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Justice III: Institutional Racism

Recap: The Rawlsian Paradigm

* OP representatives were to agree on the principles of justice that will govern the basic structure of society as an intergenerational, closed, self-sufficient, fair system of social cooperation between citizens as free and equal persons.
* They were to choose between options on a menu drawn up from the (Western) tradition of moral and political philosophy.
* Rawls argues that they would choose a liberal conception of justice.
* This liberal conception he calls “justice as fairness”.

Recap: Justice as Fairness

* Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;
* Social and economic inequalities are to satisfy two conditions:
	+ They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*;
	+ They are to be to the greatest benefit of the least-advantaged members of society (the *difference principle*).
* The first principle is **lexically prior** to the second, and *fair equality of opportunity* is lexically prior to the *difference principle* if the principles come into **conflict**.

Reflective Equilibrium and Reconciliation

* Rawls argues that when we come to understand the basic structure of society as **rationally justified**, we overcome our **alienation**.
	+ “Political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational, and developed over time as they did to attain their *present, rational form*. This fits one of Hegel’s well-known sayings: “When we look at the world rationally, the world looks rationally back.” He seeks for us reconciliation –*Versöhnung* – that is, we are to accept and affirm our social world positively, not merely to be resigned to it.”
* One reason Rawls thinks we are alienated from modern societies is the fact of pluralism among reasonable comprehensive doctrines, and the result that liberal democracies are not and cannot be communities in any rich sense. We might contest this claim. For Rawls, we learn through political philosophical reflection to see reasonable pluralism as the outcome of enduring free institutions.
* Another reason Rawls thinks we are alienated from modern societies is that we are born into a particular political society at a particular time in history, and this might make us question whether we are truly free. For Rawls, the solution is to see society as a fair intergenerational system of social cooperation.
* However, on all of these points, Rawls misses the mark when it comes to the alienation of racially or colonially subordinated subjects.
* How can slavery, colonialism, and genocide, as historical-sociological processes, be seen as the development of rational institutions? When differently situated and embodied subjects look at the world rationally, the world looks back as the accumulation and intensification of catastrophe – from colonial plantation slavery to mass incarceration, from the colonial dispossession of Indigenous lands and displacement of Indigenous peoples to the systematic violation of Indigenous rights and the desecration of sacred lands in the name of capitalist economic growth.
* Today, our focus is on institutional racism, tomorrow on decolonising Anglo-American political philosophy.

Rawls’s Method

* Develop a procedure for formulating principles of justice by drawing on the generalised intuitions of liberal democratic citizens.
* Compare resulting principles with our considered judgements.
* Are our considered judgments and our principles in equilibrium?
* If not:
	+ Do we give up our intuitions (and revise what we believe)?
	+ Or do we give up the principles (and revise the procedure)?
* Repeat until we attain reflective equilibrium.
* Narrow versus wide reflective equilibrium.
* **Narrow reflective equilibrium** arises when an individual finds a conception of political justice that makes the fewest revisions in their individual considered judgements, makes that conception their own, and revises their beliefs accordingly.
* **Wide reflective equilibrium** arises when an individual carefully considers alternative conceptions of political justice “found in our philosophical tradition” (Marxism, utilitarianism, etc.), and has weighed the force of different arguments to make the rational choice of conceptions, and revises their beliefs accordingly.
* **Full reflective equilibrium** only arises in a hypothetical well-ordered society.
	+ “Recall that a well-ordered society is a society effectively regulated by a public conception of justice. Think of each citizen in such a society as having achieved wide (versus narrow) reflective equilibrium. But since citizens recognize that they affirm the same public conception of political justice, reflective equilibrium is also general: the same conception is affirmed in everyone’s considered judgments. Thus citizens have achieved general and wide, or what we may refer to as full, reflective equilibrium. (The adjective “full” we reserve for features as realized in a well-ordered society.) In such a society not only is there a public point of view from which all citizens can adjudicate their claims, but also this point of view is mutually recognized as affirmed by them all in full reflective equilibrium.”

The Murder of Stephen Lawrence

* 22 April 1993, 18-year-old black youth, Stephen Lawrence, is stabbed to death in an unprovoked racially motivated attack by a gang of white youths as he waits at a bus stop in Eltham, South-East London, with his friend Duwayne Brooks.
* The day after the murder, a letter giving the names of the suspects is left in a telephone box.
* 7 May-23 June 1993 - Police arrest brothers Neil and Jamie Acourt, David Norris, Gary Dobson and Luke Knight, and search their homes.
* Neil Acourt and Luke Knight are identified by Duwayne Brooks, and are charged with the murder of Stephen Lawrence.
* They deny the charges.
* Charges against the pair are dropped on 29 July 1993 because ID evidence from Brooks is deemed “unreliable”.
* The abolition of the double jeopardy rule eventually led to the 2012 conviction of Gary Dobson and David Norris for Lawrence’s murder.
* Both men receive life sentences. Dobson is jailed for a minimum of 15 years and two months, Norris for 14 years and three months.
* Would lead to later investigations into Police practices and conduct.
* Complete timeline: <https://www.bbc.com/news/uk-26465916>

The MacPherson Inquiry and Report

* July 1997, more than four years later, then home secretary Jack Straw announced an inquiry “into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to **identify the lessons to be learned for the investigation and prosecution of racially motivated crimes**”.
* Chaired by Sir William Macpherson, a retired High Court judge.
* The inquiry came after years of campaigning by the Lawrence family, the collapse of the family’s private case, and the announcement of an investigation into the case by the Police Complaints Authority.
* The 350-page report concluded that the police investigation into the murder had been “marred by a combination of professional incompetence, institutional racism and a failure of leadership”.
* The report named, and singled out for criticism, particular agents and institutions for their responsibility.
* **The police, as an institution, was criticised for being racist**.
* The Report stressed institutional racism **does not imply** that **policies are racist** or that every **officer is individually racist**.
* 6.34. For the purposes of our Inquiry the concept of institutional racism of: The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.
* The concept of institutional racism was not new.
* The concept had been developed over several decades by activists and academics in the US and UK who named and theorised the phenomenon that was part of black people’s average everyday experience with public and private organisations.
* Generated a new critical-hermeneutical resource for **making sense** of the experiences of racialised oppression – to themselves, each other, and to their oppressors – and **transforming** the social structure.
* The joint authors of the report argued that the **public debate** about policing and institutional racism had been transformed by the inquiry, “and that the debate thus ignited must be carried forward”.
* The report made 70 recommendations designed to show “zero tolerance” for racism in society.
* Included reform measures to end institutional racism and change attitudes in the police and improve accountability. Reforms extended to the civil service, NHS, judiciary, and other public bodies.
* 67 recommendations led to changes in practice or the law within two years.
* Detailed targets for the recruitment, retention and promotion of BAME officers.
* Establishment of the Independent Police Complaints Commission with the power to appoint its own investigators.
* The amended Race Relations Act s.71 provided that every specified or defined public authority ‘shall, in carrying out its functions have due regard to the need – a) to eliminate unlawful racial discrimination; and b) to promote equality of opportunity and good relations between persons of different racial groups.’

The Lammy Review (2017)

* Independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System
* “Across England and Wales, people from minority ethnic backgrounds are breaking through barriers. More students from Black, Asian and Minority Ethnic (BAME) backgrounds are achieving in school and going to university. There is a growing BAME middle class. Powerful, high-profile institutions, like the House of Commons, are slowly becoming more diverse.”
* Yet, the UK justice system remains problematic. Those who are charged, tried and punished for crimes are still disproportionately likely to come from BAME communities.
* BAME men and women comprise 14% of the population, yet they comprise 25% of prisoners.
* Over 40% of young people in custody are from BAME backgrounds.
* If the UK prison population reflected the demographics of England and Wales, there would be 9,000 fewer people in prison.
* **There is greater disproportionality in the number of Black people in prisons in the United Kingdom than in the United States**.
* Demographics of the institutions comprising the Justice system are unrepresentative of the general population.

Connected Sociologies

* In France, Muslims make up an estimated 8% of the population and between a quarter and a half of the prison population.
* In America, one in 35 African American men are incarcerated, compared with one in 214 White men.
* In Canada, Indigenous adults make up 3% of the population but 25% of the prison population.
* In Australia, Aboriginal and Torres Strait Islander people make up 2% of the population, but 27% of prisoners.
* In New Zealand, Māori make up 15% of the population, but more than 50% of the prisoners.

Changing Discursive Field

* From discrimination and equality to “diversity” and “inclusion”.
* From institutional racism and sexism to ”unconscious bias”.
* ”Social cohesion” and the problematisation of diversity.
* Shift from social justice to economic rationale.
* “Diversity is all around us; global economic trends, shifts in population structures, and improved communication channels have changed our organisations and how we operate. The key to unlocking the social and economic benefits of diversity is through organisations having cultures of inclusion.”

Theory, Again

* Eliminating unconscious racial bias requires a personalised solution for each individual. Its production and reproduction is unexplained.
* This **depoliticises** racism as an **ethical issue**, not a **political issue**.
* Recall that, for Rawls, the basic structure is the subject of justice.
* Part of what makes his theory “political” is that the subject of justice is **politics** (structures, institutions) not **ethics** (character, action).
* We need to revitalise the **institutionalist approach**, by focusing on the national and transnational institutions that continue to reproduce racial inequalities 20 years on from the Lawrence Inquiry Report.

Retrieving Rawls for Racial Justice (Charles W. Mills)

* *Justice as fairness*: social institutions are to be fair to all cooperating members of society, regardless of their “morally arbitrary” features.
* The shortcomings of **ahistorical liberal ideal-theory** for theorising structural and institutional injustice.
* **Problematic assumptions**: closure, cooperation, freedom and equality.
* “If you begin by conceiving of society as a cooperative venture, which rules out structural oppression and systemic exploitation; if you continue by assuming the recognized moral equality of all humans, which rules out the actual normative subordination of the majority of the population; if you postulate autarkical nations, which rules out the history of imperialism; if you take ideal theory to legitimate ignoring both gender and race, whose very existence shows that they are constitutive of the basic structure you are supposed to be prescribing for; then how after all that can you possibly afford to pay any attention to the real world, when every assumption you have made is so flagrantly contradicted by it?”
- Charles W. Mills, “Realizing (Through Racializing) Pogge”
* White supremacy as basic structure