

Post-Rawlsian Movements, Multiculturalism, and Black Americans

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For those interested in describing and ameliorating racial exclusion and subordination, the work of John Rawls and his continuing legacy have been sources of frustration. The frustration owes itself to an inability or an indifference on the part of Rawls and his followers to conduct any analysis of racial hierarchy. This problem can be understood in different ways deriving from the methodology laid out in *A Theory of Justice*. The problem is, critics maintain, that Rawlsian theorizing is preoccupied with abstracting away features of persons in an attempt to determine the normative character of the basic structure rendering the theory ill-suited to be of any use in describing or ameliorating racial inequality. The problem shows up in at least four ways.

Charles Mills writes in the *Racial Contract*

The frustrating problem nonwhites have always had, and continue to have, with mainstream political theory is not with abstraction *itself* but with an *idealizing* abstraction that abstracts *away* from the crucial realities of the racial polity. The shift to the hypothetical, ideal contract encourages and facilitates this abstraction, since eminently *nonideal* features of the real world are not part of the apparatus. There is, then, in a sense, no conceptual point-of-entry to start talking about the fundamental way in which race structures one's life and affects one's life chances (Mills 1997).

Thus, first, the idealizations found within liberal political theorizing present theoretical barriers to capturing the character of racial exclusion and subordination. And the attack is pushed further in *Blackness Visible* while Mills argues that failing to incorporate in any meaningful way the

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history and theoretical significance of racial exclusion not only has the effect of preventing liberals from capturing the significance of racial exclusion, he also claims that theorizations of the remedies to address racial exclusion will not become “theoretically visible”(Mills 1998Mills 1998). That is, the remedies for unjust distributions of rights and opportunities that owe themselves to race would not be theorized as remedies to *racial* injustice because that project itself presupposes a theoretical account of racial justice. Third, since race is not in the theoretical vocabulary normative political theory racial justice has to be understood in terms of neutrality. These features of normative political theorizing create a further problem, namely that failing to pay attention to features of race has the effect of *reproducing* injustices (Mills, 1998, p. 108).

Fourth, what is more, Rawls’s discussion and limitation of the fundamental problem of social justice, instead of to the actual histories of distributions of rights, resources, and rights, has the effect of concealing the injustice of the basic structure. So on Rawlsian grounds, Rawls’s theory is underdetermined in its effort to remedy the injustices lying within the basic structure by insufficiently characterizing the extent and the scope of the injustice located within the basic structure.

To no surprise the discussion of the merits and demerits of the attacks on Rawls and of the propriety of the Rawlsian enterprise to describe and ameliorate racial inequality has spawned its own cottage industry.² And for many individuals, Rawls exemplifies the impotency or disinterest of the liberal tradition towards racial injustice.

² For recent discussion of some of these issues see Thomas McCarthy, T. (2009). Race, empire, and the idea of human development. Cambridge, UK ; New York, Cambridge University Press. and Tommie Shelby, ‘Race and Social Justice: Rawlsian Considerations’ (2004) LXXII: 5 Fordham Law Review 1697-1714. Shelby seeks to defend Rawls against some of Mills’s claims while McCarthy attempts to weave a path between rejecting Rawls while recognizing the problematic features of ignoring race. For views sympathetic to Mills see Howard McGary (1999). *Race and Social Justice*. Oxford: Blackwell) and McGary, H. and B. E. Lawson (1992). Between slavery and freedom : philosophy and American slavery. Bloomington, Indiana University Press.

But the preoccupation with Rawls has blinded us in the profession from thinking more clearly about post Rawlsian attempts to accommodate the various criticisms that we find against Rawls. For in other theories we might find modes of theorizing that are not bogged down by claims about ideal theorizing or preoccupations with societies abstractly construed.

And my aim here is to consider Will Kymlicka's work in this vein. Kymlicka's work is clearly in the Rawlsian tradition, as I note below, but Kymlicka seeks to avoid some of the charges leveled at Rawls and Rawlsian methodology. Kymlicka's work is worthwhile for several reasons. First, his theory is an instance of the ways in which one might bring to bear non-ideal theorizing to address particular kinds of injustices. This strategy is promising because it seeks to avoid the problems found in ideal theorizing that have bogged down discussions of the remedies for marginalized groups.

Second, his work has been prominent as a theoretical justification for actual state sponsored policies of multiculturalism in Canada. The upshot of this, though this is a point that I cannot address here fully, is that we can ask about the relationship between actual policies and the theoretical justifications that might generate them. This is a far more realizable project than asking abstract questions about the relationship of actual policies to broader theories of the basic structure as we find in discussions about the relation between, for instance, Rawl's difference principle and affirmative action policies.³ Third, by considering a theory that attempts to accommodate group rights with individual rights we avoid another source of frustration with theories such as Rawls, and *ipso facto* the liberal tradition, namely that his view perpetuates an antagonistic towards group rights. Fourth, appealing to Kymlicka looks promising because we can appeal to a mode of theorizing that is self-consciously interested in prescribing social arrangements that recognize the continuing heterogeneity of nation states. And finally, perhaps

³ For recent discussions see Taylor, Robert S. (April 2009). "Rawlsian Affirmative Action." Ethics 119(3), 476-506.

most importantly, Kymlicka's is the only discussion of African-Americans by any of the "mainstream" Anglo-American analytic philosophers.⁴ Indeed, the recent historical experiences of black Americans plays a key role in Kymlicka's argument in *Multicultural Citizenship* that liberal antagonism towards group rights is a recent phenomenon arising from the civil rights era.

If Kymlicka's theory accommodates the experiences of black Americans, we will have a powerful theoretical tool to criticize particular arrangements that ignores the interests of racialized groups. But also we will have a theory that is sensitive to issues of race.

In what follows I consider Kymlicka's discussion of black Americans. And while black-Americans find themselves near center stage in normative theorizing, Kymlicka's diagnosis and remedies for their disadvantages are mistaken. I argue that he fails to apply his theory where it applies and his failure to apply the theory derives from mistaken conceptualizations about the experiences of black-Americans and mistaken conceptualizations within his theory.

I.

Let me begin with a clarification. Although my interest lies in understanding how recent non-ideal theorizations offer new ways of conceptualizing particular forms of social injustice, the remarks I say about Kymlicka's view should not be thought to be exhaustive. Kymlicka's work has spawned its own cottage industry and even if one finds his theory plausible in my discussion, there are a considerable number of objections from the left and from the right towards his theory. And so insofar as I endorse his general strategy of theorizing particular modes of social injustice, I do not defend the propriety of using the concept of "culture" to characterize modes of group differentiated difference in this paper.

⁴ I will use the expressions "African-American" and "black-American" interchangeably. And in some cases, to ease exposition, I will simply refer to black-Americans as "blacks."

Kymlicka's view seeks to marry liberal principles to social identity.⁵ It is liberal in that it recognizes the individual as the primary unit of value and it recognizes the importance of such values as equality, autonomy, and freedom. Contrary to Rawls, Kymlicka's view takes seriously the role that social identities play in a person's ability to flourish and to realize the normative values that the liberal political theory privileges. Kymlicka's commitment to the significance of social identity is manifested in the self-conscious attempt to combine policies of redistribution with policies of recognition.⁶

Kymlicka's theory involves abstraction but, unlike Rawls, it is not a project of making prescriptions from idealized positions. Kymlicka's view begins with the idea that individual lives flourish when left to the choices of the person whose life is being lead, but to make choices one needs various resources. Among the resources that a persons needs to lead a life of their choosing one is a context of choice in which various choices are made available and intelligible to that person. Kymlicka understands this domain under the notion of "culture" to capture the ways in which one's involvement in a social collective is important for the ways in which persons come to recognize, understand, and makes various choices. The problem is that the resources required to make effective the cultural conditions in which one chooses effectively are unequally distributed within liberal nations, putting particular social groups, and subsequently particular individuals, at risk of failing to flourish in ways that put liberal theory in its most favorable light. And Kymlicka's theory aims to isolate and to remedy these disadvantages.

⁵ Will Kymlicka's work appears over several publications. I will consider his Kymlicka, W. (1995). *Multicultural citizenship: a liberal theory of minority rights*. Oxford: New York, Oxford University Press; Kymlicka, W. (1998). *Finding our way : rethinking ethnocultural relations in Canada*. Oxford University Press., Kymlicka, W. (2001); *Politics in the vernacular : nationalism, multiculturalism, and citizenship*. Oxford, Oxford University Press.

⁶ We might also understand Kymlicka's theory as a theory that attempts to fuse recognition of one's worth as a moral agent with recognition of one's individual identity.

Kymlicka's theory contains a theory of disadvantage and a set of remedies for that disadvantage that collectives face in pursuing its interests. The kinds of disadvantages that attach to collectives attach to collectives in certain formations of which there are principally two, namely national groups and ethnic groups. National groups correspond roughly to what we might call nations.⁷ They are "more or less institutionally complete" enjoying high degrees of territorial concentration, linguistic particularity, and history.⁸ Examples of these groups include Canadian Anglophone, Puerto Ricans, and Native Americans. These groups are entitled to differential citizenship in the form of self-government rights. Such rights secure the full and free development of the group's collective identity by recognizing the group's political autonomy or territorial jurisdiction.⁹ Under the category of self-government rights, Kymlicka includes linguistic rights, political veto powers, and land claims.¹⁰ National groups are also entitled to *special representation*. These rights seek to address the lack of representation in political decision making and so they guarantee some number of seats set aside for members of the relevant groups.

Ethnic or immigrant groups in contrast, are not understood in terms of their institutional complexity but through voluntary immigration.¹¹ These are groups seeking integration into mainstream institutions. Such groups are typically interested in learning the dominant language(s) within host states because it allows them to better compete for opportunities and resources. To promote their own flourishing and to offset disadvantages to the flourishing of their collective identities culturally defined, these groups seek protection. Kymlicka calls these

⁷ Kymlicka himself uses the term 'culture' synonymously with the term "nation." I don't think I misrepresent his view by using the term "nation" rather than the term "culture."

⁸ Kymlicka, *Multicultural Citizenship*, p. 18.

⁹ Kymlicka, *Multicultural Citizenship*, p. 27.

¹⁰ Kymlicka *Multicultural Citizenship*, p. 109.

¹¹ Kymlicka uses the expressions "immigrant groups" and "ethnocultural groups" interchangeably with the expression ethnic group. In *Politics* he uses the expression "ethnocultural group" commonly. I will use these terms interchangeably as well for ease of exposition.

protections *polyethnic rights*. Kymlicka claims that this right entails public funding for cultural practices and exemptions to known work rules. These rights are meant to promote the integration of immigrants into dominant institutions.¹²

These are the main pieces of Kymlicka's theory. The next question is to determine whether and how black Americans fit in the theory. That is to say, to determine what remedies are appropriate to alleviate the disadvantages of black Americans we need to determine whether they fit into the Kymlickian typology.

Start with national group status. A collective is a national group if it enjoys high degrees of institutional presence and if it culturally seeks to keep its collective identity. These features provide evidence of a collective narrative identity. Neither of these features are satisfied by black Americans. In *Multicultural Citizenship*, Kymlicka claimed that black Americans did not desire, and I think we can infer, did not actively fight for the institutional features that satisfy the requirements of national group status. And as per institutional concentration, nor did black Americans possess the kind of territorial concentration, historical features, and language that might have allowed them to develop in ways similar to paradigmatic national groups.

In his later work, *Politics in the Vernacular*, Kymlicka corrects himself and notes that owing to the exclusion of blacks from dominant institutions, e.g. Jim Crow, many black Americans experienced institutional separation from whites showing many of the features exemplified by national groups: distinct schools, hospitals, churches, organizations, and financial institutions.¹³ But even after making this concession, Kymlicka refuses to assign self-

¹² Since it is no part of my argument here, I do not consider Kymlicka's claim that promotion of a group's culture is normatively important for its members. This is of course the crucial claim for the argument, but its intelligibility and plausibility matter little for this paper. I will simply assume its truth.

¹³ The chapter in which Kymlicka makes these claims is reproduced verbatim in *Finding Our Way*.

government rights to black Americans, arguing that black Americans did not choose their separate existence, this was put upon them by exclusion.

If we can't demarcate a collective black identity by appeal to institutional features, can we demarcate black American identity culturally? Kymlicka thinks not. Kymlicka claims that the original African slaves did not share a common language and culture and that the common culture that black Americans now share is distinctly 'American.' Subsequently, black Americans lack the features constitutive of being a distinct society. And on Kymlicka's view, we can infer that the rights that attach to that status would be inappropriate for black Americans.

Next, consider the immigrant model and the rights and powers associated with it. Groups fitting this status are defined by their voluntary immigration and an interest in joining the larger political community. The barriers they face are barriers of access to dominant mainstream institutions. Kymlicka claims that black Americans did not voluntarily seek to become members of the new world. What is more, when African slaves were brought to the United States they were prevented from integrating into mainstream institutions and the many different culturally demarcated African collective traits were neither preserved nor consolidated into a common culturally demarcated collective.¹⁴

It seems that the main reason for excluding them from this category is that policies of integrating blacks into dominant institutions have been blocked. The virulent character of institutionalized racism has foreclosed the possibility of moving into mainstream positions and statuses in society. And so Kymlicka infers, following other social theorists that a new model of integration needs to be articulated to capture the experiences of black Americans.

Kymlicka therefore takes his theory to be of little use in explicating the disadvantage and of addressing the injustices black Americans face. But in admitting this Kymlicka's view

¹⁴ Kymlicka, *Multicultural Citizenship*, p. 24.

remains unclear. We don't know whether this concession means that the right to determine the character of the collective identity through culturally defined protections are inappropriate or whether such rights are inefficacious in bringing about or promoting access to dominant institutions. Perhaps Kymlicka's view would be clearer if he had critically considered whether the protections he considered, e.g. polyethnic rights or special representation rights, have an effect on the disadvantages black Americans experience. But Kymlicka does not and so we are left thinking that black Americans strike out on both accounts on his theory.

II.

But this analysis seems mistaken. One problem lies with the ascription conditions for the typology. For instance, where he excludes black Americans on the grounds that they do not want self-government, Kymlicka ignores the fact that separation and nationalism have been defining features of African-American political thought.¹⁵ Nor does he take seriously enough the separate status that black Americans had as an instantiation of his view. Kymlicka attempts to deflate the status of their self-government claiming that they were forced into such a position, but other collectives, such as indigenous groups who have similarly been refused entrance into mainstream institutions, but enjoy self government status, remain unquestioned.

Second, Kymlicka's typology poorly reflects the communicative innovations that influence the discursive properties that the view requires. Kymlicka conceives of nations as collectives that occupy territorially contiguous spaces, but this picture is best suited for collections of individuals with fewer means of communication. In prior eras, living in close proximity to members of one's social group mattered because it ensured better access to co-members and to the events of one's community. In short, collective agency and coordination

¹⁵ See Boxill, Bernard (1992-1993). "Two traditions in African-American Philosophy." Philosophy Forum 24(1-3), 119-135.

problems were tractable with members in close quarters. But recent technology in the form of television, print media, cell phones, and the internet extend public spheres and members of collectives can organize and communicate effectively with fewer face to face meetings. What this suggests is that the conception of National groups sharing a contiguous space needs to be re-interpreted and needs re-mapping onto the various new and burgeoning discursive public spheres (churches, suburbs, exurbs, etc.). For if he had done so in the case of black Americans he would have found numerous and multiple sites, churches, blogospheres, barbershops and hair salons to name a few, where black Americans routinely meet and display the features of the kind of ongoing construction of a collective identity that Kymlicka's view seeks to capture.

Third, Kymlicka's emphasis on culture as a necessary and sufficient condition for inclusion in the theory is problematic. This worry cuts across both categories of the theory. Recall that Kymlicka granted self-government rights when a collective possess a collective identity, culturally defined. This idea seems important for the immigrant model though it voluntariness is prior in the analysis. As I presented earlier, according to Kymlicka, black-Americans fail to display culturally demarcated collective traits, but for those that are effectively 'American.' But one might resist such a claim. Kymlicka does not consider whether the various Africans tribes formed over time and via the institution of slavery, Jim Crow, and Christianity, forged a common and unique collective of individuals, an imagined community with an overlapping consensus of culturally demarcated traits and properties. To claim that black American culture is simply American culture fails to note the contributions of black Americans to American culture and reflects parochial conceptions of black American and American culture. It is also sociologically and anthropologically naïve. Now if Kymlicka means that American culture includes black American culture in the way that Canadian culture includes Quebecois and

Inuit culture, then the claim is trivially true. But I suspect that he means the reductionist claim that black Americans have no distinct culture and as I said, even a brief survey of black American history will locate the presence of a distinct culture. So where the culture seems to matter for the theory, black-Americans satisfy the ascriptions conditions.

But more importantly, the presence of culture is not morally relevant for the normative project. What matters from the moral point of view is a narrative identity with fixed points of historical significance and rituals that reflect the various values and goods of the collective. This is evidence that a group is autonomous. The fixed points of historical significance reflect the presence of a collective conception of the good that the collective seeks to enact, not a particular set of practices or performances.

Kymlicka's exclusion of black Americans is also equally problematic when we consider his typology of immigrant groups. Recall on this category, collectives that voluntarily immigrate to a new host country and seek to enter the host country's mainstream institutions are granted various rights. But black Americans did not voluntarily immigrate and have been denied access to mainstream institutions. Kymlicka is correct to note that black Americans (still) seek to integrate into dominant institutions even though they did not voluntarily immigrate to the New World. But Kymlicka locates the voluntaries of immigration in the wrong place and on mistaken grounds. What should matter from the moral point of view is that black-Americans have been invited to live as moral equals. Of course they were invited to the New World as chattel slavery, but one might infer, from the legal abolition of chattel slavery, that the US invited those black Africans on its soil to live as moral equals. The invitation of course, remains unfulfilled. But the normative point seems clear. The invitation of host states to would be-immigrants is what provides the justification for the rights Kymlicka offers, not the fact that immigrants

“volunteered” to leave or that they have demarcated collective cultural traits that are distinct from the dominant culture.

So I disagree with Kymlicka that black-Americans do not have the right kind of culturally demarcated traits and properties that make for inclusion into the theory. But I also deny that the possession of these properties should be necessary or sufficient for inclusion into the theory.

III.

Kymlicka’s attempt to capture the disadvantages facing black Americans is problematic and it suggests a more general weakness in his theory to capture ethnocultural and ethnoracial disadvantage. Where the theory is problematic is in its application and in some of its underlying assumptions. Kymlicka’s theory is not bogged down by idealizations and by creating a theory that applies to bare persons devoid of a history and tradition.

But while I think various underlying assumptions appear to be mistaken, they can be re-thought and perhaps put to use to aid those of us thinking about remedies for racial exclusion and subordination. Given the ways in which racial exclusion and subordination morph or intersect with other axes such a project would be welcomed. But if the reader is not convinced of these claims, one perhaps finds some amount of solace in knowing that Kymlicka’s discussion of the experiences of black Americans puts him well beyond the work of John Rawls.