

The Historical Injustice Problem for Political Liberalism*

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Liberal political philosophers have underestimated the philosophical relevance of historical injustice. For some groups, injustices from the past—particularly surrounding race, ethnicity, or religion—are a source of entrenched social inequality decades or even hundreds of years later. Rawls does not advocate the importance of redressing historical injustice, yet political liberalism needs a principle of historical redress. Rawls's principle of fair equality of opportunity, which is designed to prevent the leveraging of class privilege, could be paired with a supporting principle of historical redress that would contend with partiality and bias in open access to positions.

I. THE PROBLEM

Correcting past wrongs cannot always be consigned to nonideal theory and backward-looking reparations schemes. Ideal theorizing that does not confront the problem of historically rooted injustice risks yielding principles of justice that are indifferent to the role of social practices and cultural norms—and their inertia—in sustaining a wronged group's disadvantage over time. In this article, I examine the works of John Rawls, especially the statement of his views in *Political Liberalism*, which I believe highlights the difficulty of the problem of historical injustice.

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Rawls introduces the book by recounting the historical origins of liberalism in the wars of religion. He emphasizes that history impresses upon us the urgency of institutionalizing basic rights and liberties and also that historical acceptance of the principles of liberty and toleration preceded people's comfort with those principles. Only over time have people who are committed to liberty of conscience and freedom of thought come more fully to accept that reasonable people from heterogeneous backgrounds will not converge on religious, philosophical, and ethical truths.¹ The acceptance of "reasonable pluralism" is a defining moment for political liberalism.

Thus, political liberalism rejects "comprehensive liberalism" and instead defends the basic requirements of justice with "public" reasons that constitute a shared—or shareable—set of political values that can be abstracted from the broader background culture in which they are enmeshed.² Rawls believes that public reasons will not bring ethical harmony to a contested background culture, but he argues that they could lead us to justice through a common commitment to liberal democratic ideals, according to which the toleration of a plurality of worldviews is a virtue. Framing the requirements of justice to encompass a diverse set of ethical and metaphysical perspectives recasts liberalism as a distinctively political philosophy that is suited to a complex, multicultural, and free democratic society.

Yet this reorientation narrows the scope of the requirements of justice in a manner that seems (paradoxically) to allow historically rooted injustice to persist. A background culture characterized by reasonable pluralism threatens to be objectionably tolerant. Existing plans of life each count as reasonable provided that their adherents are prepared to cooperate on fair terms with other people,³ however parochial and irrational some people's viewpoints might be.⁴ "Reasonable" people who accept the political requirements of justice might adhere to ethically dubious points of view they inherit from a society's unjust past, and they might permissibly exercise their liberties of conscience, speech, and association in ways that undermine institutional requirements of justice. Religious intolerance is not resolved in liberal democratic societies, and neither are other historically rooted forms of bigotry and bias.

Though he sees where it comes from, Rawls does not fully reckon with this problem. My working example of the problem of historical injustice will be antiblack racial injustice in the United States. In Section II, I argue that a society well ordered by the principles of justice as fairness

1. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 36–37.

2. *Ibid.*, 9–11 and lecture VI.

3. *Ibid.*, 48–58.

4. See Erin Kelly and Lionel McPherson, "On Tolerating the Unreasonable," *Journal of Political Philosophy* 9 (2001): 38–55.

could harbor persisting racial inequality that is the legacy of that society's unjust past. Members of society might come to accept the institutional requirements of justice without eliminating their own racially biased attitudes and preferences. The presence of racially biased attitudes and preferences in the background culture erodes just institutional arrangements, even though members of that society accept the principles of justice as fairness to order their shared institutions. Rawls's definition of a well-ordered society does not preclude this possibility.

Rawls defines a well-ordered society as one whose members know and accept that the main political and social institutions meet the requirements of shared principles of justice.⁵ They comply with their society's basic institutions and regard them as just. Rawls does not stipulate that a well-ordered society cannot have an unjust past. Indeed, an ideal of justice disconnected from history would not fit with his conception of the task of political philosophy. His political philosophy focuses on deeply disputed questions and aims to orient us in the conceptual space of possible solutions "given the circumstances of justice in a democratic culture as we know them."⁶ A well-ordered society is a "realistic utopia"—a just and possible realization of a society that is still recognizably our own.⁷ Political philosophy, so understood, must continue to grapple with the relevance of historical injustice to its principles.⁸ Rawls has moved our thinking forward, but the principles of political liberalism must more directly confront the need to redress injustice rooted in the past, or so I will argue.

II. THE HISTORICAL LEGACY OF RACIAL INJUSTICE

Some prominent social theorists maintain that the impact of slavery lives on in American society through racial stigma. Building on the work of Erving Goffman and Orlando Patterson, Glenn Loury argues that the dishonor of slavery is part of the social meaning of race in the United States, stigmatizing the descendants of slaves and others viewed as racially black.⁹ Loury suggests that this stigma plausibly explains why, al-

5. See Rawls, *Political Liberalism*, 35–40.

6. John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001), 1–4.

7. *Ibid.*, 4–5.

8. See Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997), and "Retrieving Rawls for Racial Justice? A Critique of Tommie Shelby," *Critical Philosophy of Race* 1 (2013): 1–27.

9. Glenn C. Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2002), 71. See also Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Simon & Schuster, 1963); Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982); Elizabeth Anderson, *The Imperative of Integration* (Princeton, NJ: Princeton University Press, 2010), chap. 3.

though African Americans in the post–civil rights era continue to suffer from profound racial disparities in important social indicators such as education, employment, income, and health, this is viewed not with mainstream alarm but instead as a predictable reflection of inadequacies of the racial group.

Recent changes in American public attitudes toward opioid addiction are a case in point. Mainstream discourse around certain drugs of abuse has shifted from an emphasis on criminal deviance to a view of addiction as a public health crisis, with addicts now victims of a brain disease, the pharmaceutical industry, and lazy or unscrupulous medical doctors.¹⁰ This public health paradigm for understanding and responding to drug abuse stands in sharp contrast to the state’s response to the “crack epidemic” of the 1980s and the “heroin epidemic” of the 1960s; these crises disproportionately afflicted urban African American populations and were met with harsh criminal justice and strong moral condemnation of addicts as “junkies” and reprobates. Now, the abuse rate is higher in nonurban areas, and the racial profile of addicts is overwhelmingly white (almost 90 percent of first-time heroin users).¹¹ Courts and legislatures have become increasingly reluctant to punish this growing demographic of drug abusers.¹² White addicts have captured public sympathy and concern, unlike black addicts. As members of a racially stigmatized group, African Americans evidently are expected to make bad choices and to lead troubled lives: their difficulties prompt little soul-searching by fellow citizens.

If we understand racial injustice as mainly the product of overt, willful expressions of discrimination that could be regulated by law, we will miss how racial stigma works. Understanding the meaning and reach of stigma requires attending to the informal spheres of social life, includ-

10. See US Department of Health and Human Services (HHS), Office of the Surgeon General, *Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health* (Washington, DC: HHS, 2016), <https://addiction.surgeongeneral.gov>. See also Celine Gounder, “Who Is Responsible for the Pain-Pill Epidemic?,” *New Yorker*, November 8, 2013, <http://www.newyorker.com/business/currency/who-is-responsible-for-the-pain-pill-epidemic>.

11. See Theodore J. Cicero, Matthew S. Ellis, Hilary L. Surrat, and Stephen P. Kurtz, “The Changing Face of Heroin Use in the United States: A Retrospective Analysis of the Past 50 Years,” *JAMA Psychiatry* 71 (2014): 821–26, doi:10.1001/jamapsychiatry.2014.366. See also Pauline Anderson, “The Changing Face of Opioid Addiction,” *Medscape*, September 8, 2014, <http://www.medscape.com/viewarticle/831319>; Andrew Cohen, “How White Users Made Heroin a Public-Health Issue,” *Atlantic*, August 12, 2015, <http://www.theatlantic.com/politics/archive/2015/08/crack-heroin-and-race/401015/>.

12. On the rise of drug courts, which are diversionary programs that offer alternatives to incarceration, see <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/drug-courts-smart-approach-to-criminal-justice>.

ing people's choice of friends, neighbors, spouses, heroes, and villains.¹³ Racial stigma triggers discomfort, suspicion, disbelief, exclusion, and invisibility. It channels an explanation for misfortune or failure that is grounded in a stigmatized group's alleged inferiority. More broadly, as Goffman elaborates it, stigma causes an alienating, stressful drama of daily life for those who bear it. He describes how the burdened persons must struggle so that personal identity is not "dwarfed and spoiled" by negative demands and expectations associated with the stigmatized social identity.¹⁴ This struggle includes, when persons do not opt out, managing social relations to decrease the likelihood of being discredited in ways that may be unrecognized in the background culture.

The dynamics of social stigma present a problem for political liberalism. Rawls's insistence that principles designed to alleviate injustice cannot be presented as belonging to any particular "comprehensive doctrine" might seem to leave political liberals without adequate theoretical arguments for racial equality or effective enough strategies for promoting it. Correcting the corrosive influence of racial inequality on the basic structure of society might be thought to require adherence to an egalitarian form of comprehensive liberalism, one that promotes racial equality as an ethical ideal in all spheres of social life.

G. A. Cohen and Susan Moller Okin have raised similar concerns about market-based inequality and gender injustice, respectively. Cohen, critical of Rawls's focus on the basic structure of society as the subject of justice, argues instead for "an *ethos* of justice" whereby citizens would not need incentives, which generate inequalities allowed by the difference principle, to develop socially beneficial talents.¹⁵ Okin argues that reforming sexist laws and institutions is not nearly enough; a politically liberal society must move beyond organizing family and work life with deference to traditional gender roles.¹⁶ Unlike Cohen and Okin, I want to avoid endorsing a more comprehensive, egalitarian form of liberalism. Some may doubt whether this is possible. How could culturally diffuse and far-reaching norms of devaluation that constitute racial stigma be addressed by a political form of liberalism? A just society, I will take for granted, would be committed to breaking down barriers of racial stigma, but how?

13. Loury, *Anatomy of Racial Inequality*, 95–96.

14. Goffman, *Stigma*, 71.

15. G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), 123.

16. Susan Moller Okin, *Gender, Justice, and the Family* (New York: Basic, 1991), 171. Okin's "anticast" argument, developed in a later article, is closer to mine; see Susan Moller Okin, "Political Liberalism, Gender, and Justice," *Ethics* 105 (1994): 23–43.

Actually, Rawls's theory can help us appreciate this requirement of justice. A version of his principle of fair equality of opportunity can be instrumental in addressing racial justice. But to fit within the parameters of political liberalism, the principle must be expanded and its supporting arguments recast. When Rawls introduced the fair equality of opportunity principle in *A Theory of Justice*, he supported it with some comprehensive liberal notions of individual and social good. But since we should not expect convergence on theories of the good, those arguments should be reframed. Political liberalism should instead be understood to require public reckoning with historically rooted injustice for the sake of political and social equality. When this requirement of justice is not met, we should expect racial stigma and other forms of social marginalization to persist.

Shifting from a criminalization model to a public health model for dealing with drug addiction is a positive development in the United States. Yet, without the state's formal and active repudiation of its past resort to a punitive criminalization model, the sudden adoption of more reasonable policies can look like a response to changes in the demographics of the afflicted population rather than a fair solution.¹⁷ In concrete terms, a "war on drugs" approach to the retail sale of drugs and their recreational use was not only ineffectual but also unjust: African Americans got hyperpolicing and mass incarceration; white Americans are getting sympathy, community support, and treatment.¹⁸ This type of disparity, intentional or not, contributes to racial stigma by continuing to associate the black population with criminal deviance and normalizing that association. Public repudiation of that norm is called for.

I turn now to Rawls's theory of justice, starting with what he says—and doesn't say—about racial injustice. In Section IV, I will address challenges posed by his formulation of political liberalism and show how political liberalism directs us to recognize and to redress historical injustice.

17. See Joseph Margulies, "The Puzzle of Reform," parts I and II, <https://verdict.justia.com/2016/03/21/the-puzzle-of-reform-part-i>, <https://verdict.justia.com/2016/04/18/the-puzzle-of-reform-part-ii>.

18. The US Sentencing Commission approved the retroactive application of some parts of the Fair Sentencing Act, which could affect thousands of people incarcerated in federal prison on crack cocaine charges; see <http://www.drugpolicy.org/news/2011/06/us-sentencing-commission-votes-make-crackpowder-cocaine-sentencing-reforms-retroactive>. Still, a 2014 study found that only 55.4 percent of applications have been approved, with considerable variation by region; http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final_USSC_Crack_Retro_Data_Report_FSA.pdf.

III. RAWLS ON RACE

Rawls famously proposes that in thinking about what justice requires, we are to imagine ourselves in an original position behind a veil of ignorance that obscures the details of our personal identity and social situation. The idea is to ensure that we will not be biased to favor our personal attributes, circumstances, and values. Thus, Rawls conjectures, we will arrive at principles of justice that are fair to all members of society.¹⁹ He derives two fundamental principles of justice. The first affirms equal basic rights and liberties for all citizens. The second requires not merely formal but also fair equality of opportunity and regulates the distribution of income and wealth by a “difference principle” that restricts permissible inequalities to those that would be to the greatest benefit of the least advantaged members of society.²⁰

The social significance of differences—namely, in talent, social class, religion, sex, ethnicity, and race—masked by the veil of ignorance would not entirely disappear in a reasonably just or “well-ordered” society. Rawls maintains that certain differences, including in talent and good fortune, are permissible grounds for socioeconomic inequalities, subject to the critical proviso that any inequalities are to the greatest benefit of persons who are least well off. Other differences, including distinctions of race and sex, are excluded as bases for distributive advantages and disadvantages. These distinctions would not persist as candidate grounds for unequal shares of resources and opportunities,²¹ and racialized or gendered inequalities in the distribution of social primary goods would come in for scrutiny. But Rawls maintains that such scrutiny is mostly irrelevant to ideal theory. Because attributes of race and sex in a just society would not represent permissible grounds for unequal shares, consideration of these attributes disappears from the theoretical discussion.

The notion that justice would be indifferent to distinctions of race and sex is encouraged by Rawls’s analysis of the causes of social inequality regarding those distinctions. For example, he writes, “It appears that historically these inequalities [of race and sex] have arisen from inequalities in political power and control of economic resources. They are not now, and it would seem never have been, to the advantage of women or less favored races.”²² As he sees it, a society working under the two principles of “justice as fairness,” with the equal basic liberties and fair equality of opportunity secured, would have little reason for concern about

19. Rawls, *Political Liberalism*, 22–26.

20. John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Harvard University Press, 1999), 266. See also Rawls, *Justice as Fairness*, 42–43.

21. Rawls, *Political Liberalism*, lx. See also Rawls, *Justice as Fairness*, 66.

22. Rawls, *Justice as Fairness*, 65.

race- or sex-based social inequality, and he concludes that, in a well-ordered society, race and sex would have no bearing on whether persons are among the least advantaged. We will see that this claim about the nature of race is overly simple and the conclusion is unwarranted, even if one stays within the parameters of an ideal theory of justice as fairness.

How Rawls thinks we are to understand the bearing of class is more complicated. Naturally talented and fortunate individuals would be allowed by just institutions to attain some socioeconomic advantages. Yet, in a well-ordered society, the difference principle would not allow substantial advantages to accrue to the children of privilege, unless there is a clear benefit to persons who are least well off. This represents a limit on personal liberty and the use of personal property. For example, education policy would not tie school funding to property taxes or other measures of socioeconomic standing (e.g., political access and influence). Still, Rawls is worried that objectionable class distinctions could persist in a well-ordered society: the difference principle might not go far enough in restricting inequalities of wealth to distributions that would be to the greatest benefit of the least well off. He believes that leveraging of class privilege remains a threat.

Let me elaborate. The difference principle could not possibly allow abuse or neglect of a socioeconomic underclass. Reasoning from the difference principle, we might wonder why there is any need for a distinct principle of fair equality of opportunity, which is explicitly designed to guard against the pernicious encroachment of class. According to Rawls, fair equality of opportunity requires that “those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin.”²³ Since he presents the difference principle as securing the rights, liberties, and opportunities specified by the principle of equal liberty,²⁴ the fair equality of opportunity principle might seem redundant. Socioeconomically privileged persons would not have much greater opportunity to utilize their talents, contrary to what we find in the United States, for instance.²⁵ Any rewards attached to greater opportunity would have to be to the greatest benefit of the least well off.

23. *Ibid.*, 44.

24. See Rawls, *Political Liberalism*, 6.

25. In the United States, a person’s income is roughly predicted by the earnings of their parents, and this correlation is stronger as wealth increases. See Pablo A. Mitnik and David B. Grusky, “Economic Mobility in the United States: A Report from the Pew Charitable Trusts and the Russell Sage Foundation,” July 2015, http://www.pewtrusts.org/~media/assets/2015/07/fsm-irs-report_artfinal.pdf. See also Joe Pinsker, “America Is Even Less Socially Mobile Than Most Economists Thought,” *Atlantic*, July 23, 2015, <http://www.theatlantic.com/business/archive/2015/07/america-social-mobility-parents-income/399311/>.

Yet Rawls maintains that the difference principle offers inadequate protection, and not because society might miss out on the possible contributions of the less advantaged. He offers a spirited defense of open access to positions: "For it may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them. . . . But the principle of open positions forbids this. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. . . . They would be deprived of one of the main forms of human good."²⁶ The prospect that, say, elite school admissions or competitive internships might not be open to all similarly qualified applicants on a roughly equal basis would represent a significant injustice. Apart from the income and wealth often connected with desirable positions, people derive satisfaction from developing their talents and earning social recognition. For Rawls, justice demands fair opportunity for self-realization.

Justice also requires forestalling the effects of socioeconomic inequality on the distribution of political power, which leads Rawls to affirm the fair value of the political liberties.²⁷ The following claim exemplifies a recurring theme in his work: "The constitution must take steps to enhance the value of the equal rights of participation for all members of society. It must underwrite a fair opportunity to take part in and to influence the political process. . . . Those similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social class."²⁸ By including this requirement as a constitutional essential, Rawls emphasizes his concern that higher socioeconomic status should not readily translate into political power. Fair value of the political liberties and fair equality of opportunity must be maintained in order to prevent the leveraging of class privilege. Open access to positions is highlighted in Rawls's theory, and fair equality of opportunity takes priority over potential gains allowed by the difference principle.

Rawls does not express similar vigilance about the prospect that material and social inequalities could be leveraged as forms of racial privilege. Yet racial inequality in the United States, for example, might persist under formally ideal conditions in which everyone accepts the two principles of justice. Although the institution of slavery, formal racial segregation in public accommodations and schools, and unequal voting rights

26. Rawls, *Theory of Justice*, 73.

27. See Rawls, *Political Liberalism*, 325–31.

28. Rawls, *Theory of Justice*, 197. See also Rawls, *Political Liberalism*, 327; Rawls, *Justice as Fairness*, 46.

have been rejected, the racial stigma associated with those historical injustices persists. Networks of social relationships help to organize the informal sphere of a society's background culture, enabling whites more effectively to utilize their talents, to the de facto exclusion of African Americans.²⁹ As a result, opportunities available to African Americans might continue to be greatly unequal—which would not be apparent apart from analyzing the bearing of their racial group status on the opportunities effectively open to them. Furthermore, even if the great disparity in wealth as compared to whites were narrowed,³⁰ African Americans could still lack roughly equal social capital owing to the historical formation of racial partiality and bias.³¹

In short, I am arguing that open access to positions could be obstructed by ongoing patterns of racial partiality and bias. The dynamics of social inequality in a race-conscious society would not soon disappear simply through a redistributive scheme guaranteeing that persons who are least well off in income and wealth would not do better, by those measures, under an alternative scheme. Racial identity, regardless of formal commitment to a “color-blind” society, might still be tied to stigma: in hiring and promotion decisions, the development of intellectual potential, and the recognition of creative accomplishment, for instance. Indeed, we could expect historically burdened racial minorities to remain overrepresented in positions that are less desirable, though these minorities generally would be materially better off than they had been. Thus, I contend, race-based social marginalization that might persist despite what Rawls considers “favorable conditions”—whereby people accept the two principles of justice as public norms that ought to order their society's shared institutions—is relevant to a theory of justice.

29. I am using “background culture” in a broad sense that encompasses a society's productive activities, which Rawls refers to as the product of social cooperation.

30. In 2011, the median white family in the United States had \$111,146 in wealth holdings; the median black family had \$7,113. See “The Racial Wealth Gap: Why Policy Matters,” a study by Demos and the Institute for Assets and Social Policy, Brandeis University, http://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf. See also Joshua Holland, “The Average Black Family Would Need 228 Years to Build the Wealth of a White Family Today,” *Nation*, August 8, 2016, <https://www.thenation.com/article/the-average-black-family-would-need-228-years-to-build-the-wealth-of-a-white-family-today/>.

31. Data from the Public Religion Research Institute shows that 75 percent of whites have no black friends. See Christopher Ingraham, “Three Quarters of Whites Don't Have Any Non-white Friends,” *Washington Post*, August 25, 2014, https://www.washingtonpost.com/news/wonk/wp/2014/08/25/three-quarters-of-whites-dont-have-any-non-white-friends/?utm_term=.0ced33844a6b. For survey data, see Daniel Cox, Juhem Navarro-Rivera, and Robert P. Jones, “Race, Religion, and Political Affiliation of Americans' Core Social Networks,” a report for the Public Religion Research Institute, August 3, 2016, <http://www.prrri.org/research/poll-race-religion-politics-americans-social-networks/>.

A principle of fair equality of opportunity seems suited to address the racial dynamics of social inequality. Unfortunately, the way Rawls formulates the fair equality of opportunity principle is inadequate for that task. To reiterate his version: “Those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin.”³² I have criticized this for being too narrowly focused on protecting equal opportunity from the influence of socioeconomic advantage simpliciter. Still, I believe, a fair equality of opportunity principle can be plausibly expanded. Or Rawls might be read as implicitly endorsing an expanded version, such as the one defended by Tommie Shelby.³³ For Shelby, correcting racial patterns of broader disadvantage requires ensuring that all citizens enjoy fair equality of opportunity, and his interpretation of Rawls yields this requirement.

Shelby’s reading is supported by the general way Rawls introduces the principle of fair equality of opportunity in *A Theory of Justice*. Rawls writes, “The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. . . . We might say that those with similar abilities and skills should have similar life chances. Those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. . . . The expectations of [persons] with the same abilities and aspirations should not be affected by their social class.”³⁴ Bracketing the last sentence’s focus on class, the passage overall can be interpreted to rule out any factors of prior social standing from undermining equal prospects. When social identities rooted in historical injustice undermine equal prospects, this is reason to suspect that the historical injustice has not been superseded.³⁵

Still, if we are to expand the fair equality of opportunity principle, we confront some challenges. We must understand how an improved version could fit within a politically liberal theory of justice, and we must understand what addressing unfairness in a society’s opportunity structures would involve. Presumably, as Shelby emphasizes, justice at least forbids racial discrimination.³⁶ But whether prohibiting racial discrimi-

32. Rawls, *Justice as Fairness*, 44.

33. See Tommie Shelby, “Race and Social Justice: Rawlsian Considerations,” *Fordham Law Journal* 72 (2004): 1697–1714.

34. Rawls, *Theory of Justice*, 63.

35. On the notion that historical injustice can be superseded, see Jeremy Waldron, “Superseding Historic Injustice,” *Ethics* 103 (1992): 4–28.

36. Seana Shiffrin also stresses the importance of an antidiscrimination principle, arguing that it should be part of Rawls’s first principle of justice; see Seana Shiffrin, “Race, Labor, and the Fair Equality of Opportunity Principle,” *Fordham Law Journal* 72 (2004): 1643–47.

nation adequately protects fair equality of opportunity depends on whether discrimination exhausts the complexities of racial partiality and bias I sketched above.

IV. A POLITICALLY LIBERAL ARGUMENT FOR HISTORICAL REDRESS

In *A Theory of Justice*, Rawls connects fair equality of opportunity with the value of self-development and, in particular, with what he refers to as the Aristotelian principle. The Aristotelian principle articulates a conception of the good for individuals: “other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity.”³⁷ Rawls’s point is that developing one’s talents and abilities to a high level is a fundamental aspect of human good. Yet this claim does not fit well within a political conception of justice.

The Aristotelian principle belongs to a comprehensive conception of the good, according to which people attain the deepest satisfactions when they develop their talents in intellectually complex and challenging ways. In *Political Liberalism*, Rawls turns away from the Aristotelian principle and relies instead on the more general claim that individuals experience as good the exercise of the “two moral powers.”³⁸ These moral powers—that is, the capacity for caring about justice and for a rational life plan—can be realized in various ways, not all of which would satisfy the Aristotelian principle.³⁹ This better represents a political conception of the good. But what, then, of the argument for fair equality of opportunity that depended on open access to positions? Exercising the moral powers may be compatible with a less demanding opportunity principle than the version Rawls adopts.

Remaining within the strictures of political liberalism, how might we make the case that a Rawlsian principle of fair equality of opportunity is an important measure of social justice? To do so, I return to Rawls’s defense of the fair value of the political liberties. As I have indicated, he argues that the political liberties must have fair value in order to give full meaning to the importance of participatory democracy. “The liberties protected by the principle of participation lose much of their value,”

37. Rawls, *Theory of Justice*, 374.

38. Rawls, *Political Liberalism*, 19.

39. Rawls notes that the moral psychology of *Theory of Justice* relies on the Aristotelian principle but that “other views might adopt different principles to reach the same conclusion” (ibid., 203 n. 35). He affirms that “the good involved in the exercise of the two moral powers and in the public recognition of persons’ status as citizens belongs to the political good of a well-ordered society and not that of a comprehensive religious, philosophical, or moral doctrine” (ibid., 203).

he writes, “whenever [persons] who have greater private means are permitted to use their advantages to control the course of public debate.”⁴⁰ Rawls insists not only that citizens in a democracy must have a formal opportunity to vote, to express their political views, to run for office, and to assume positions of political authority; these political liberties also must have fair value: persons similarly motivated and talented should have roughly equal chances of success in attaining those positions and in influencing the course of politics. Otherwise, a democratic political system does not treat its members as equal citizens, regardless of fairness in the distribution of income and wealth.

In my view, the value of democratic inclusion that underwrites the fair value of the political liberties also provides an argument for fair equality of opportunity. Specifically, the value of democratic inclusion demands fair equality of opportunity as a social condition of the good of individual self-development—but for reasons not encompassed by the Aristotelian principle. Competing for positions of educational advantage, meaningful employment, and political leadership enables persons to contribute to their society as their talents, interests, values, and abilities allow. Understood as a requirement of democratic inclusion, fair opportunity is compatible with a variety of ethical, religious, and philosophical viewpoints; the underlying notion of social equality is a political value. It is also demanding. Fair equality of opportunity must encompass not only opportunities to develop one’s talents but also a real opportunity, unburdened by distinctions of race and sex, to shape the nature of one’s society in broad, culturally meaningful ways. In other words, fair equality of opportunity requires the expansion of democracy beyond the realm of politics to include welcome participation in society’s productive activities.

While persons who are more talented and motivated will have a better chance of attaining desirable positions, the difference principle ensures a roughly egalitarian distribution of resources to all members of society, including those who are less qualified for or interested in those positions.⁴¹ Meanwhile, the fair opportunity principle protects all members of society from the indignity of unequal consideration. So understood, fair equality of opportunity, supported by the difference principle, would enable all members of society to enjoy a sense of social belonging and to be acknowledged as equal citizens. But in a racially divided society, achieving fair equality of opportunity would require serious measures to counter the persistence of racial partiality and bias, including the tendency

40. Rawls, *Theory of Justice*, 198.

41. For Rawls, merit is not the guiding principle for distributing rewards; see *ibid.*, 89–90. On the distinction between legitimate entitlements and moral desert, see Rawls, *Justice as Fairness*, 72–74, 77–79.

of more favored groups to exercise freedom of association and other personal choices in ways that sustain historically rooted patterns of social marginalization. Participatory democracy would need to be expanded largely through state action and not left to the hope of widespread personal transformations, say, through national conversation on race. Such expansion of democracy, I am arguing, is a requirement of justice in a politically liberal society.

Some political philosophers have criticized Rawls for failing to affirm that justice requires the social recognition of disfavored groups and not merely the redistribution of income and wealth.⁴² While I have outlined why their criticisms are not unfounded, such a “fuller recognition” version of the fair equality of opportunity principle does fit Rawls’s theory. In fact, an expanded appeal to open positions provides substance to the role of social recognition, a role that has been underspecified in political philosophy or connected with more comprehensive accounts of the good of cultural belonging. Nancy Fraser’s elaboration of social misrecognition in terms of “institutionalized patterns of cultural value that prevent one from participating as a peer in social life” marks a notable exception.⁴³ There is affinity here with heightened concern for fair equality of opportunity.

A fuller recognition version of a fair equality of opportunity principle adds a dimension of meaning to Rawls’s notion of society as a “social union” and can be viewed as an aspect of his “social bases” of self-respect. Rawls proposes in *A Theory of Justice* that people who strive to develop their talents will derive satisfaction from securing a valued place in a social union in which people’s talents are mutually complementary; a social union of talents enables each person to identify with an array of developed talents that could not be realized within the limits of a single life.⁴⁴ Relying on an ideal of the good for individuals, however, this argument fits uneasily with a political conception of justice. It endorses pluralism as a form of comprehensive liberalism by supposing that individuals attain satisfaction from playing a part in an orchestra of different talents.

42. On the importance of social recognition, see, e.g., Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995); David Miller, *On Nationality* (Oxford: Oxford University Press, 1995); Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: University of Notre Dame Press, 1984). Unlike these “communitarian” philosophers, I emphasize social recognition in the service of fair equality of opportunity, not cultural community.

43. Nancy Fraser, “Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation,” in *Redistribution or Recognition? A Political-Philosophical Exchange*, ed. Nancy Fraser and Axel Honneth (London: Verso, 2003), 29–30.

44. Rawls, *Theory of Justice*, 500.

We should reformulate the social union argument. By representing the good of social recognition for productive activity, the ideal of a social union serves the requirement that a democratic society treat its members as equals. This reformulated argument connects well with *Political Liberalism's* discussion of a just political society, which Rawls claims is a good for citizens because "it secures for them . . . the social bases of their mutual self-respect."⁴⁵ Fair equality of opportunity is essential to realizing this good. On this interpretation of fair equality of opportunity, all members of society must enjoy, and believe they enjoy, open access to positions—where this spirit of openness is itself influential in shaping and reshaping the background culture. Political liberalism demands this interpretation of the fair opportunity principle and, in turn, provides political reasons to identify and redress unfairness in the background culture.

An expanded equal opportunity principle might be construed in one of two ways. The first understands fair equality of opportunity to require opening desirable positions to freer and fairer competition that would reward the most talented and motivated, regardless of social status. The second understands fair equality of opportunity to require that the menu of desirable positions be produced through an inclusive, deliberative process. Here the conception of democracy is deliberative in a strong sense: all members of society would participate in thinking through and determining their society's values and, by extension, its opportunities. Effort to build consensus for shared values would be critical to equal citizenship.

The second interpretation, while attractive for its ambition to promote mutual respect and social cohesion, cannot be reconciled with the "fact of reasonable pluralism."⁴⁶ Citizens in a free society are bound to disagree about the meaning and priority of various productive activities, which will be expressed in disagreement about how much public investment, for instance, there should be in health care, higher education, technology, the arts, criminal justice, financial services, infrastructure, and the military. Moral and political differences of this nature will not likely be resolved through a deliberative process; reasonable and rational citizens will not come to consensus about their value commitments. I believe that Rawls is correct about that. Still, when a society's opportunities are more genuinely inclusive, the substance and meaning of a society's productive activities are likely to change over time. Deliberative democracy is not essential for revising a society's menu of desirable opportunities.

Of course, the first understanding of fair equality of opportunity faces familiar concerns about implementation, especially regarding the role of

45. Rawls, *Political Liberalism*, 203.

46. *Ibid.*, 36–37.

the state. Law can prohibit overt discrimination, which would address some causes of racially unequal opportunity. As we have seen, though, racial inequality is also driven by more diffuse attitudes, habits, and practices—including personal preferences, assumptions, reactions, and social networks—that tend to reflect a legacy of historical injustice. An adequate Rawlsian account of fair equality of opportunity will have to go further than what other charitable commentators have recognized. For example, Shelby acknowledges the importance of corrective justice, namely, as a backward-looking requirement to satisfy moral debts but not as a forward-looking principle of reform.⁴⁷ He argues that fair equality of opportunity would help mitigate socioeconomic disadvantages that are a product of past racial harms, with no special need for historical redress.⁴⁸ I am arguing that this will not be sufficient for dealing with diffuse sources of racial inequality in the broader, informal routes of access to opportunity.⁴⁹

To put it bluntly: fair equality of opportunity, in a racially hierarchical society, cannot be achieved without corrective justice. This is predictable enough to be directly relevant to so-called ideal theory. The challenge is that informal social relations and networks, which are mechanisms of inclusion and exclusion, lie largely in the domain of personal choice and freedom—a domain that is and should be protected by law. An effective approach to countering historically rooted injustice threatens to run up against reasonable personal liberty.

There is no threat to personal liberty, however, in the state promoting fair equality of opportunity by calling attention to the impact of historical injustice. More concretely, the state has an obligation to commit to reducing racial disparities that undermine fair equality of opportunity. This means that an expanded fair opportunity principle cannot be “color-blind.” I propose that an expanded principle requires a supporting principle of historical redress. This speaks to the value of remembering past injustice, setting the record straight, understanding the legacy of historical injustice, and rectifying that legacy. Affirming a principle of historical redress would check a tendency among class-conscious liberals to ignore the background culture dimensions of racial justice or to reduce the significance of culture to socioeconomic indicators.⁵⁰ Furthermore,

47. Tommie Shelby, “Racial Realities and Corrective Justice: A Reply to Charles Mills,” *Critical Philosophy of Race* 1 (2013): 145–62, and “Reparations, Leadership, and Democracy: A Comment on Balfour and Gooding-Williams,” *Du Bois Review* 8 (2011): 395–99.

48. Shelby, “Race and Social Justice,” 1711.

49. Loury describes these sources of racial inequality as involving “development bias”; see Loury, *Anatomy of Racial Inequality*, 93.

50. On the significance of culture to justice movements, see Amilcar Cabral, “National Liberation and Culture,” in *Return to the Source: Selected Speeches of Amilcar Cabral*, ed. The Africa Information Service (New York: Monthly Review, 1973), 39–56.

identifying the circumstances and legacy of the racially unjust past is itself a form of redress through social recognition.

An extensive literature is available on measures of historical redress.⁵¹ Public acknowledgement of historical injustice can be exemplified in memorials, museums, national holidays, and history curriculums.⁵² Such investments in remembrance and memorialization give weight to acts of political speech, including apologies, which can seem empty when not backed by substantive displays of commitment.⁵³ Perhaps the new and unprecedented National Museum of African American History and Culture, located in Washington, DC, will serve this purpose. Its narrated display of thousands of artifacts honestly covers the range of racialized American experience, from the courageous to the brutal to the mundane. In my estimation, this museum conveys a twofold message that cannot be taken for granted: African American history is foundational to understanding US history, and historical events surrounding African Americans have been vital to the formation of social, regional, and national identity.

Historical redress also will have to involve concerted effort to re-route social dynamics that are an obstacle to expanded fair equality of opportunity. The use of institutional incentives need not be at odds with personal choice and freedom in social relations. Such incentives—directed against de facto racial barriers in education, hiring, promotion,

51. See, e.g., David Lyons, *Confronting Injustice: Moral History and Political Theory* (Oxford: Oxford University Press, 2013); Colleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge: Cambridge University Press, 2012); Michael T. Martin and Marilyn Yaquinto, eds., *On Reparations for Slavery, Jim Crow, and Their Legacies* (Durham, NC: Duke University Press, 2007); John Miller and Rahul Kumar, eds., *Reparations: Interdisciplinary Inquiries* (Oxford: Oxford University Press, 2007); Margaret Urban Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing* (Cambridge: Cambridge University Press, 2006); Howard McGary, *Race and Social Justice* (Malden, MA: Blackwell, 1999); Bernard R. Boxill, *Blacks and Social Justice*, revised ed. (Lanham, MD: Rowman & Littlefield, 1992).

52. Truth commissions (as in South Africa and Argentina), war crimes trials, and narrative renderings of oppression are modes of public acknowledgement. See Iris Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002), 68–72. See also Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton, NJ: Princeton University Press, 2004), 48–53; Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard University Press, 1996), 135–36; Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000).

53. See Jeffrey M. Blustein, *Forgiveness and Remembrance: Remembering Wrongdoing in Personal and Public Life* (Oxford: Oxford University Press, 2014); Nick Smith, *I Was Wrong: The Meaning of Apologies* (Cambridge: Cambridge University Press, 2008); Charles Griswold, *Forgiveness: A Philosophical Exploration* (Cambridge: Cambridge University Press, 2007). See also Karl Jaspers, *The Question of German Guilt* (1947; repr., New York: Fordham University Press, 2001).

and housing, for instance—could take a variety of forms.⁵⁴ Government-subsidized low-interest home mortgages and business loans for historically burdened racial minorities would help to reverse the consequences of decades of discriminatory and predatory lending practices.⁵⁵ Federal and state funding could be increased for voluntary school integration programs like METCO (Metropolitan Council for Educational Opportunity), which buses nonwhite students from Boston to better-quality schools outside the city, so that suburban school districts would have more to gain financially by participating. State agencies could adopt or strengthen policies to contract with firms that are racially inclusive or, at least, sincerely seek to be through internal mandate that minority candidates must be interviewed (a practice adopted, e.g., by the National Football League) and actual hires charted over time.⁵⁶

My present task is not to evaluate possible measures of historical redress for efficacy or constitutionality. Rather, I am stressing the importance of recognizing the need for corrective justice—as well as rejecting a familiar presumption that, for whatever reasons, not much could be done. A politically liberal theory of justice should make the case that a society encumbered by a history of racial injustice has an obligation to confront this past and to take substantive measures to rectify racial inequality. The work of historical redress is called for in the civic realm as well as in the formal realm of law and politics. Without it, entrenched racial disparities are likely to persist.

V. CONCLUSION

In a Rawlsian just society, people's relation to their opportunities must be underwritten by social conditions of open access, which means that opportunities must be truly accessible to them. Rawls overestimated the sig-

54. In New York City public schools, the average enrollment is almost 75 percent black and Hispanic, with some schools over 95 percent, and the average is considerably higher in Chicago, Los Angeles, Washington, DC, Baltimore, and Detroit. See Jonathan Kozol, "Still Separate, Still Unequal: America's Educational Apartheid," *Harper's Magazine*, September 1, 2005. Regarding de facto racial segregation, including housing, see Orlando Patterson, "Equality," *Democracy: A Journal of Ideas* 11 (2009), <http://democracyjournal.org/magazine/11/equality/>.

55. On the history of racist US housing policy, see Ta-Nehisi Coates, "The Case for Reparations," *Atlantic*, May 21, 2014, <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

56. The NFL's "Rooney Rule," adopted in 2002, requires all NFL teams to interview at least one nonwhite candidate for any open head coaching position. By 2006, the number of African American coaches in the league grew from 6 percent to 22 percent. See Brian W. Collins, "Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule," *New York University Law Review* 82 (2007): 870–912.

nificance of socioeconomic status for identifying and addressing disadvantage. This led him to downplay the problem of historically rooted injustice, particularly with regard to race. The overestimation misleadingly suggests that the best approach is simply to attend to the interests of the least advantaged, identified by income and wealth. But such redistribution is unlikely on its own to resolve racial patterns of social disadvantage. Abstracting from historically rooted injustice will not direct us toward adequate principles of justice because it ignores the residue in the background culture of a well-ordered society's history of injustice. Historical injustice persists, for example, when patterns of racial partiality and bias that are rooted in the background culture undermine fair opportunities. This possibility demands a principled response in the form of historical redress.

The notion of a well-ordered society without an unjust past would not enable us to understand the demands of justice in any relevant historical context. Rawls's *Political Liberalism*, which is self-consciously less ahistorical than *A Theory of Justice*, is sensitive to the dynamics of identity formation and to extra-institutional challenges to the aspirations of social justice, including the dangerous instability of a mere *modus vivendi*.⁵⁷ An "overlapping consensus" of reasonable comprehensive doctrines on principles of liberal justice is something Rawls imagines evolving out of a practical if unstable political compromise between groups of people who do not trust or care for one another.⁵⁸ I have argued that the possibility of a stable and secure commitment to principles of liberal justice depends on a society's efforts to confront its unjust past. *Political Liberalism*'s sensible rejection of comprehensive liberalism, as well as its affirmation of the principle of equal basic rights and liberties in full view of society's conflicts and divisions, implies that the legacy of historical injustice must be confronted for what it is. Some people will display bias in the permissible exercise of their basic rights and liberties, and this is damaging to fair equality of opportunity.

We cannot assume that consequences of the past will be rendered obsolete through agreement on a scheme to redistribute income and wealth, much less by social convergence on matters of the true and the good. This calls for an expansion of the requirements of justice to address historically rooted injustice. Only when a historically unjust society confronts entrenched consequences of its past will its members enjoy truly fair equality of opportunity. This recognition could be formalized in a theory of justice by way of a principle of historical redress. To be clear, my argument for such a principle is analogous to the argument Rawls advanced to prevent the leveraging of class privilege. The backbone of the argument, tai-

57. Rawls, *Political Liberalism*, 147–49.

58. *Ibid.*, 158–68.

lored to the restrictions of political liberalism, is a political conception of equal citizenship. Supported by this argument, an expanded principle of fair equality of opportunity, one that includes a supporting principle of historical redress, would enable political liberalism to contend with the relevance of a society's background culture to the requirements of justice.