

*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*

*“Too often we stop at knowing the good without doing it because
we also know the better without being able to do it. Yet here and there
a victory is achieved nevertheless, and for the fighters who use critical history
for life there is even a remarkable consolation: namely, to know that this first
nature also was, at some time or other a second nature and that every
victorious second nature becomes a first.”
- Friedrich Nietzsche. On The Advantage and Disadvantage of History for Life*

Justice and Racial Inequality: History, Power, and Respect

This paper takes the fact of systemic racial inequality as sufficient motivation for formulating a theory of justice which expresses historically sensitive and contextualized principles.¹ There seem to be available normative resources from within political thought capable of confronting the injustice of systemic racial inequality. In particular, Sen’s focus on capabilities and Anderson’s conception of democratic inequality, concerned as it is with persistent oppression, ostensibly provide ground for contextualizing the actual needs of the disadvantaged. However, so far as racial justice is concerned, I believe there is a difficulty precedent to the approaches suggested by the work of Sen and Anderson

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¹ This statement is meant to play two roles. Its first is as stating a motivational premise. Second, it is intended to be preemptive. It will be natural to wonder why a Rawlsian account of justice, concerned with institutional arrangements and fairness as it is, is not mobilized to the cause of racial justice. To my mind one reason is immediately available: systemic racial injustice is exceptional and non-neutral. Therefore, any theory which takes neutrality and severe informational constraints as its basis will only treat racial injustice as a mere lapse (see section V) rather than as deeply rooted in the normal workings of society. This, then, is a methodological concern. It might be imagined, though I do not mobilize this reason, that bargaining in the original position takes a tabula rasa approach to institutional design, with justice an achievement beginning with proper institutional reform. But, we would be left to wonder about that aspect of justice which is concerned with what persons or groups are owed. In this sense, Rawls’ approach threatens to do an injustice to persons of color by discounting claims that might be made due to the deeply historical nature of racial inequality – it pays no heed to the historical nature of justice claims that some groups rightly have.

(and any similar) which threatens to undermine the attempt to achieve substantive racial equality. How do we account for persistent patterns of injustice in the face of formal equality, fairness, and inclusion?

Below I offer the model *historically evolved socially embedded power* as a response to this difficulty. It specifies power as historically evolved just in case society witnesses systemic inequalities that mirror prior patterns of unjust distribution and social asymmetries; power is socially embedded just in case an understanding of continued systemic inequality is understood apart from the mutual construction of disadvantage between institutions and the internal lives of persons. Our case is the systemic inequality of persons of color.²

The model of power offered leads to a preferred conception of justice: justice as democratic partnership. Though I do not endeavor to work out this conception in great detail, its brief statement here serves to highlight the tight link between concerns over power and attaining social justice. The conception as informed by historically evolved socially embedded power rests on three implications of the model.

First, it suggests our framework of valuation, as part of the normal workings of society, not only diminish external factors such as opportunity or resource attainment, but adversely affect the internal lives of the disadvantaged, hindering their ability to leverage resource and opportunity when available and the ability to form a conception of the good life. If this view is correct, it seems that achieving self-respect³ is not only a vital functioning for persons of color, in Sen's terms, but maybe the most important functioning in achieving personal advantage. Second, the internal lives of others not disadvantaged are also affected since the norms which govern systemic disadvantage inhibit their ability to accept all fellow citizens as substantive equals in a shared society. If this is so, the social bases of self-respect⁴ are to be conceived as the primary aim of social justice so far as it is motivated by the fact of racial inequality.⁵ Last, given the role

² Throughout this paper I shall use the term 'persons of color' to include blacks and Latinos. A claim I cannot take the space to engage here is that what began as specifically black disadvantage, over time, due to our society's racial framework, came to affect and include others that came to be easily grouped with blacks.

³ By self-respect I shall mean: what one accomplishes or attains when one is able to reflect upon one's successes, failures, plans, and perceived purposes and be subsequently invested in them with dignity and a sense of worth.

⁴ By the social bases of self-respect, I shall mean: the resources a political society must provide in order that one can have self-respect within the context of that society's commitment to equal treatment and advantage.

⁵ Offering the social bases of self-respect, as I conceive that idea, has a dialogical nature to it – it isn't simply that those disadvantaged benefit, but in its being provided along with the public knowledge of its provision, the advantaged come to view the systemically disadvantaged as persons of substantive equal value and deserving of that value. In this sense, the social bases of self-respect stabilizes the integrity of a just political society. Below, I shelve particulars of the content of the social bases of self-respect. Rather, I illustrate the utility and necessity of historically evolved socially embedded power as an interpretive/explanatory model. In any case, it will be shown that *historically evolved socially embedded power* itself provides justification for prioritizing the social bases of self-respect as the aim of social justice.

institutions historically played in abetting racial injustice, and given the power they have to either perpetuate or dampen the pervasiveness of norms, institutions are taken as the primary subjects of democratic partnership – they are envisioned as leading and embodying change.

Democratic partnership, then, holds that the conditions of justice are being met when on the one hand institutions take responsibility for their past role and embrace their capability to imbue democracy with integrity by offering the social bases of self-respect. 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. It is to be further noted that democratic partnership is a conception the outcome of which is an ongoing process of human reconciliation and fulfillment that is believed 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 the model of power: if it is the case that a systematic unjust state of affairs is the outcome of a social and political 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. My engagement with Sen and Anderson is meant to highlight that even a liberal attempt to deal with the needs of persons in a given context or mobilizing such a view to combat oppression will fall short without the guidance of such a model of power and attention to its temporal and social nature. Further, the model of power indicates that existing theories are not amenable to adaptation or extension in the manner that Sen and Anderson's work initially suggest themselves; an alternative account informed specifically by the model is required.

The aim of this paper is modest in specificity but ambitious in scope in order to best lay out the case for a particular approach to systemic racial inequality. In analyzing three available promising resources for confronting racial inequality and considering their weaknesses I illustrate the utility and necessity of historically evolved socially embedded power. I go on to sketch the model of power. Finally I suggest how it supports justice as democratic partnership and the social bases of self-respect as the appropriate aim of that conception, though I do not attempt a detailed accounting of that conception here.

I.

Contemporary injustices seen as substantially linked to events and circumstances of the past pose special problems for normative theorists, not least of which is settling upon an appropriate manner of assessing the nature of the injustice. For instance, is the fact of any one particular broken black family today substantively linked to Jim Crow decades ago? Such considerations are necessarily inconclusive in very particular cases; but reason leads us to rather firm conclusions when we see the broken family as endemic within colored communities, particularly in light of our racial history.

Theories of justice often take some measure, such as resource or opportunity inequality or disadvantage, as a fact of the present and endeavor to offer principles which rectify the inequality or disadvantage. However, such perspectives, even when proclaiming sensitivity to circumstances, tend to elide the troubling dynamic between power, disadvantage likely a result of an identity marker (i.e. black), and the realization of justice. For example, G. A. Cohen's conception of equal access to advantage⁶ will compensate persons for outcomes the result of bad circumstances since these cannot be reasonably posited as the fault of the disadvantaged agent. Alternately, persons are owed nothing for unfortunate outcomes the result of autonomous decisions. Such a view has intuitive appeal given our tendency to respect agency and its consequences under free choice. Moreover, its distinction between circumstance and choice seems promising for historical, power-laden injustices.

However, Cohen's view tends to leave little to no room for the gray area between choice and circumstance since there is inadequate attention to the complex precedent circumstances that may burden the ability of institutions to carry out the mandates required by justice on the one hand, and autonomous decision making by the disadvantaged on the other. Consider the situation of a teenager (Rebecca) growing up in the ghetto who, counter to the influence of her environment, endeavors to attend college but is ultimately under-prepared to compete for admission due to benign neglect of her school district (see section IV). Barring exceptional perseverance and good luck, Rebecca's choices to secure the good of her life will only continue to narrow over time, blurring the line between choice and circumstance. Ultimately, should her disadvantage be such that compensation is required, she runs the greater risk of being shunned by Cohen's conception of equality though her plight is arguably minimally her fault. The power which inhabits the space between choice and circumstance with regard to racial inequality is particular to the history of blacks in our country which is inextricably linked to slavery, oppression, abuse, dominance, exclusion and disrespect, hence requires tools to disarm the mechanisms which perpetuate this history rather than merely its effects.

In offering the capabilities approach as an informational basis for assessing one's well-being in addition to one's freedom to be well, Sen helps highlight the methodological concerns confronting us when theorizing racial justice. He writes: "The capability approach to a person's advantage is concerned with evaluating it in terms of his or her actual ability to achieve various valuable functionings as a part of living. The corresponding approach to social advantage...takes the sets of individual capabilities as constituting an indispensable and central part of the relevant informational base of such evaluation."⁷ For Sen, functionings "represent the parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life," while capability "reflects the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection."⁸ In this sense, "We should first

⁶ G. A. Cohen, "Where The Action Is: On The Site of Distributive Justice," *Philosophy and Public Affairs* 26 (1997), 3-30

⁷ Amartya Sen, "Capability and Well-being," *The Quality of Life*. eds. Martha Nussbaum and Amartya Sen. (Oxford: Clarendon Press, 1993): 30-52; 30

⁸ *Ibid.*, 31

note that capabilities are defined derivatively from functionings....If a functioning achievement...is a *point* in that space, capability is a set of such points.”⁹

Capability, then, is comprised of a set of functionings. Functionings on Sen’s view range from the simple to the complex, from nourishment and mobility to happiness and self-respect.¹⁰ To illustrate, consider the following capability: pursuing a career of one’s choosing. Among the functionings one might imagine as comprising the capability set are an education, adequate nourishment, and a basic sense of self-confidence that one can actually see one’s plans to completion. We will likely think the provision of these functionings are not only well within the grasp of society to support (especially the first two functionings), but may be incumbent upon society to support. With regard to racial justice, so far so good since it tends to be the case that persons of color achieve lower levels of such functionings in a disproportionate manner.

I earlier argued that a conception of justice appropriate for the needs of racial inequality must endeavor to do more than equalize a state of affairs; it must be sensitive to the historicized exigencies of human existence. It is on this count which Sen seeks to challenge the Rawlsian distribution of primary goods. He argues “Primary goods suffers from the fetishist handicap in being concerned with goods” and ultimately “is concerned with good things rather than with what these good things *do* to human beings.”¹¹ The critical thesis offered by Sen: “Rawls takes primary goods as the embodiment of advantage, rather than taking advantage to be a *relationship* between persons and goods.”¹² The reason we might want to be concerned with functionings rather than goods is because it is important to actual persons that meaning be imbued widely in their life; this in turn allows them to view the course of their life as a trend of living rather than a series of fair and just transactions.

I believe it is an open question as to whether the substance of Sen’s view does the work it needs to do to upend Rawls’ primary goods approach. In the end, Sen and Rawls are focused on distributions, and ultimately provide stuff to persons. Since Sen provides scant guidance as to exactly what his scheme results in, it is easy to imagine a Rawlsian distribution taking on, at least in form, the same shape as a Sen distribution. I think, though, Sen’s arguments do point to a weakness in a moral theory the result of orthodox liberal methodology; a weakness of particular concern to racial justice: the difference in the meaning of a good or functioning for a person in light of her actual situation, which might itself be a function of deeply contextual, historical circumstances shaped by power dynamics. While we all need nourishment, the need of a marginalized person of color (Dolores) in a society witness to racial disparities holds a different meaning for her than it will for others. In this sense, when Dolores achieves nourishment functionings, besides satisfying her hunger there is the additional concern as to the relationship between her hunger and her identity marker, a relationship that can negatively impact her level of self-respect (note how this is a very separate issue from being hungry) and sense of inclusion

⁹ *Ibid.*, 38

¹⁰ *Ibid.*, 36

¹¹ Amartya Sen, “Equality of What?” *Tanner Lectures*. Delivered May 22, 1979; 218. <http://www.tannerlectures.utah.edu/lectures/documents/sen80.pdf> [emphasis in original]

¹² *Ibid.*, 216

in broader society. Moreover, there's no reason to believe that simply satisfying hunger resolves the relationship between her hunger and her identity marker. In this sense, it is easy to see that a methodology which supports a focus on equitable distribution will overlook persistent effects of dynamics that impact but are separate in substance from the issue of equitable distribution, as illustrated by Dolores' case.

However, Sen's view fails to account for two important aspects of justice. Let us remember that Sen is primarily interested in and looking to address the relationship *between* persons and goods, and that he takes this as a way of assisting people in their lived lives as they are. But consider, first, that Dolores' has two problems: hunger and the impact the fact of her hunger correlating with her identity has on her self-respect. Now for her hunger functioning to be consistent with her ability to fulfill a conception of the good life, it needs to be the case that her functioning not be envisioned as something that applies to her life from today forward, but the meaning and shape of which was already in the process of being determined prior to her being hungry in the first place. The second aspect, which follows from the first: the functionings approach *on its own* will leave structural influences on the internal lives of persons unaccounted for; it does not confront the power dynamics which in the first instance shape a person's own perspective on the relationship between herself and her disadvantage, nor between herself and goods.

Systemic racial inequality is a function of prior explicit expressions of power and oppression and is, minimally, indicative of contemporary power dynamics which disadvantage persons of color. Intuitively, the functionings approach seem an appropriate conceptual framework for addressing power-laden injustices, such as racial inequality, given its stated commitment to persons as they are and who attach meaning to the various aspects of their lives. However, we have good reason to suspect that in overlooking the conditions precedent to one's actual disadvantage, as in Dolores' case, it will have limited utility in dealing with such classes of injustice. In fact, it runs the risk of placing the theorist in the same position as G. A. Cohen, which I argued was a position of insensitivity to the dynamic between power, disadvantage the likely result of an identity marker, and the realization of social justice. To see if this is so, let's consider Elizabeth Anderson's approach, which mobilizes functionings, to combating oppression.

II.

Elizabeth Anderson's conception of democratic equality¹³ provides two benefits when thinking about classes of injustice which are imbued with power relationships and have a pronounced historical nature. First, she engages in telling critiques of widely accepted methods of building normative political theories. Second, in positing equality as

¹³ Elizabeth Anderson, "What Is The Point of Equality?" *Ethics* 2 (1999): 287-337, 311

a relational concept, she seems to readily acknowledge the social import and implications of inequality the result of oppression and dominance. However, I will show that while Anderson mobilizes Sen's view in offering democratic equality as a response, she underestimates the potency of the precedent effects of power. Hence, democratic equality risks perpetuating or overlooking disadvantage in exactly the same way she criticizes Cohen and other egalitarians of doing.

Anderson's motivational thesis is that contemporary egalitarians have ceased to be concerned with oppression in trying to accommodate both capitalism and socialism with the result being either a perpetuation of forms of oppression and or outright disrespect of the worst-off citizens. Her response to this perceived shortcoming is what she terms democratic equality. She argues that equality is a relational concept, and that insofar as it is connected to respect, deserves our attention because it is important that citizens feel affirmed in the value of their political membership and sense of worth.

Addressing her critique first, Anderson argues the way contemporary egalitarians theorize justice actually assists people in getting by under forms of oppression rather than confronting oppression itself. Recalling the concerns raised earlier over Cohen's luck egalitarianism I argued that without greater sensitivity to historical context and a conception of power egalitarians run the risk of blurring the line between choice and circumstance, and that this blurring was more probable and more crucial for some groups of persons than others. Such a view, regardless of its intent to acknowledge bad luck and circumstance is more transactional than socially substantive – the beliefs that fuel adverse circumstances are left unmolested.

A significant result of this approach to normative theory, as Anderson goes on to argue, is that contemporary egalitarians become committed to forms of disrespect towards citizens. Recall Rebecca: if, as her options continued to narrow required something more than the meager resources of welfare, a bad situation that might be identified by Cohen as bad choice luck, she would be required, reminiscent of the Poor Laws,¹⁴ to effectively proclaim her inferiority in order to gain the help of the state. Anderson's point is that it is difficult for citizens to have a sense of self-respect equal to others' ability to have that sense when an open claim to inferiority is the basis of assistance. Anderson rejects contemporary egalitarian theories of justice on the grounds that they lack appropriate emancipatory power and at times can be disrespectful towards those most in need.

Anderson's response to these difficulties is democratic equality. How does it address her concerns? She writes: "Inegalitarianism asserted the justice or necessity of basing social order on a hierarchy of human beings, ranked according to intrinsic worth. Inequality referred not so much to distributions of goods as to relations between superior and inferior persons." Egalitarian political movements, then, are committed to affirming the "equal moral worth of persons" by rejecting birth or identity based assessments of worth, and by asserting "that all competent adults are equally moral agents."¹⁵ Hence, egalitarianism was adequately positioned to combat oppression by trying to establish a

¹⁴ *Ibid.*, 308

¹⁵ *Ibid.*, 312

social order such that “persons stand in relations of equality.”¹⁶ Democratic equality comes to the following three mandates: to “abolish socially created oppression;” to view equality as a relational concept; that it be “sensitive to the need to integrate the demands of equal recognition with those of equal distribution.”¹⁷

Anderson is aware, however, that to posit oppression is to posit a possible obstacle for a theory that requires persons to engage each other as equals. The solution is to offer the antithesis of oppression – freedom – as the complement to democratic equality. She takes up Sen’s line of argument for the capabilities approach since “capabilities measure...a person’s freedom to achieve valued functionings.”¹⁸ The idea is that when we make justice and equality a relational concept we open the way for persons to contribute to each other’s functionings, hence their capabilities, hence we increase their freedom.¹⁹

Anderson’s view is intuitively compelling. But there are at least two concerns. First, Anderson doesn’t consider whether all forms of oppression are created equal. For instance, if we take her recommendations seriously, are blacks and women, two historically disadvantaged groups, owed the same thing? Do we even go about thinking over what they are owed along similar principles? I suspect that to take the context of oppression seriously is to respond to both of these questions in the negative or at least in a highly qualified way. Second, Anderson fails to draw a methodological conclusion from her substantive premises. Where Anderson has gone wrong is in the move from concerns over oppression and respect to the idea that citizens have a mutual obligation to ensure each other’s freedom on an equal basis. This move is informed by an approach to theorizing which requires relying upon accepted liberal ideas about the relation between ideas like oppression and freedom that tend to detach them from the complex ways these ideas play might play out in the lives of subjects. Hence it elides a very crucial point, and puts it at risk of being of little use to racial inequality.

Nancy Hirschmann helps us clarify the concern with what I term the *mutual construction argument*. She argues that what when we think about constructing a

¹⁶ *Ibid.*, 313

¹⁷ *Ibid.*, 313-314

¹⁸ *Ibid.*, 316. Anderson argues that there are three spaces where equality of capabilities must obtain so that persons can achieve proper freedom: as human beings; as participants in a system of cooperative production; and, as a citizen of a democratic state” (*ibid.*, 317).

¹⁹ One might here object that to offer the social bases of self-respect *and* attribute to them a dialogical nature is similar to Anderson’s view, hence I might be engaging in a trivial critique. My argument here, however, relies on two important differences. First, my account revolves around the idea that it is the idea of the social bases of self-respect in particular that is appropriate for concerns over racial justice in light of our history. This statement contains three qualifiers that lead to particular conclusions that may or may not pertain to injustice experienced by others. Second, without a conception of power to complement concerns over oppression, any offered solution runs the risk of becoming empty since long-standing oppression implies a unique dynamic, which as Hirschmann argues, likely diminishes the value and effectiveness of attaining of freedom, self-respect, liberty, etc. It should be noted that these same considerations give us further reason for pause when considering a goods based view of justice – goods simply are that and do not address the social circumstances of racial injustice.

normative theory serving the needs of women (in light of their longstanding social inequality) what is required is “a recognition of the need to conceptualize freedom in terms of the interaction and mutual constitution of the external structures of patriarchy and the inner selves of women.”²⁰ Why? Hirschmann is arguing that domination of women exercised over time is not simply a matter of husbands relegating them to chores or male executives requiring their receptionists to be a certain gendered subset of enterprising college grads. For instance, women may find themselves conforming to patriarchal expectations. On the one hand such oppression manifests itself in the internal lives of women to the extent that formal freedom, rights, liberties have diminished worth; moreover, it corrupts the ability to relate to these ideas in exactly the way contemporary theory requires for the theory in question to be coherent and have integrity. On the other, it is a structural feature such that men themselves are also victims of immoral attitudes towards women.²¹ On this view real freedom is a matter of dismantling structures of power while at the same time realizing the way power insinuates itself in the internal lives of those under its influence, not only the disadvantaged, and thus becomes normal or at least invisible to society.

Anderson’s view is helpful insofar as it highlights the need for the sensitivity to power and the relation between persons (compared to merely the relation between persons and goods). Her reliance upon functionings de-fangs her substantive criticisms of egalitarians since it draws our attention away from the complex relationship between circumstance and inequality. Specifically in view of Hirschmann’s arguments, Anderson’s conception will be inattentive to the precedent conditions for persons to value freedom, pursue it, or play a role in others being able to attain it. In that case, freedom can’t and won’t amount to much since the underlying mechanisms of oppression are challenged only indirectly. It seems then that the initial hope held out for democratic equality’s utility for racial inequality, a class of inequality I have argued is particularly imbued with ongoing power dynamics, must be shelved.

To be clear, my argument hinges on a particular concern, namely that the problem of systemic racial inequality indicates an issue I take to be obscured by focusing primarily on the relationship between persons and goods (Sen), and which is elided by aiming straightaway for equality or freedom (Anderson). Systemic racial inequality in the face of formal equality indicates a complex power dynamic that is substantively linked to our troubled racial history. In this sense, a conception of justice must be attentive to racial inequality’s historical evolution. Further this class of injustice is too complex to be attributed to the purposive plans of well-placed elites or widespread racism or some shortcoming of persons of color. In this sense, as indicated by the mutual construction argument, a conception of justice must be sensitive to the power which perpetuates inequality as embedded in broader society. The model of power is offered as an

²⁰ Nancy J. Hirschmann, *The Subject of Liberty: Towards A Feminist Theory of Freedom* (Princeton: Princeton University Press, 2002), 199

²¹ “The conception of social construction implicit in the third level has an additional feminist advantage in that it suggests that men, too, suffer from patriarchy, and they have nothing to lose but their chains in giving it up. It is not that men are the problem and feminism the solution; rather, the problem is patriarchy and we all suffer from it” (*ibid.* 84).

explanatory/interpretive device which seeks to account for the contemporaneous, antithetical facts of systemic racial inequality and formal equality. Democratic partnership is ultimately offered as an alternative in light of the guidance offered by the model of power.

III.

Taking stock of what we have so far: our problem is, how to address racial inequality? The problem becomes complex because of its existence under institutions and rules explicitly meant to promote and support fairness and equal treatment. I have quickly reviewed what I take to be two (of the more) promising resources from within political thought in addressing this class of injustice. The review was not fruitful as both Sen and Anderson fail to fully acknowledge the deeply historical and embedded nature of the dynamic which fuels persistent inequality; racial inequality is one case in this class of injustices. Historically evolved socially embedded power is properly understood as providing the link between what we observe regarding historical racial injustice and what we deduce about its connection to today's patterns of racial injustice.

Before I proceed to outline this model and its relation to a particular conception of justice, we might try one more avenue available to us – a theory of structural racism. When we speak of structural racism we usually have a very basic kind of social outcome in mind: my being of color, and only my being of color, likely diminishes the statistical chances of achieving goals and objectives others in my society are able to achieve. This diminished chance, moreover, while racial in outcome is not necessarily predicated on any overt racial intent targeted at me.²² What almost all definitions and conceptions of structural racism have in common is, first, the idea that race, a social construct or not, plays a significant role in how we categorize others.²³ Second, racial categories come equipped with a hierarchical ranking that exists as a function of America's history of racial oppression and domination. Last, these practices are an integral part of how institutions distribute benefits and advantages, hence, such distributions tend to be

²² An early statement of structural racism in referring to the failure to convict KKK members in the murder of civil rights workers states: "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." Owen Blank *et al*, *Institutional Racism In America* ed L. Knowles and Kenneth Prewitt (Englewood Cliffs: Prentice, 1969), 4. And, while both the book and incident are located in particularly charged racial times, the authors go on to stipulate that an act of racism can occur "without the presence of conscious bigotry" (*ibid.*, 5).

²³ For other views of structural racism see: Eduardo Bonilla-Silva, "Rethinking Racism: Towards A Structural Interpretation, *American Sociological Review* 3 (1997): 465-480; Manning Marable, *The Great Wells of Democracy: The Meaning of Race In American Life* (New York: Basic Civitas Books, 2002); Joe Feagin, *Systemic Racism: A Theory of Oppression* (New York: Routledge, 2006).

skewed in favor of one group over another. However, what gives structural racism its unique character is the lack of intention to disadvantage persons of color.²⁴

However, structural racism as it is usually defined contains a glaring weakness. How do we account for structural racism? What do we mean when we say racial disparities are the result of institutional processes in the absence of intentional racism? Indeed, it is mysterious how blacks and persons of color lose when no one else it seems is trying to win. Moreover, to relocate causality from intentional agents to “history” only seems to add to the difficulties. The structural racism literature does us the service of arguing that we cannot see the continued systemic disadvantage of persons of color outside of the context of a deep history of sanctioned racial dominance. As Joe Feagin remarks, “For the first 90 percent of this country’s history (about 350 years) slavery or legal segregation was generally in place. Only for the last 10 percent or so of our entire history have we been free of slavery and legal segregation.”²⁵ However, scholars have been mostly content to take the fact of patterned racial disparities, add it to the above observation made by Feagin, and let that sum up to a theory of structural racism. What we are looking for is a way of specifying the “obvious” connection between such a deep history and continued patterned outcomes.

I want to consider work by Glenn Loury²⁶ not only because he makes a rare attempt at providing some analytical traction to the idea of structural racism, but because where he comes up short sheds light as to the conceptual resources needed to satisfactorily account for systemic racial inequality. It turns out that they are the same conceptual resources needed to adequately theorize racial justice.

Loury begins with two reasonable premises. First, persons require information to function in society, therefore, they always seek it. Second, humans have always relied upon categorizations based on observable markings as guideposts in their social existence.²⁷

Loury touches on the foundational aspects of structural racism in his idea of 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*,” meaning, that when I act on my generalization I contribute to its being the case in fact.²⁸ Crucial in moving towards understanding the systemic nature of racial inequality, Loury wants to better understand how it is that racial surmises translate into perpetuated racial outcomes which in turn contribute to racial inequality.

²⁴ Indeed, it is this attribute which makes the idea itself slippery. In making normative statements, our intuition tends to guide us to seeking causality in order that we may assign appropriate responsibility and derive appropriate obligations.

²⁵ *Ibid.*, 2

²⁶ Glenn Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2002)

²⁷ *Ibid.*, 17

²⁸ *Ibid.*, 23 (emphasis in original)

It seems reasonable to position Loury as saying something analytically definitive about structural racism when he writes, “This mistake would be of great *political* moment. For attributing an endogenous difference (a difference produced within a system of interactions) to an exogenous cause (a cause located outside that system) leaves one less interested in working for systemic reform.”²⁹ In effect, Loury has specified basic mechanisms of structural racism: as an agent acting in a social world, I put to work 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.

Of course, the systematization is not fully represented in this cycle. When it is asked why blacks don’t do as well as other groups, the response refers not to the proximate cause internal to the dynamic (what Loury termed endogenous differences) but to something outside of that dynamic. In the above example about why blacks have bad credit, rather than the answer referring to the possibility of self-confirming stereotypes, a common response will likely refer to low earning power, unsteady employment, fickle sense of financial responsibility.

Two virtues of Loury’s approach are immediately apparent. First, he avoids what tends to most undermine the credibility of structural theories: the ominous presence of an unspecified structure mobilized by unspecified mechanisms acting on individual agents who seem more or less unable to counteract or recognize the influence they are under. Loury does us the service of keeping his eyes firmly on the ball of human nature and judgment. Second, he has something to say about the reciprocal dynamic involved in making racial injustice pervasive and systemic. His logic for self-confirming stereotypes depends in the first instance on statistical inference (Jones is likely to be late to work since blacks are often late for work and Jones is black). Next, acknowledging the impact stereotypes have on those under their influence, there is a feedback effect in which Jones reasons, why hustle to get out the door since I’ve already been pegged as irresponsible? Where the disadvantage seems to become systemic is in the last step of the logic where a convention forms as a result of the equilibrium achieved between steps one and two – I expect Jones to be late because he is black, Jones gets to work late since I expect him to, hence, as a black man, Jones confirms that black men do not get to work on time.

Though Loury’s account does a great service to the structural racism literature, there is an inconsistency. On the one hand, Loury portrays persons as more or less rational. In responding to the hypothetical question of why don’t people revise erroneous beliefs, he responds: “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” and while it is not necessarily a rational act, it may be reasonably classified as pattern recognition, in which agents intuitively make fits and place facts in ways that make intuitive sense to them.³⁰ If so, we may ask, why doesn’t it make sense for Jones to secure his job and economic well-being and get to work on time? After all it only seems rational to secure the means for the good of his life. Why does he become a partner in achieving equilibrium? It can’t be the

²⁹ *Ibid.*, 25-26 (emphasis in original)

³⁰ *Ibid.*, 44

case that he's a *willing* partner. I agree with Loury's explanation for why people on the advantaged side of the equation don't bother to revise their beliefs, but I am troubled by why the disadvantaged become complicit in their situation. It cannot simply be that Jones does what's expected *because it's expected*.

Loury, well aware of this challenge, offers the idea of racial stigma: "dishonorable meanings socially inscribed on arbitrary bodily marks, of 'spoiled collective identities.'"³¹ He also acknowledges 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."³² Here we have racial stigma as part and parcel of the social fabric, enmeshed in our practices and social understanding.

But Loury seems to miss the full import of what he suggests in strongly attributing a brand of economics rationality to agents. 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 that a black male will rob him, costing him thousands if not his life. Loury, however, thinks that a cop in his \$50,000 cruiser, \$100,000 of training and the power of a massive bureaucracy has no excuse in indulging statistical inference. While he may have no excuse, he may have a *reason*, and that reason refers back to the source of racial stigma.

The practices involved in racial dishonor don't only contribute to stigma but contribute in a positive sense to a status quo. The cop's training is itself a social event, one in which tacit understandings on racial profiling are shared fears of patrolling "certain neighborhoods" are transformed to tacit pledges of being tough on "thugs." Moreover, it's a social event that finds its tacit support (or at least not its consistent, explicit discouragement) in the very working of the same massive bureaucracy that provides the \$100,000 training and \$50,000 cruiser. In this sense, the institution of law enforcement is not only a source of racial stigma but helps to propagate it. To this point, I have argued that Loury has done a great deal in offering a framework for understanding the robustness and adaptability of racial attitudes and beliefs. However, I contend that his framework does not accomplish a task of equal or greater importance: helping to understand the development of structural racism out of historical developments. While he rightly insists that the values which attach themselves to racial categories are a function of a deep history of racial injustice, his framework ultimately pays more attention to the relation of agents to each other while paying little attention to how those relations develop over time. Nor does he pay enough attention to the impact institutions have on persons (externally *and* internally).

I agree with Loury that to simply assign explanatory power to the mysterious workings of institutions is not to say much of use. I disagree that the bulk of the

³¹ *Ibid.*, 59

³² *Ibid.*, 69-70

explanation can be done by looking at how humans seek and use information. We must appreciate two aspects of the problem. First, there must be a supplementary attempt to theorize a line of development in which historical trends and their attending values inform the development of our institutions which provide space for the development of the above cop's attitudes and beliefs in a particular way. Second, as per the mutual construction argument, we must accept institutions as having a significant impact on agents such as the cop who likely is not racist, but likely holds beliefs as a matter of course that prompt him to make racial judgments. Further, we must appreciate the impact the cop's actions fueled by false beliefs have 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. At bottom, the idea of structural racism, even as elegantly considered by Loury as it is, requires a prior account of power that attempts an explanation of how we posit a connection between historical developments and the shaping of institutions (which of course are in part shaped by individual attitudes) which in turn shapes society which in turn has an impact on persons, forming a cycle that can be difficult to breach. It is this role I suggest for historically evolved socially embedded power.

IV.

Historically evolved socially embedded power is a model of power comprised of two components. Power is historically evolved just in case society witnesses systemic inequalities that mirror prior patterns of unjust distribution and social asymmetries. Power is socially embedded just in case the mutually constructed dynamic of continued systemic inequality is obscured by positing it as the result of mere lapses in a political and social system that is otherwise fair, well-ordered, and indifferent to salient identifiers. Our particular case is that of race and persons of color.

Before I offer a conceptual schematic of this model, an example might be helpful. Consider the idea (and instances) of benign neglect. Under benign neglect there is no intention to make the lives of persons of color worse off, but funding for certain programs that would improve certain situations inevitably is in short supply or not forthcoming with justifications such as: providing handouts only rewards inaction and lack of personal responsibility. So, it comes to be that those positioned disadvantageously in an asymmetrical relationship are seen as lacking requisite attributes for productive social membership and achievement that the advantaged group is continually seen as intrinsically having. Moreover these attributes are those which have been placed at the center of social expectation by the group itself and which accords with that group's value system. Importantly, the ordering of this value system embeds within it the means of its own reproduction. Such outcomes do not require any intention to make minorities less well-off – it simply needs to be the case that the values embodied by those already asymmetrically positioned continue to be held, hence benign neglect.

Now, a more concrete illustration. In *City*, Douglas Rae discusses the ways in which the Home Owner's Lending Corporation, a New Deal agency, explicitly

downgraded neighborhood quality in New Haven by the percentage of black inhabitants which drove down property values, drove out whites and middle-income blacks.³³ An inevitable outcome of this for any local school in a municipality is diminished access to resources as tax revenue also decreases. Without intervention, such circumstances greatly increase the chance for breeding the conditions of the decline of any community, and such instances represent the case of many communities of color. What might initially seem as justification for a focus on poverty, as was briefly the case under Lyndon Johnson's administration, will nationally, by the 1970's, become justification for telling blacks to focus on fixing broken families and making the most with their newly attained rights and formal equality. This is an illustration of how we might understand the ways sanctioned social attitudes begat their own social truth in a manner allowing the contemporary picture to tell a widely accepted story, but one which distorts the underlying conditions of this kind of injustice. Thus, in this instance power is historically evolved when explicit racial marginalization comes to be acceptably explained as a matter of the way markets work in line with individual effort, but really amounts to de facto marginalization; and it became socially embedded when the socially accepted cause of the marginalization became broken black families and waiting for handouts rather than looking at the prolonged effects of acts such as those of the HOLC.³⁴ Further we might imagine persons in situations similar to Rebecca or Dolores begin to internalize their condition as a function of lower standing in society as a person of color. Conceptually, the two components of historically evolved socially embedded power have precedents in two aspects of the power literature: forms of power and faces of power, respectively. Dealing with the forms of power/historically evolved pairing first I turn to Gianfranco Poggi.

Poggi identifies three forms of power as comprising social power: political power, economic power, and what is termed ideological/normative power (referred to hereafter as normative power).³⁵ Political power is the explicit control over rulership: the "ability to make enforceable arrangements and issue orders as to who should have access to the society's goods or be deprived of them, or shoulder its burdens."³⁶ Political power indicates control over formal process of authority and distribution within a political framework. Economic power "expresses itself through a circuit of acts of exchange (typically, *market transactions*), and affects in the first place the production and reproduction of society's material resources."³⁷

Last, there is normative power – "This consists in the extent to which given individuals possess intrinsically valuable attributes, those that the group's culture places at the very centre of its construction of reality, and which impart order and significance to

³³ Douglas Rae, *City: Urbanism and Its End*. (New Haven: Yale University Press, 2003), 263-267

³⁴ It should be noted that an operative complicity principle might have also brought into light not only the relationship between the HOLC's acts and the outcomes, but would also have raised substantive questions on the HOLC's motivations which were obviously targeted *against* a particular group for which it should have shown equal concern and respect.

³⁵ Gianfranco Poggi, *Forms of Power* (Cambridge, MA: Polity Press, 2001)

³⁶ *Ibid.*, 19

³⁷ *Ibid.*, (emphasis in original).

it.”³⁸ This power is exercised by way of custom and relies upon “shared understanding of what is true and proper.”³⁹ The crucial portion of this definition revolves around the fact that the group values and prioritizes perceived attributes that accord with its ordering of the world. In initially being asymmetrically positioned politically and economically there is ample opportunity to imbue institutions and processes with norms that will persevere even during formal institutional reformation.

An appropriate metaphor might be found in genetics. Though the persons who populate institutions and decide on processes come and go over time, institutions can be said to carry the DNA they are initially programmed with and which is reinforced at crucial junctures over time. Relying upon the metaphor once again, surely institutions and their processes adapt over time, yet their core remains stable and changes more slowly. Here lies the temporal nature of power’s evolution.

Slavery as an institution of forced labor and oppression of blacks was present and prevalent before the colonies endeavored to revolt in the name of freedom and equality. The revolt ultimately proved successful. The men who would become The Founders now turned toward nation building. At the Philadelphia convention of 1787 slavery was a contentious topic which threatened to cause a sectional rift before there was a nation to divide. Two compromises kept the hope of union alive. First among them was the three-fifths compromise which allowed Southerners for matters of representation to count each slave as three-fifths the value of one free white man. Not only did this equalize power between north and south, but also gave the South prominent representation in the electoral college resulting in a steady stream of southern presidents. Second, the South succeeded in preventing government interference with the slave trade for twenty years hence. Northerners complied since they “respected property rights in slaves” and since their “states for the most part still had significant slave populations.”⁴⁰ These are the values our democracy was founded upon; this is our social and political DNA.

As time goes on, Civil War through Civil Rights, by and large, blacks remain in their political and economic inferior position. Under a procedurally democratic regime these forms of power could only be justified by the use of normative power: the asymmetrical construction of a social reality which posited blacks as naturally undeserving (or as deserving of their subordinate position). During the middle of the 20th century, there begins a moment of institutional reform such that the mechanisms meant to oppress blacks were formally expelled. However, more than forty years later, the same group with such a deep history of disadvantage continues to find itself consistently and systematically worse off. This is the picture of historically evolved power as it concerns race – the continuation of a trend of disadvantage previously impacted by institutions and processes acting as conduits of a body of explicit and accepted norms, which persists today as systemic racial inequality.⁴¹

³⁸ *Ibid.*, 18

³⁹ *Ibid.*

⁴⁰ Michael Klarman, *Unfinished Business: Racial Equality in American History*. (New York: Oxford University Press, 2007), 23

⁴¹ It is worth noting that power’s historical evolution gives less and less credence to intentionality as normative power simply attaches itself to the presumptions and premises which inform our social fabric.

I want to press on three points. First, the model prompts us to challenge the common de-historicization of racial inequality, the idea that the situation of persons of color is not the result of norms and processes which guide institutional mechanisms and which impact common perceptions of the cause of racial inequality. Second, we should note that intentionality is not a requisite factor for the model of power. What follows is that the model challenges the idea that restructured institutions ought not be implicated in (hence responsible for perpetuating) racial inequality. Last, I argued in the opening section that institutions are the proper primary subjects of justice in part because of their real influence on the shape of society by enforcing or denying the validity of norms. If so, the metaphor may be further extended: early institutional practices over a completely oppressed group generates within that group its own DNA, which impacts its ability to leverage the benefits of its environment fully even when that overt oppression goes away. It is easy to see, for example, how the conservative move to derail Johnson's roots causes approach to black poverty was able to succeed.

This directly connects to the socially embedded aspect of the model. This aspect of the model has its precedent in the faces of power literature, which over time came to see power as a property expressed in non-decisions⁴² and impacting one's consciousness⁴³ rather than (as solely) something exercised and wielded by distinct agents. One expression of the culmination of this approach to power is offered by Clarissa Hayward's account of de-faced power⁴⁴ which argues our concerns over power should not primarily be in locating distinct power relations between/over/around *A* and *B*, a relationship in which one set of preferences wins out, or obscures a competing set of preferences. Rather, she suggests power "defines a set of possibilities."⁴⁵ More specifically:

"any account that defines the relation between power and freedom as essentially one through which the powerful constrain the independent or authentic action of the powerless draws attention away from the politically significant ways power shapes freedom for all social actors, within and beyond relations in which they participate as relatively powerful and powerless agents."⁴⁶

De-faced power offers two significant contributions. First, it opens the way to account for patterns of social norm acceptance and expectations that find themselves enmeshed in the workings of society by suggesting that the *A* vs. *B* scenario has long played out and society has merely internalized the story once written by the victors. Second, it extends, in both time and space, the reach of power's influence.

⁴² Peter Bachrach and Morton S. Baratz, "Two Faces of Power," *American Political Science Review* 4 (1962): 947-952

⁴³ Steven Lukes, *Power: A Radical View*, 2nd ed. (New York: Palgrave MacMillan, 2004); John Gaventa, *Power and Powerlessness: Quiescence and Rebellion In An Appalachian Valley* (Oxford: Clarendon Press, 1980)

⁴⁴ Clarissa Hayward, *De-facing Power* (New York: Cambridge University Press, 2000)

⁴⁵ *Ibid.*, 30

⁴⁶ *Ibid.*, 27

However, there is a shortcoming in Hayward's approach. Though she provides a compelling reason to locate power in the workings of society at large – its institutions and structure of norms and beliefs – we are provided little insight on being able to differentiate between instances of de-faced power and this has to do with distinguishing a body of norms that provide the content for the mutual construction of one disadvantaged group as compared to another. For example, is the power structure that limits the field of possibility over persons of color the same as that which operates over women? It seems not once we consider the different stereotypes attached to each: blacks are lazy, women are too emotional to lead in a pinch. We accordingly would need to be able to identify why different beliefs are associated with the respective disadvantaged groups. What makes socially embedded power social is its normative specificity; what makes it embedded is its role in mutual construction which provides its location in society's normal workings.⁴⁷

To give us some traction in understanding what's at stake in specifying the socially embedded component of power rather than mobilizing de-faced power, consider Hayward's definition of domination, which she conceives not as an instance in the exercise of power, but as being located at the extreme of a continuum. Domination is "power relations characterized by the avoidable exclusion of some participants from processes of shaping their constitutive norms, and/or by patterned and enduring restrictions on the scope of political freedom."⁴⁸ Maybe it is the case that the "exclusion of some participants from processes of shaping their constitutive norms" is avoidable. The solution would seem to be inclusion. But it is reasonable to suppose that this would be hindered by whatever mechanisms perpetuate the "enduring restrictions" of concern in the first place, what I take to comprise the substance of the socially embedded aspect of power. The power of normatively informed domination, as has historically been the case with persons of color, is that it itself shapes the field of deliberation – it depicts the avoidable as the normal and reasonable.

The case of racial inequality cannot simply be identified as a problem of possible domination is the point I want to stress. What makes power socially embedded is not simply its nature as pervasive and diffuse in both structures and social attitudes, but as being rooted in the genesis of particular asymmetrical relations within a society and adapting to that society's development over time in such a way that patterns of asymmetry persist but are 1) understood as either a natural outcome of that society's legitimate structures, within which people are free agents with the opportunity to make more of their lives, or 2) remediable through further adjustments to the formal structure of institutions meant to ensure fairness and equality. The reason why we try and specify the nature of particular asymmetrical relations is that they develop in their own way over time socially embedding varying norms that disadvantage on a differential basis as the

⁴⁷ The fact that blacks are considered lazy does not necessarily relate to the gender question, though it may of course intersect with it when it comes to black women. I think the situation that black women may find themselves in, by virtue of two historically disadvantageous identifiers, is worthy of its own investigation, but cannot be addressed in any meaningful way in this space.

⁴⁸ *Ibid.*, 162

example comparing race and gender stereotypes suggests.⁴⁹ In specifying power as socially embedded we are asked to look into the norms of the society as having developed over a given time frame with a particular set of effects and outcomes that deny their own location in our social expectations and institutions. Thinking of power as enmeshed in our society in this way indicates more than transcending intentional inter-agent dynamics – it is how groups of persons live and how they understand the possibility of their lives.

Historically evolved socially embedded power as a model might seem highly speculative and/or unnecessarily provocative to some. It might be objected, for instance, blacks are not doing as well because they are not able and they are not able, not because of any genetic predetermination, but because they are farther behind on the development curve precisely because of an extended period of oppression. On this view, it is unreasonable to expect blacks to be equally represented in executive boardrooms, for instance, if they only recently have had formal access to the resources whites have long had in starting their own companies, sending their children to elite schools and so on.

One response to this objection would depend on empirical work such as Mary Waters' study of black immigrants and their successive generations. Her work suggests that the problem with being black in America is a problem that attaches itself to persons by formative involvement in American society. In her study, black immigrants establish themselves within the economy and are able to start businesses and improve their lives, but in a consistent troubling manner, their children not only fail to capitalize on their parents' gains but actually experience decline by developing self-defeating attitudes that are a part of coping with existing under an identifier which seems to bear the burden of racial stigma. Waters' research brings us to three considerations. First, given the history of race in our society, the factors which contribute to these results are historical in nature. Second, not only is normative power something that affects groups from the outside but which contributes to undermining the constructive will of members of those groups, impacting future members as time goes on (recall the DNA metaphor above). Last, and which indicates the role justice is to play, it undermines a democratic society's ability to fully value all of its members since such trends perpetuate damaging beliefs for both the advantaged and disadvantaged. On this view, the inability of some agents to pursue the good of their lives is not simply a material problem, hence, not a behind-the-curve developmental problem, but a problem which insinuates itself into the lives of persons of color at almost every turn, including the mirror.

⁴⁹ It should also be clear that this goes toward substantively addressing concerns raised earlier about the right mode of justice: resources or opportunity. We can't answer that question in any meaningful way without being clear, not as to the disparity of advantage between groups, but where we can locate what drives the disadvantage and shapes its content.

V.

Most theories and conceptions of justice aim at a similar goal: granting persons their due and what they are owed, ensuring the bases for pursuing the good of their life, protecting rights against possible threats. I believe this is foundational, if not the essence of justice.

However, we should take care to note another common disposition in justice literature, the tendency to think about what would be just under an ideal set of conditions that are not historically reflective in their substance.⁵⁰ The result of such theories, as Anderson persuasively argues, is to carry over social practices that (passively) perpetuate social biases and which contain the elements of their own destabilization. But we also saw that Anderson missed the import of her own criticisms by arguing for a view of freedom that does not stop to consider how it is people came to be un-free in the first place, and subsequently, the impact a prior lack of freedom has on internal lives. Why is it that some groups seem consistently unable to obtain or usefully mobilize their capabilities? If we do not endeavor to understand this, then justice will always be elusive for society; it will always be an idealization.

This is the primary function of the model of power I offer here – to grant us the conceptual and analytic tools in coming to terms with racial inequality which evidences prior patterns of disadvantage. Most theories respond in a manner I call *level one* justice. They seek to remedy the situation by redistributing resources to enable free and equal agents in leveraging resources. Sometimes there is disagreement about the extent to which institutions should give people the stuff of the good life and argue, for various reasons that fairness dictates and maximally allows that persons all have the same opportunities come what may. Whatever the virtues of each view, they share the same dis-virtue – they treat injustices as mere lapses in an otherwise fair system, a system whose fundamental workings require little investigation.

Historically evolved socially embedded power prompts us to see patterned injustices as more than mere lapses in the integrity of processes and institutional frameworks. Given the temporally extended transformation of economic and political power into normative power, the norms of which are an integral part of our social fabric adversely impacting outcomes along racial lines, it prompts us to see instances of unfairness as a product of social patterns that no matter how much opportunity one is offered or resources one is guaranteed, we still need to account for why members of some groups are so much less likely to be called for a job interview or shown a house in a district with a resource rich public school. Additionally, it guides us in thinking about the

⁵⁰ By using the term “ideal set of conditions” I do not mean to refer solely to theories in the contractarian tradition such as those of Rawls and Nozick. Rather, by “ideal set of conditions” I mean premises that are only informed by the fact of injustice (people seem to be disproportionately unequal in a number of ways) and its shape (some easily measurable dimension of equality, i.e. resources). Another way of putting the matter is that many accounts of justice do not venture to begin with premises that reflect a point of intersection with the human *meaning* of inequality, a point Sen made in criticizing Rawls of fetishizing goods.

impact such patterns have on the internal lives of persons – why it is self-defeating attitudes became a way of life for second generation black immigrants, for instance. Historically evolved socially embedded power motivates what I consider a *level two* approach to justice where patterns of injustice are treated substantively and contextually, not as lapses. It not only inquires into how institutions can remedy the outcomes but can be a part of reshaping the very social and political fabric which supports these patterns.

As a conception of justice appropriate for addressing racial inequality, justice as democratic partnership rejects approaching racial justice as (primarily or merely) requiring the equalization of resources or opportunities. It is a conception of justice which aims to calibrate the relations among persons in society, as well as the relations between persons and institutions. As implied by the term, justice as democratic partnership envisions bi-lateral cooperation and effort as the means of attaining racial justice, thus, establishing a moral and just political order.

However, greater weight is placed on the cooperation and reformation of institutions; justice as democratic partnership is, in the first instance, a conception which takes institutions as the appropriate subjects of justice. There are both pragmatic and moral reasons for this. Pragmatically, institutions have the power to both effect and lead change on a very real basis on the sites of injustice by providing support for and sanctioning beliefs. The moral reason for an institutional focus revolves around the idea of complicity. I offer the complicity principle which states that agents are to be considered responsible for the morally disagreeable position of some agent or agents today just in case their actions in the past significantly and substantially contributed to the position in question. The complicity principle and institutional focus is justified since our institutions have played a significant role over time in the history of racial inequality and oppression.⁵¹

So, on the one hand, institutions must endeavor to substantively review and take responsibility for not only their own processes but the outcomes which disproportionately affect persons of color. It follows that practices must be aligned with an appropriate moral disposition towards persons of color. On the other hand, persons of color are expected to utilize the social bases of self-respect in order to exercise and publicly claim their equal standing in society. In doing so, persons become a partner in unifying themselves as agents with a plan of life and as having a proper disposition towards themselves as such.

While the content of the social bases of self-respect cannot be worked out in this space, we can consider the role it plays and its importance to democratic partnership. In fact, four roles are suggested for the social bases as the primary aim of democratic partnership. First, it allows institutions to fulfill their responsibility under the complicity principle. Second, it provides resources to the systemically disadvantaged not only to pursue the good of their lives but to develop the proper relationship with themselves as

⁵¹ It might be objected that they have also played a significant role in adopting rules of fairness. Two responses are provided in the course of my argument. First, the disparity between persons of color and others indicates that such a role has not been adequately attended to. Second, such an objection is no embarrassment since the model of power offered specifies norms as operative concurrently with rules of fairness and inclusion.

persons of worth in a democratic society. Third, the social bases are conceived as dialogical. If the pragmatic reasons for focusing on institutions is accepted, if we are compelled by the DNA metaphors employed earlier, and if we find reason in Nancy Hirschmann's arguments about the broad impact of long-standing power dynamics, then 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 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.⁵²

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.

The offering of the course, I believe, represents a model for what providing the social bases of self-respect entails. 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

⁵² John Rawls, *A Theory of Justice*. (Cambridge, MA: Belknap Press, 1999)

envision a significant contribution to the idea of society as a scheme of ongoing cooperation.

Historically evolved socially embedded power is an explanatory device in that it offers interpretive guidance as to where we might begin in history, identifying racial values initially expressed in society, the relationship between those values and the development of institutions, the relationship of those institutions with blacks over time, the impact on the internal lives of persons, and, of course, the situation of persons of color today. Democratic partnership is the appropriate normative complement to the guidance offered by the model. If it is the case that patterned inequalities persist over a formerly oppressed group under a regime of fairness by way of de-historicization and norm internalization, it seems to follow that the best chance of achieving a just society is to offer the means by which history is acknowledged and morally appropriate revised norms are granted public support. In this way, 'persons of color' becomes purely a descriptive term rather than a possible predictor of disadvantage. Better futures can be imagined when we have the courage to face the presence of the past.