. However, notice that this is so because Rosenblum commits to grounding her doubts on an empirical question: do we know what the conditions of self-respect are? Do we know what harms it or helps it? This stresses why it is important that political thinkers engage empirical studies, because what Rosenblum considers to be speculation, I have shown to be factually supported. This is the reason the move was made from Du Bois to Waters and Steele – we don't have to rely upon speculative judgment to guide our thinking on these kinds matters.

If we follow Rosenblum's lead, then, this is how things look: *if* it is the case that we know the circumstances of self-respect then we can give it its appropriate consideration. On this view, it seems to follow that if it turns out to *actually* be the case that the circumstances of self-respect are indeed closely tied to public standing, and, moreover, how this helps or hurts self-respect, then self-respect is *not* too subjective a state of mind (on the second meaning above) to be the focus of justice considerations. We have previously provided evidence that race is tied to public standing and that race impacts and harms self-respect of persons of color. Additionally, our historical and case study investigations indicated that our basic structure has been complicit in making this so. So, not only do we

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[18] *Ibid.*, 177

have ample guidance on the circumstances of self-respect as well as what harms or helps it, but we also know which agents are responsible for supporting the circumstances that induce the harm in the particular case of racial injustice. Rosenblum's objection is undermined and the focus on the social bases of self-respect stands as the appropriate conclusion of our considerations on the problem of racial inequality.

§5.4   My response to Rosenblum might be taken as securing the importance assigned to the social bases of self-respect as well as the place it occupies in the theory. But, someone may be concerned by the amount of time it would take to realize racial justice. I have in mind Virginia Held's concerns over the limits of reasonable progress.[19] In brief, Held, building on work done by Sen, raises the question: what would be the impact on one's self-respect if one had to wait X number of years for justice to be manifest? What are the outer limits of X before someone's self-respect is put at risk? This concern revolves around seemingly acceptable but offensive Pareto optimal results. At issue is the concern that even if principles of justice open up opportunities for persons, there is the problem that those better positioned still have their positions, thus, others have to wait for them to vacate. Yet, this situation is Pareto optimal since a better situation has been identified that leaves no one worse off. On this view, someone might view raise a similar concern against my conception of justice, focused as it is on an ongoing process of reconciliation. The reply here is two fold.

In the first instance, Held's concerns center on equality of opportunity, a situation that is particularly at risk of suffering from the Pareto optimal paradox. But, justice as

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[19] See Virginia Held, "Reasonable Progress and Self-Respect," in *The Monist* 57 (1973), 12-27.

democratic partnership is not solely or even primarily concerned with opportunity, such as equal employment, Held's own particular case study. Rather, the conception takes a holistic view of racial injustice and deploys numerous strategies to resist the many intricate manifestations of racial inequality.

Now it may still be the case that certain of the institutional principles, such as historical review, might in certain instances resolve to claims over equalized opportunities. We can imagine this being the case in an industry that has typically discriminated racially in its employment practices. We would then face the same difficulties raised by Held. But note, and this is the second response, that this is one facet of the complete theory of justice that can be offset by the personal principles as well as the reality of adequate opportunities across the spectrum. What I have in mind here is as follows: the personal principle of fair assessment urges people to release aversive attitudes towards institutions once they indicate their commitment to racial justice, while the principle of self-recognition presses people to realize their human powers of autonomy and action. So on this view, though it may be the case that certain opportunities face the Pareto optimal paradox, justice as democratic partnership is widely empowering such that even if particular opportunities do not become immediately available, it is still the case that persons' self-respect is robustly supported by the conception. Moreover, because the social bases of self-respect are robust, persons are expected to treat their lives as creative projects rather than as objects of compensation or reparation. On this view, while some opportunities may be closed, a person's path to the good life - now more widely open and easily navigable on the strength of justice as democratic partnership – can nevertheless lead to many happy and satisfying

destinations. I think, then, that Held's class of concerns is greatly mitigated by the robustness of justice as democratic partnership.

§5.5   The last objection, and maybe most difficult to refute, is that my approach seems to favor what may seem like racial prioritarianism. We are subsequently at risk of putting ourselves on the slippery slope of reifying racial divisions while making non-persons of color the new 'others' in society. While I can't deny that this is certainly a risk, I must stress the institutional principles are formulated in such a way to not only ensure fairness but to constantly publicize the justification for any act, to always provide benefits to the broader polity, as well as suppress the conception of justice should it conflict with a more legitimate pressing need of the polity. Additionally, we recall that the personal principles of justice as democratic partnership require that persons of color also be active participants in contributing to a just society. But, even so, we may remain uncomfortable with boosting the images of persons of color and being concerned with their psychological and affective well-being as overbearing on the part of the state. One response could simply be that justice in part requires giving one one's due, what one is owed – the fact of racial inequality combined with the history of race in our society makes apparent that persons of color are certainly owed more than what they have received. If I have correctly structured the explanation and derived the right arguments, then what is owed is what is owed, and there's no wrong in this so long as fundamental democratic principles of equality and fairness are not violated.

Racial inequality is something that no one would reasonably justify on the grounds of race itself (as compared to losing out in an otherwise truly fair competition). If this is so,

our actions and policies must be guided by the diagnosis; and, if I have diagnosed the problem correctly, there is good news and possibly bad news. The 'bad news' is that justice will certainly require sacrifices and a period of unfamiliarity. The good news is that justice will be done and America can finally, truly, achieve the promise it set for itself two centuries ago.