

Rawls, Race, and the Problem of the Basic Structure

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Abstract:

This paper contributes to recent debates over the place of race in the work of John Rawls. Controversy has centered on whether Rawls' broader philosophical approach is capable of addressing racial injustice, and if not, precisely why the Rawlsian framework remains disconcertingly blind to such issues. The major figures of this debate are Anderson (2010), McCarthy (2004, 2009), Mills (1997, 2008, 2009, 2013), and Shelby (2004, 2013) who focus on the nature of Rawls' emphasis on "ideal theory," and whether that precludes his engagement with racial domination. Pace these scholars, we show that Rawls' inability to account for, or address, racial injustice lies in Rawls' limited understanding of the kinds of 'associations' or institutions that condition and perpetuate racial oppression. As studies in *Race and American Political Development* have shown, non-statutory institutions like political parties, unions, and universities were key to the development and maintenance of racial hierarchical order. Fully understanding the role of these institutions in perpetuating racial injustice allows us to see that the limitations of Rawls is not his ideal theory, per se, but his preoccupation with the "basic structure" of society. By restricting his political philosophy to this subject of justice, many meso-level institutions necessary for understanding the nature of American racial domination fall outside the scope of his analysis.

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Rawls and Race: The Basic Structure Problem

This paper aims to contribute to our understanding of the problem that racial domination presents to liberal political theory. We take as our point of departure the recent scholarly debate over the place of race in the work of John Rawls, whose thought has been so influential in shaping contemporary political theory. Discussion has centered on assessing whether or not Rawls' broader philosophical approach is capable of addressing questions of racial injustice, and if not, precisely why the Rawlsian framework remains disconcertingly blind to such issues. This debate is undoubtedly timely, as questions of race and racial injustice have become increasingly present in public discourse; as a result, the question of whether American liberalism is up to the task of dealing with America's "original sin," has taken on an urgent and undeniable salience. By revisiting the question of race in the thought of the most preeminent 20th century liberal theorist, we aim to both 1) shed light on an under-appreciated shortcoming of Rawls' project relevant to understanding why it is so deeply limited in conceptualizing issues of racial injustice, while also 2) suggesting how contemporary political theorists ought to respond to broader questions of racial injustice in our present.

Recent critiques and defences of Rawls's approach to questions of racial injustice can be said to fall into three camps. Writes such as Elizabeth Anderson (2010) reject that Rawls and Rawlsians can say anything effective about race. Scholars such as Thomas McCarthy (2004, 2009) and Charles Mills (1997, 2008, 2009, 2013) are equally critical of Rawls and have respectively suggested that the Rawlsian approach would have to be radically revised to accommodate such concerns. Finally, Tommie Shelby has argued that the Rawlsian apparatus is already equipped to deal with racial injustice, and requires no modification. The key focus of this debate has been over the nature of Rawls' commitment to "ideal theory," and whether that precludes his engagement with racial domination. *Pace* these scholars, we suggest that the problem of Rawls' inability to offer either a central place to racial injustice or a viable means of addressing such claims lies elsewhere. The underappreciated tension of Rawls' thought we locate is found not in his commitment to ideal theory, but more fundamentally in the limits of the Rawlsian understanding of the role of institutions in conditioning and perpetuating the sorts of racialized forms of hierarchy and domination that characterized both his age and ours. As studies in race and American Political Development have shown, institutions like political parties and labor unions have been key to the development and maintenance of racial hierarchical order. When the role of these institutions in perpetuating racial injustice is fully understood, we see that the limitations of Rawls is not his ideal theory, *per se*, but his preoccupation with the "basic structure" of society. By restricting his political philosophy to this subject of justice, many socially important institutions - institutions necessary for understanding the nature of American racial domination - fell outside the scope of his analysis. It's not that Rawls didn't care about race. It was simply that the philosophical architecture he builds leaves him unable to either account for or address the meso-level institutions that play such a central in sustaining racial injustice.

We conclude by explaining how Rawls' inability to adequately address racial

injustice speaks to a deeper historical problem with 20th century liberalism and its inability to address itself to non-statutory institutions. With the historic rise of the welfare state in the 20th century, liberals like Rawls have become preoccupied with the state and its role in creating and remedying injustice. The result has been that liberal theory has become incapable of dealing with a host of contemporary issues, racial injustice being only the most prominent example. As a result, we suggest that to adequately address the problem of racial injustice requires political theories capable of dealing with these institutions. We consider how the foremost critics of racial injustice in America—such as Douglass, DuBois, MLK, and Malcolm X—all made meso-level institutions like schools, churches, political parties, and labor unions central targets of their critiques. Prescriptive approaches to the question of racial justice must follow their lead, and abandon the cozy confines of Rawls’ basic structure.

I. Explaining Rawls’s Silence On Race: A Question of Ideals?

The place of racial injustice in Rawls’ thought has received increased attention by scholars in recent years. This is by no means surprising, given Rawls’ canonical status in Twentieth century Anglo-American political philosophy and the enduring importance of race to enduring issues of social justice within the United States. While there is compelling evidence that Rawls was by no means indifferent to racial injustice, both critics and sympathizers have noted the surprisingly marginal role of discussions of race in Rawls’ writings, leading to broader discussions of the significance of this omission for his contributions to liberal political theory.

Ambivalence and concern regarding the capacity of Rawls’ project to address questions of racial injustice can be traced back to the “strange presence” of race in *A Theory of Justice* (Shebie 2004, p. 1699). The explicit goal of *Theory* was to develop a conception of justice that “generalizes and carries to a higher level of abstraction” the fundamental insights of the liberal social contract tradition in order to produce a set of principles to govern the ‘basic structure’ of society. (*TJ*, p. 11) For Rawls, this focus on the ‘basic structure’ - understood as the “primary subject of justice” - was underwritten by the fact that its institutional “effects are so profound and present from the start” (*TJ*, p. 7). Rawls argued that in order to generate principles necessary to secure such conditions of justice we ought to imagine an original position composed of rational and disinterested agents deliberating under the condition of a veil of ignorance.

Under such conditions, Rawls suggests the contracting parties would endorse his famous two principles of justice: political institutions should secure the most extensive range of basic liberties to all persons, and any social and economic inequalities must be arranged so that they are conducive to both fair equality of opportunity and to the maximum benefit of the socio-economic condition of society’s least advantaged (*TJ*, p. 52). The latter ‘difference principle’ fundamentally tied Rawls’ theoretical project to securing a relative level of economic egalitarianism within society, thus leading to a broader focus on questions of distributive justice in subsequent Anglo-American political theory. Yet while clearly concerned with the implications of distributive injustices, Rawls’ framework seemed to have little to say about racism and racial domination - one

of the most serious and pervasive sources of oppression within his own society. Indeed, as Charles W. Mills has demonstrated, explicit discussions of race remain not only marginal in the context of *Theory*, but throughout Rawls' writings. (Mills 2009, p.163-9) Moreover, while Rawls felt compelled to revise his account to respond to apparent shortcomings with regard to the fact of pluralism, the problem of stability, and considerations of gender, no such shift is visible with regard to the issue of race, despite his admission that race constituted one of the "most basic problems" of our society (*PL*, p. xxvii).

That Rawls' account of justice has little to say explicitly on questions of racial justice has struck many as deeply perplexing and problematic, leading to broader debates about the implications of this apparent absence.¹ For Charles W. Mills the surprising marginality and insignificance of questions of race in Rawls' writings was far from incidental and pointed toward fundamental flaws in the Rawlsian project (1997, 2008, 2009, 2013). Locating Rawls' work as part of a broader pathology of liberal political thought grounded in the distortions of the social contract tradition, Mills has argued that the Rawlsian framework is largely incapable of addressing issues of racial domination and injustice. According to Mills, this "systematic omission" of race was a direct result of Rawls' larger methodological focus on 'ideal theory' and the subsequent abstraction from actual existing conditions of injustice this methodological commitment entails. (Mills 2009, p. 162) Such an approach – which entails generating principles of social justice for a well-ordered society under the idealized assumptions of perfect compliance of all citizens – has little to say about the measures necessary to rectify the ongoing legacy of racial domination that characterizes the United States. As an implication of this conceptual move Rawls, and his followers, "are immediately exempted from dealing with the legacy of white supremacy in our actual society" (Mills 2008, p. 1385).

Thomas McCarthy has put forward a similar line of critique that also identifies the apparent weakness of Rawls' approach for addressing questions of racial justice as grounded in a conceptual focus on ideal theory (McCarthy 2004; 2009). According to McCarthy, Rawls' approach remains fundamentally incapable of engaging with such questions because Rawls' conception of ideal theory abstracts away all considerations of race, on the grounds that such considerations are morally arbitrary and should not play a significant role in structuring social and political institutions. However, the dichotomy between ideal and non-ideal theory in Rawls' approach "threatens to render normative theory both unrealistic and unfair" (McCarthy 2009, p. 31). This is because within the strictures of Rawls framework, "there are no theoretical means at hand for bridging the gap between a color-blind ideal theory and a color-coded political reality" which renders his broader conceptual approach incapable of attending to the historical legacy and contemporary reality of racism and racial hierarchy (McCarthy 2009, p. 39).

Approaching the Rawlsian project from a far more sympathetic perspective, Thomas Shelby has contended that Rawls' project is largely capable of addressing issues of racial injustice and doesn't require significant revision to be responsive to such concerns. According to Shelby, Rawls' critics on this matter simply misread him: far

¹ This omission is all the more striking given the historical context of Rawls' intervention, which took place in the wake of the American Civil Rights movement.

from permitting or justifying racial inequalities, Rawls's abstractions on the level of ideal theory are intended to make sure "racial bias is not codified in or further entrenched by our shared conception of justice" and his broader framework "explicitly rules out regarding the members of any racial group as anything less than full moral persons" (Shelby 2004, pp. 1700, 1702). While Shelby concedes that Rawls's framework explicitly has less to say about compensatory justice, he denies that this necessary compromises the Rawlsian approach

These studies, while rich and innovative, have focused almost exclusively on the implications of the ideal and non-ideal theory distinction in Rawls' work, neglecting the possibility that the inability of Rawlsian approaches to thematize issues of race may lie elsewhere. We wish to complicate these discussions by demonstrating that the inability of Rawlsian theory to address racial inequality and injustice is due to more foundational commitments implicit in Rawls' understanding of the appropriate subject of justice. Recall here that Rawls suggests that the principles of justice that ought to inform ideal theory are restricted in their application to the basic structure of society. Our suggestion is that it is precisely the narrowness of the application of this application of the principles of justice that renders many of the main perpetrators of racial oppression and inequality beyond the purview of his account.² In essence, by making social justice only a matter of addressing the principle institutions of the state, Rawls' account is unable to say much about the role of meso-level associations and structures that have historically played a pivotal role in sustaining existing forms of racial inequality. The significance of meso-level institutions on these issues is the subject of the next section.

II. Racial Orders and Meso-Level Institutions

In the United States there is a tendency to view the story of race and racial injustice through a triumphalist and Lincolnian lens. In this narrative, institutionalized racist practices--in the form of antebellum slavery or postbellum Jim Crow--were the result of an anemic federal state and all-too-empowered state governments. According to this story, slavery persisted because southern states were allowed to do as they wish; the solution was the Civil War and Reconstruction, the subjection of these states to the liberal egalitarian norms embodied in the constitution, and the consequent extension of national citizenship to former slaves. Similarly, segregation was the result of a constitutional interpretation that left such policies for the states to decide on how to (dis)enfranchise and police its citizens; the solution was campaigns, judicial decisions, and policy

² Our criticism perhaps has an elective affinity with the critiques of Rawls' work developed by G.A. Cohen. (1997, 2008) Engaging with Rawls's project from a Marxist perspective Cohen pointed out that there is an apparent tension between the sense of justice that would characterize a just society and the appeal to self-interest implicit in Rawls's account of the difference principle and the permissible inequalities it would allow. For Cohen, a just society would require an ethos of justice that supports equality enabling choices and such an ethos must go beyond what a focus on the basic structure of society was capable of affecting. Presumably Rawls' concerns with pluralism and resistance to perfectionism would rendering it impossible for him to accept Cohen's thick ethos of justice. But at the same time, Cohen's critique does point to some of the conceptual difficulties raised by restricting the impact of principles of justice to the basic structure, and it is precisely this insight that we pursue.

platforms that introduced federal action to substantiate the rights of former slaves and their access to the basic institutions of society, i.e. the 1960s civil rights movement, *Brown v Board of Education*, and the Great Society.

Racial Orders

Yet as many scholars of American political development and race have noted, such a narrative is far too simplistic in at least two respects: first, it makes racial injustice out to be a wholly southern phenomenon, and ignores systematic racial injustice in the north; and second, it ignores how systemic racism was upheld and shaped by Federal government policy itself. Against the “racist south” and the “anti-racist Federal government” characterization of America’s history with regard to race, the more nuanced story brings to light the variety of institutions in which racism and white supremacy are manifest. The construction and persistence of American racial injustice looks less like recalcitrant states resisting federal imposition and more like a certain set of institutions--both within and outside the state apparatus--that are propped up by coalitions and result in the maldistribution of social standing and privileges on racial lines.

The cementing of such institutions was famously defined by King and Smith (2005, p. 75) as a “racial order,” that is the “the coalitions of state institutions and other political actors and organizations that seek to secure and exercise governing power...in which political actors have adopted racial concepts, commitments, and aims in order to help bind together their coalitions and structure governing institutions.” The significance of the racial orders insight for our purposes here is the inclusion of “other political actors and organizations” that are distinct from state institutions. That is, even with the extension of constitutional principles through the expansion and consolidation of the federal government, racial orders can persist and be sustained because of empowered institutions “below” the level of government.

This ties studies of racial orders to recent developments in political theory that focus on “meso level” or “intermediary” institutions and their significance for normative theory. Of course, such organizations have not exactly been ignored in previous scholarship; concerns with organizations and associations played a large part in theories of civil society, social capital, social movements, and arguments about the role of the public sphere in democratic legitimacy. These theories focused on such organizations as *agents*, whose relative prevalence and power had normative valence because of their effect on larger political processes and institutions (democracy, state efficacy, etc.). In contrast, recent work in political theory has considered the ways in which the meso-level can function as an institutional site of power in its own right; that is, how associations “below” the state can hamper or bolster the freedom, equality, and dignity of individuals. As a result, from such a perspective the structure and conduct of such institutions is contended to be a primary subject of normative political theory.

Meso-Level Institutions

This movement in political theory can be seen in recent work on political theories of the corporation (Ciepley 2012; Norman 2015; Scherer and Palazzo 2007, 2008), political parties (Rosenblum 2008), and NGOs (Rubenstein 2014, 2015). The most

comprehensive work on political theory and the meso/associational-level is undoubtedly Levy's (2015) study of such organizations' place in liberal political thought. On Levy's account, much of liberal political thought has approached this phenomena as either extensions of individuals and their freedom to associate (what he refers to as the "pure liberal" theory) or as governments in miniature (what he refers to as the "congruence" theory). The result has been liberal theories that either look sanguinely upon such groups as the protectors of individual freedoms against state encroachment (a camp which includes "pluralists" such as Tocqueville), or those that look suspiciously upon such groups as potential threats to individual freedoms, which must therefore be subject to legal intervention by a liberal state ("rationalists" like J.S. Mill).

While the pluralists are correct in noting the importance of associational autonomy for securing and substantiating our freedoms, Levy also notes how such organizations can become sources of unfreedom. This can occur in three main ways. First, groups can become so large and/or multitudinous that *there cannot be said to be any real exit option* for those who fall under their sway. As a result, individuals are forced to live under the dictates of an organization that they otherwise would not have chosen. While Levy's normative approach focuses on pluralism, he also makes a point of acknowledging how both perspectives have a crucial point. Second, even ostensibly voluntarily entered groups can have dynamics that constitute *violations of the rule of law*. Third, and most importantly, Levy notes that even when voluntarily consented to, "*authority generates power*" (49-50). By vesting authority to others over us, we also provide them the space to make decisions in their own interests, and not for the original purpose the authority was given. In these ways, even perfectly voluntary, freedom-of-association-generated groups can become dominating institutions.

Joining the insights of racial orders with this insight about the nature of meso level institutions, we gain a different understanding of how racial orders work, as well as the sources of racial domination. In this view, the "other political actors and organizations" that establish racial order coalitions do not do so solely through their support of particular state policies; they uphold such racial orders, wittingly or not, through the power they wield directly over individuals. Because they often have captive memberships and the ability to abuse discretionary power, when meso-level organizations are racialized in various fashions, their power takes on the form of racial domination. When the nature of intra-group power is such that divisions between in-group and out-group, or divisions between in-group decision-maker and in-group subjects, map onto racial divides, we expect to see group power manifest itself in terms of race. Focusing solely on the basic structure, no matter how emancipatory one's intentions, can have the effect of overlooking these sorts of power dynamics.

III. Meso-Level Sources of Northern Segregation

If we are correct in emphasizing the crucial - and indeed central - role of mesa-level institutions in producing and sustaining relations of racial hierarchy and oppression, liberal theory's tendency to neglect such institutions represents an important gap in its approach to questions of social justice. This can be seen by looking at the racial

segregation of the Jim Crow era that existed *outside* of the Jim Crow south and in the north, under FDR's new deal. As has been noted (Katznelson 2005) the alliance within the democratic party between northern labor and ethnic minorities on the one hand, and southern segregationists on the other, led not only to the persistence of segregation in the south, but a racialized welfare state in the north. However, unlike the Jim Crow south, where caste-based racial domination was explicitly backed and enforced by government, northern racial domination was more subtle from a legal standpoint. Instead of it being explicitly endorsed by government, it was carried about by non-governmental institutions that were explicitly racist. We can identify at least two key meso-level institutions where the sustenance of racial domination occurred, and which contributed to a racialized society: the political party and the labor union.³

The Democratic Party

American historians and critical race theorists have pointed out a number of ways in which the political party was instrumental in inscribing racial categories and racial orders. Jean Baker (1998, pp. 179-181) notes how the Democratic party appealed to racial notions of White superiority in order to secure cooperation and alliance amongst recently-enfranchised White voters across the North and the South, despite disagreements about the legality of slavery or secession. Indeed, the Democratic Party did not merely appeal to notions of Whiteness, but actively constituted them (Roediger 1999, 140). The Democrats used Whiteness to appeal to newly arrived European immigrants who were not yet integrated into the American public. Put differently, the formal legal extension of the vote was only given effect with the development of the mass party that actually brought these newly enfranchised citizens into the political process. Faced with marginalization and an American polity that viewed them as outsiders, the Democratic party offered them the possibility of inclusion by giving them the ability to be identified as part of the dominant class, to become White.

The classic example of this are Irish Americans. Thoroughly racialized and oppressed as a result of English colonialism, the Irish came to America finding themselves similarly confined. Despite their complexion, these immigrants found themselves more often identified with the Black underclass than not, sometimes referred to as "White Niggers." The historical tie between the Irish and the Democrat party finds its basis in this condition. As Ignatiev (1995, p. 89) put it in his famous *How the Irish Became White*:

The Irish did not vote...Democratic out of sentimental attachment to those who gave them the vote. The Democratic Party eased their assimilation as

³ It should be noted that though our discussion here centers around two "progressive" institutions--the Democratic party and the labor union--we do not mean to imply at all that this is part and parcel of progressive political ideologies generally. Indeed, we might say that our focus on these institutions is more necessary because conservative institutions have been far more forthright and explicit in conserving racial status quos. If anything, we are calling attention to the history of racism in these institutions in order to contribute to a healthier progressive politics.

whites, and more than any other institution, it taught them the meaning of whiteness. Key to this was the Party's rejection of nativism. Strong tendencies existed in antebellum America to consign the Irish, if not to the black race, then to an intermediate race located socially between black and white. Nativism expressed this tendency, and nativism appealed to many artisans who were resentful of immigrants coming into the country....If, therefore, the Democratic Party, decided, after some vacillation, to reject nativism, the decision had far-reaching consequences. Nativism lost out not to the vision of a non-racial society, but to a society polarized between white and black.

By using racial categories as a way to appeal to new immigrants and extend the franchise to them, the Democratic party helped to establish and perpetuate White supremacy, even as the franchise was extended to more Black voters.

This continued well into the 20th century with FDR's New Deal coalition. Recent work (eg. Katznelson 2013) has highlighted the odd tension underlying the resurgence and transformation of the Democratic party: the coalition between northern labor, ethnic minorities (including the Black community), and White southern segregationists. The result was that the New Deal's de-commodification of labor and establishment of the welfare state was inscribed with racial categories. Labor rights were given primarily to occupations to White workers at the exclusion of domestic and agricultural work, which were done primarily by Black workers; the establishment of public housing was formally segregated, and the availability of loans and mortgages were denied to those living in predominantly Black neighborhoods. Thus, even though Jim Crow was the law of the land in the south, we find the establishment of White Supremacy in the North, with the main protagonist being the Democratic Party.

This example shows us just how pervasive the idea that "authority generates power" can be within society. Racism was not inscribed into the New Deal simply through aggregation of racist voters' preferences into a Democratic Party platform that was then executed through legislation. Instead, through its power to constitute an in-group and an out-group, the Party turned voters into White Voters who were defined in opposition to newly enfranchised Black Voters. The result was a party whose members were directed toward certain preferences by virtue of the power the party was able to wield, and this power was racially-inflected.

The Labor Union

One of the most enduring features of the New Deal was its empowerment and protection of labor unions, by establishing the right to organize, collective bargaining, and strike. However, as a result of the dynamic in the democratic party given above, the pro-union laws of the New Deal, such as the Wagner Act and the NLRA, allowed unions to choose their own membership criteria, which often meant explicit segregation and racial exclusion. As Frymer (2008a, p. 185) has noted, the institutions of the labor movement largely saw thinking about race as a distraction from thinking about class conflict, and

were therefore reticent to challenge segregation in local unions: “to the degree that racism was deemed important, the issue was far secondary to the maintenance of the institutional components of union power such as protecting seniority and local union autonomy.”

The result was a growing split between groups like the NAACP that were focused on racial equality and the AFL-CIO, where the former demanded integration and the latter would respond defensively. As labor grew more intransigent in the face of criticism, the NAACP abandoned cooperative approaches to integrate unions, moving toward confrontational actions like pickets and, ultimately, legal challenges in order to effect desegregation. That is, precisely because these meso-level organizations were violating the rule of law by applying their membership procedures in a discriminatory fashion, state intervention was required to force such organizations to function in a more liberal manner. What the NAACP was doing, fundamentally, was calling attention to the power the AFL-CIO was exercising as a non-state actor, and the racial dimensions such power took on.

No wonder that the labor movement that has been on the decline for the past thirty years, hampered by federal intervention and the alienation of civil rights groups. More importantly for our purposes was that the result was the exact opposite then what the class-based union ideology suggested: instead of disappearing, racial identification increased among working class Whites. The result has been the change in political coalitions, where the White working class largely identifies with other identifiably White voting blocs under the auspices of the Republican Party, which now actively works to undermine unions and entrench racial categories in drug and immigration policy (Frymer 2008b, p. 43; King and Smith 2011, pp. 215-249). The current makeup of Whiteness and its political valence is very much a consequence of the racialization of labor unions and their refusal to integrate.

IV. Rawls and the Meso-Level

One could continue to list institutions that played their part: the Church and its doctrinal support of racial institutions; the university and its quotas; the practices of professional associations; and so forth. The party and the union are only two of the more obvious examples. Although, looking at the work of Rawls, *perhaps not*. Given the significance and high-profile of these two institutions in entrenching racial injustice in America--and also at the time Rawls was writing--it is surprising that there is almost nothing said about either of these institutions in his various books, not to mention his silence on corporations and professional associations.

We can account for this by virtue of Rawls' famous emphasis on the “basic structure of society” as the primary subject of justice. There is little agreement about what this basic structure is, largely because of Rawls' own ambiguity on the subject.⁴

⁴ As Rawls himself notes in *Theory*, “Now admittedly the concept of the basic structure is somewhat vague. It is not always clear which institutions or features thereof should be included. But it would be premature to worry about this matter here.” (TJ, 9) One would anticipate a subsequent detailed elaboration of this central idea in the text, but as the ongoing Rawlsian literature on global justice attests, the concept remains fundamentally underspecified throughout Rawls' writings.

Although it went through some slight mutation, the last definition that Rawls gave of the basic structure was “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....The basic structure is the background social framework *within which the activities of associations and individuals take place*” (*Justice as Fairness*, p. 10, emphasis added). The ambiguity comes from which parts of society constitute the “main political and social institutions” and which are the “activities of associations and individuals” for which the basic structure is meant to provide a framework.

It is worth taking a moment to recognize the stakes at the heart of this question. The significance of claiming that the subject of justice is the basic structure is that it means that principles of justice do not apply to the entire universe of human activity. Instead, there is a division of labor where a conception of justice governs the basic structure and the comprehensive doctrines of citizens govern their affairs within that structure. Political philosophy, in this view, is not merely applied moral philosophy, and does not address itself to the whole array of moral questions. Where the basic structure secures background justice, “individuals are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.” (Rawls PL, pp. 268-69) The role of justice in a scheme of social cooperation is not to dictate all activity, but to enable “individuals *and associations* free to act effectively in pursuit of their ends and without excessive constraints” (PL, pp. 268-269). Although Rawls’ philosophy leads to radical and critical results for modern society (Ron 2008; Chambers 2012), its reliance on this division of labor is part of what makes it a fundamentally liberal doctrine.

So what is the basic structure? There are numerous ways of interpreting it: one way is to say that it is those institutions that have “profound and pervasive impact”; another is to say that it is those institutions that subject people to legal coercion (Abizadeh 2007, p. 319). Yet based on how Rawls responded to criticisms from Okin (1989) and Cohen (2008), as well as how Rawls addresses the question of ecclesiastical power, interpreting the basic structure as any institution that has profound and pervasive impact seems dubious. Because there must be a distinction between those institutions that are “basic” to securing social cooperation and those that express individuals’ moral beliefs, it seems the Rawlsian framework must be committed to leaving some institutions outside the basic structure, despite their profound impact on individuals’ lives. Indeed, as we noted above, Rawls is explicit that both individuals and associations are effected by, but not directly part of, the basic structure of society.

So when approaching institutions like the party or the union, it is not clear whether they can be brought into the fold of the basic structure, or whether they are those associations that ought to be largely left alone. On the one hand they seem important to how we “regulate the division of advantages that arises from social cooperation.” (*Justice as Fairness*, p. 10). On the other hand their structure and organization would seem to reflect values and the achievement of particular ends that would not apply to all of society (PL, pp. 41-42). This helps explain why Rawls drew a sharp distinction between

the basic structure and the “rules of corporate associations” (*TJ*, p. 126). While perhaps the principles of justice might be able to influence these institutions in certain ways, it is not obvious that they could force them to be governed in some particular way as opposed to some other. It would seem that there would be some imperative coming from Rawls’ liberal theory that says these associations would have to be left free to pursue their ends as they wish --in the realm of ideal theory anyway, where the basic structure is working its magic.

IV. Alternative Approaches to the Problem of Racial Injustice

We have seen that racial injustice is not merely perpetuated under the auspices of the state, but also by various meso-level institutions. Indeed, even if we demur with Mills and grant Rawls his ideal theoretic starting point, it seems an open question as to whether his ideal theory can cover the range of institutions necessary to combat injustices of this sort. Because Rawls must be committed to a particular type of personal liberty and an agnosticism toward the good that individuals pursue, he must to some extent grant certain institutions their autonomy.

Now, we admit that there are resources within the Rawlsian corpus to perhaps challenge this conclusion --indeed, this is a function of just how vague and unclear the basic structure is. But the formulation of Rawls’ theory necessarily makes this a live tension. Indeed, if we take Rawls as articulating the principles immanent to liberal society, this tension is not his but is a tension inherent to the 20th century liberal society he is interpreting. This means that liberal theory, Rawls’ included, will always have a difficulty in addressing the injustices that produce, and are produced by, racial categories due to their manifestation at both both individual and institutional levels.

This in turn helps us gain a different vantage point on the Mills-Shelbie debate. While the method of ideal theory may be a difficulty for applying Rawls to questions of race, the problem of fitting meso-level institutions into his theory point to a different problem. The problem is less that Rawls’ answers fail to fully address racial injustice; rather it is with the question he poses in the first instance. Because he asks what principles of justice would govern the basic structure of society, in order to apply his theory to the question of race we must presuppose that the basic structure of society is up to the task of addressing such problems. Put better, the question he poses predisposes his theory toward particular styles of answers.

This is contrast to other traditions of political theory that address themselves to different questions. As Gooding-Williams (2009, p. 3) notes, this is the case of what he calls “Afro-Modern” political theory: “this tradition, in sharp contrast to the social contract...and most other tendencies of modern political thought, tends to concern itself less with the nation state *per se*--that is, with the authority or the centralized, bureaucratic power of the nation-state--than with the regimes of white supremacy that have operated apart from or in close alliance with the nation state.” The liberal social contract tradition confines itself to a certain set of institution by virtue of the question it asks; in contrast, if we start with the question of White supremacy and its causes, we will be less restricted with the kinds of institutions we can attend to.

If we look at examples of Afro-Modern politics, we see less reluctance in addressing institutions like the ones reviewed above. Frederick Douglass famously condemned the church, so much so that he appended a clarification to his *Narrative* on the precise nature of his criticism. Though he made it clear that his condemnation was not of Christianity *tout court*, he also was unequivocal of noting the role that this particular instantiation of the Church played (2004, p. 145): “the slave prison and the church stand near each other. The clanking of fetters and the rattling of chains in the prison, and the pious psalm and solemn prayer in the church, may be heard at the same time. The dealers in the bodies and souls of men erect their stand in the presence of the pulpit, and they mutually help each other.” Douglass here identifies the ideational power wielded by the church as a culprit in the construction of racial domination. We ask simply: could Rawls, with his deference to ecclesiastical autonomy, fit such a stringing critique within the confines of his theory? If so, how do we make sense of his conception of the “basic structure” as the subject of justice? If not, how can Rawlsians deal with the actual history and nature of White supremacy?

More contemporaneous with Rawls would be Malcolm X’s famous “The Ballot or the Bullet.” While the most interesting and dwelt-upon themes in that speech is the question of violence and political legitimacy, Malcolm X also makes a fairly subtle point about enfranchisement and its institutional establishment. In this regard, X makes a number of cutting remarks about the Democratic Party, arguing that they had carried the Black vote, controlled the legislature, and yet still dithered on the question of civil rights laws. What was the cause of this? For X it was the very constitution of the Democratic Party:

They blame the Dixiecrats. What is a Dixiecrat? A Democrat. A Dixiecrat is nothing but a Democrat in disguise. The titular head of the Democrats is also the head of the Dixiecrats, because the Dixiecrats are a part of the Democratic Party....The Dixiecrats in Washington DC control the key committees that run the government. The only reason the Dixiecrats control these committees is because they have seniority. The only reason they have seniority is because they come from states where Negroes can't vote.

While the “Black vote” was part of the Democratic coalition, the Dixiecrat was also a huge source of its power, a part that it would not be quick to give. This meant that Black voters in the North, who voted for Democrats, were essentially disenfranchising themselves, by voting for a party that structurally could not address their needs: “when you see the amount of power that would be lost by the Democratic Party if it were to lose the Dixiecrat wing, or branch, or element, you can see where it’s against the interests of the Democrats to give voting rights to Negroes.”

X’s observation, not dissimilar from the one we made above, was that the franchise is not a direct linkage between the individual citizen--or group of citizens--and the halls of power. It is mediated institutionally by the political party. X’s point was that in voting for Democrats, and focusing solely on the passage of law, Black voters were

missing that the Democratic party was itself implicated in racial domination. By focusing on the statutory aspects of segregation, people were missing other institutional sites of oppression.

By working within the Rawlsian paradigm, the problem is not so much that we are predisposed toward ideal theory. Instead, the problem is that we confine ourselves only to the puzzles germane to liberal society--namely the structure and configuration of the “main” institutions that coordinate social cooperation. While these are not exactly small questions, and are worth addressing, we may very well find that they don’t perfectly track the the nature and cause of injustice as we find it.

V. Rethinking the *Political* in Liberalism

In this paper we argue that we ought to approach the mysterious marginality of questions of race in the most prominent and influential Anglo-American political theorist of liberalism from a different vantage point. Intervening into an already lively debate on Rawls’s thought we have, to borrow a phrase from G.A. Cohen, attempted to rethink “where the action is.” We suggest that the inability of the Rawlsian tradition in political theory to speak to some of the most pressing and immediate issues of justice we confront today may lie less on the level of methodology and more so in the fundamental architecture of such an approach.

In doing so, our project dovetails with other concerns that have been voiced regarding the ‘distributive paradigm’ toward questions of justice - which has dominated much of liberal political theory in the wake of Rawls. These writers (e.g. Young 1990; Forst 2007) have suggested that the ‘distributive turn’ has shifted our attentiveness away from the centrality of questions of power and agency. According to these critiques, the broader issue with the distributive perspective — whether concerned with the allocation of the basic liberties of persons or the equitable distribution of primary goods — is that it obscures the essentially political nature of claims to justice. This in turn leaves much of contemporary liberal theory to neglect the role of a wider institutional context in creating and sustaining relations of domination.

While we have not focused on the distributive dimension of Rawls account *per se*, we hope to have brought important attention to an equally fundamental blind-spot in liberal political theory, one that in part explains its persistent inability to offer a compelling response to racial domination. In this task, we hope to contribute to broader discussions regarding the nature of contemporary normative political theory by emphasizing the need to relocate our concerns as theorists beyond the level of the ‘basic structure’ and to engage with the role and place of mesa-level organizations, institutions, and associations in interrogating such questions. We have emphasized this need to do political theory in a different registry by drawing on less dominant voices already present in the tradition of political thought that are more attentive to a far wider range of contexts in their analysis of the constitutive conditions of racial injustice.

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