

RACIAL LIBERALISM AS CONCEPTUAL RUIN

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## *Introduction*

What is the concept of ruin and how might it enrich political theory? This paper is a first draft in an answer to that question. The concept of ruin has been used increasingly by academics to give shape to and explain problems across the human sciences.<sup>1</sup> Uses in this context usually rely on the common sense definition of a ruin as a collapsed physical object.<sup>2</sup> Descriptive accounts of contemporary political phenomena such as “post-colonial ruins”<sup>3</sup> rely on metaphor to demonstrate the layered dimensions of historical change and interpretive tensions that emerge from different human agents acting on the physical or conceptual objects of ruin. For example, Russian ruins from the era of Catherine the Great anchor an historical account of governmental and sociological change.<sup>4</sup> A ruin is only a pile of rubble unless a human agent interprets it, taking into account the contours of what is apparent (as a fact) and what the appearance means, historically, politically, and otherwise.

Initially, I found the conceptual metaphor of “ruin” appealing for historically-bounded arguments in political theory because of the way it captures many tensions and problems of Constitutional interpretation since Reconstruction.<sup>5</sup> The legal structure of protected citizenship

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<sup>1</sup> Recent examples include uses in anthropology to discuss regime change and post-colonial government formations; in Art History, the concept of ruin has been used as a means to discuss the historical transformation of both the work of art and the transformation of the beholding subject.

<sup>2</sup> The word “ruin” contains a scattered set of objects and attitudes in its definitions. Its entry into the English language from Latin came by way of medieval Italian (ca. 1292, but perhaps as early as 1175). It seems to have entered Germanic languages at the same time via the Latin root and can therefore support reasonable inferences to the cross-lingual integrity of the concept in romance and Germanic languages. The general definition of the term according to the Oxford English Dictionary refers to the collapsed or degraded condition of an object such as a building. It was only later that moral failure or lapse was associated with the phrase “to be ruined” as a woman’s reputation.

<sup>3</sup> Ann Laura Stoler’s article “Imperial Debris: Reflections on Ruins and Ruination” (2008) examines the concept of ruins in the field of cultural anthropology. Her account begins with an examination of the logic of late US military interventions and older forms of European colonial rule.

<sup>4</sup> Schonle, Andreas, “Ruins and History.” *Slavic Review*, Winter 2006.

<sup>5</sup> By “legal structure of protect/marginalized citizenship” I refer to the new category of citizenship introduced in the Civil Rights Act of 1866 and later in the Fourteenth Amendment (along with the Thirteenth and Fifteenth) to the US Constitution.

with its inscriptions of equal membership, equal protection, its outline of citizenship's privileges and immunities, and the guarantees of due process are not fixed. These meanings have been contested across time and space, most obviously by political elites like Supreme Court Justices who interpret them, but also by grass roots political activists whose rhetoric of membership is couched in Constitutional claims.

The postbellum period (roughly 1865-1930) is remarkable for the kinds of Constitutional claims and interpretations that were made by marginalized groups. These included craftsmen who wished to retain (an economically defunct) self-determination in the price-setting process during Reconstruction, populist movements in the North and South in the Gilded Age, the mobilization of Black civil rights discourse, the labor movement, and the women's suffrage movement in the Progressive Era. These movements had their share of internal diversity and division. But one thing that they shared, with tragically few exceptions, was a basic embrace of the identity-based paradigm of difference.<sup>6</sup> This shared paradigm led groups to cross-cut one another in their quest for inclusion while simultaneously affirming a normalized vision of citizenship of white, male, and propertied. These movements were marked by an embrace of a classical liberal vision of legal membership even while the goals for which they advocated were aimed at ameliorating a situation of marginalization in everyday life. I argue that genesis of liberal identity-based movements for political and civil inclusion, was not in the Niagara Movement's "Declaration of Principles" or the sloganeering of urban union strikes or women's

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<sup>6</sup> Some of Iris Marion Young's language of difference is helpful from her *Justice and the Politics of Difference*. Young critiques some mid-twentieth century minority movements' identity-based platform and an interest-group style of protest that presupposed the primacy of one identity and advocated for resource redistribution without agitating for a greater share in institutional decision-making power that controlled resource redistribution. Young's ultimate argument is one for identity-pluralism. I argue that identity-based claims cannot but operate in cross-cutting and devise ways. That is, the priority of identity over situation (which necessarily includes cultural identity along with economic standing, gender, and geography) inherently cross-cuts groups that otherwise share a common condition of operating under processes of marginalization and exclusion.

marches, but in the Supreme Court's partitioning of cultural identity and socio-economic situation in its 1873 *Slaughterhouse Cases* decision. To the extent that these grass roots campaigns organized themselves within the dominant paradigm of identity-difference espoused by national elites, they conformed to a vision of citizenship that at once included universal claims and special protections of groups who were, by implication.

### ***Road Map***

The deep entrenchment of identity-based liberation has led to a situation of conceptual confusion in the post-civil rights era, creating a paradox between formal equality and structural difference. The language of difference as identity exemplifies a conceptual and interpretive ruin from another historical context. Racial liberalism is only one dimension of this ruined discourse, but is highly illustrative of today's conceptual quagmire surrounding 'mass incarceration.' This contemporary phenomenon frames the historical examination of racial liberalism.

In what follows, I explore the concept and use of *ruin* in political theory insofar as it names and interrogates a way of interpreting the world that has since become obsolete or opaque. I develop my argument through an historically-informed examination of racial liberalism.<sup>7</sup> It is a mode of thinking about marginalization and mobilization that was largely developed during the Progressive Era. It is a mode of conceptualizing membership that remains the dominant way of understanding difference as identity. A racial liberal vision of membership views the non-enforcement of Constitutional rights and duties as a ruined form of the normatively just, free, and equal polity that it inscribes. Racial liberals conceptualize racial difference as an arbitrary

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<sup>7</sup> Racial liberalism, briefly, is a political outlook that views salient political racial difference as separate from liberal forms of law and governance. It seeks formal, legal solutions to substantive political conflicts. For a longer discussion, Cf. Olson, J., *The Abolition of White Democracy*.

identity-based prejudice that has persisted over time. This way of thinking about membership and difference advocates first for formal recognition of right and equality and assumes substantive reform will follow.<sup>8</sup>

Racial liberalism once fostered an emancipatory movement, but today, its vision of racial difference and civic inclusion has become defunct. Far from blaming activists who adopted this paradigm for failing to see its limits, I argue that racial liberal platforms achieved revolutionary and palpable ends in a contingent period of history. Below, I briefly sketch out this period, wherein racial liberal activists advocated for racial mobilization because they were battling ascriptive race-based forms of oppression. These forms of oppression were often brutal and threaten to reduce all Black life to bare life. As time progressed, the results of liberal mobilization did foster economic, geographic, and cultural development within the Black American community. During the civil rights movement and the formal triumph of procedural justice and the embrace of colorblind political discourse, not only did racial liberal discourse lose its primary referent of exclusion in the law, but economic and situational differences within the Black community transcended race as a unifying identity to combat marginalization.

The double blind structure of racial liberal discourse, appeal to special protection and appeal for its erasure in order merge with ‘universal’ citizenship, facilitated the ruin of an identity-based mode of understanding difference. This phenomenon is historical and two-fold, which I will only be able to gesture towards in such a short space. First, the racial liberal conception of difference embraced the appearance of difference (i.e. its identity) while ignoring the processes and situations (which are shared by many marginalized groups) that gave rise to this identity’s appearance. Second, racial liberalism—like all liberal identity-based theories of

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<sup>8</sup> Cf. Marx, “On the Jewish Question.”

difference—simultaneously presupposes racial difference *and* advocates for its erasure in law and political discourse. In the post-civil rights context where even the modest Civil Rights Act of 1964 has been gutted, racist and race-based conceptions of difference are anathema in mainstream political discourse, even where blatant racial disparities exist.<sup>9</sup> This puts contemporary theorists and activists in a conceptual bind.

This earlier period in history helped inform the political and tactical outlook of later protest movements up to the present. This inquiry is framed by one of today's most pressing, and yet under-theorized, questions in political theory. Identity-based theories of difference is itself an interpretive ruin, one that is especially disastrous when thinking about contemporary marginalization and exclusion in the era of mass criminality. The ways contemporary scholars tend to think about the mass punishment phenomenon is often summarized in one word: 'racialized.' Racial disparity is evident even while criminal punishment cannot be seen as an ascriptive marginalization as race was in an earlier period. It is clear that Black (male) identity has been conflated with criminality on many valences of American political discourse. Perpetuating this conflation in social and political theory only prolongs an outdated mode of understanding situated difference, even its racial dimensions. This paper drops in at several moments in US history where racial liberalism was used in order to examine how it was used and how it was perceived by political agents. Thus, I am not making a causal argument, but articulating a description of ideological use and transformation.

First, I argue that one can find the legal and conceptual genesis of racial liberalism in the Court majority of the *Slaughterhouse Cases* of 1873. Later, this basic conceptual structure of marginalization, special protection, and identity-difference was taken up as a tool for racial

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<sup>9</sup> *Shelby County v. Holder* 57 US \_\_ (2013)

mobilization in the early twentieth century in the fight to cloak bare Black life with the basic protection of due process. Half a century later in the midst of the civil rights movement, race-based claims of social and political inclusion were still the order of the day. However, leaders like Martin Luther King Jr. in his *Where Do We Go from Here* began to see that identity-based claims did not translate directly to marginal emancipation, particularly among urban working class Blacks. Finally, I review the work of Michael Fortner and others who outline the transcendence of situational differences in the urban post-industrial Black community that triggered a breakdown of race-based solidarity in the 1970s.

### ***The Genesis of Racial Liberalism in American Constitutionalism***

There are two competing strains of Constitutional interpretation that emerged out of the landmark *Slaughterhouse Cases*: one read the Reconstruction Amendments as constituting a new ‘Magna Carta’ and the other, conservative interpretation, viewed them as mere correctives on the existing Constitution. The implications of this interpretive battle waged among political elites in 1873 cannot be overstated. The Reconstruction Amendments were read (by the minority of the decision) to apply to all citizens who were marginalized economically, racially, or otherwise. This reading facilitates a questioning of the ‘naturalness’ of the right to unlimited property accumulation and the normalization of the citizen as white male, and property-holding. On the other hand, the majority decision espoused a theory of political marginalization that was identity-, rather than situationally-, based. It held that the application of the Reconstruction Amendments protected certain at-risk populations, namely Black Americans. It held that marginalization was a function of one’s identity, not one’s situation. The decision reflects recognition of the political dimension of race while denying the political (and therefore contestable) character of the processes that constitute marginality as a situation, including race.

Constitutional liberalism is capacious enough to include ‘classical republicanism’ expounded by Blackstone in his *Commentaries on the Laws of England*, which did not see positive law as necessarily circumscribing personal liberty. Conversely, classical liberalism<sup>10</sup> was highly skeptical of the emancipatory qualities of positive law. These two ways of considering the law share a genealogy, but they collided with another over the question of the Fourteenth Amendment’s effect on the structure of American citizenship and the Constitution as a whole in *The Slaughterhouse Cases* 83 US 36 (1873). This Court decision is also the genesis of racial liberalism as a schism in Constitutional theology in the United States, a schism which itself generated one of the most powerful ways of thinking about and mobilizing for the legal equality of groups based on identity rather than situation.

After a Republican ‘carpet bagger’ legislature in Louisiana passed a law requiring all the slaughtering around New Orleans to be conducted in a central location run by a private corporation, several effected butchers hired John A. Campbell, a former Supreme Court Justice. Campbell argued that the butcher’s Thirteenth and Fourteenth Amendment rights had been violated because they had been subjected to involuntary servitude and stripped of their right to honest employment unless they consented to use the new private slaughtering facilities for a fee. The Court decided against the butchers in a decision 5-4. Justice Miller, who issued the Court’s opinion, made several legal arguments that gave shape to the interpretation of the Fourteenth Amendment.

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<sup>10</sup> The stream that shaped and conditioned the interpretive landscape of legal, political, and economic conflicts in the Supreme Court was the political philosophy of constitutional liberalism. The foundations of classical liberalism, found in John Locke’s theory of property, natural law, positive law, and the legal locus of sovereignty in the *Second Discourse*.



First, Miller asserts that the Louisiana legislature operated well within its police powers in creating a central location for area butchers to slaughter their animals. The butcher's new requisite to travel with his stock and pay 'a reasonable compensation' for the use of the facility was not seen as a violation of his Constitutional right to seek property and enjoy equal protection under the laws. Miller was anxious to highlight that a private corporation will have a greater interest in effecting the state's new police regulations than the 'ordinary efforts of the officers of the law.'

Second, the Court offered a strict construction of the Thirteenth and Fourteenth Amendments. The Reconstruction Amendments, Miller asserts, cannot be understood out of context of the Civil War. He argues that these amendments were clearly intended to protect the recently liberated African slave class and affirm their rights as United States citizens. The 'unity of purpose' of the Reconstruction Amendments, i.e. the freedom of slaves, that Miller identifies attaches the 'true meaning' of the Thirteenth and Fourteenth Amendments to the protection of a racial group. These Amendments, he argues, ought to be seen as additional laws in the Constitution, not transformative ones. One cannot fully appreciate the meaning of this interpretation without his subsequent partitioning of state and federal citizenship.

Miller asserts that the Fourteenth Amendment partitions state and federal citizenship, because it makes reference to both state and national membership in one clause, where the next phrase only requires that federal citizenship not be abridged. This, he argues, is meant to uphold the traditional separation between state and national governments, giving further proof that it is within the states' police powers to abridge rights for the common benefit. In order for it to be the case that the Thirteenth and Fourteenth Amendments apply to all persons over and against state governments, the entire Constitution must be reread in a radical departure from its historical

protections, namely that citizens of a free government enjoy protection by the government, the right to possess and acquire property, and to pursue happiness and safety. Miller dismisses out of hand the possibility that this was the intent of Congress. Therefore, privileges and immunities are largely the purview of state governments, and so the Court has not been presented with a case that requires it to define the privileges and immunities of US citizens after all.

Having briefly summarized the major contours of the Court's opinion, we are now in a position to review the structure of citizenship castes introduced by the *Slaughterhouse Cases* opinion, a political artifact that remains with us today. Consider the Court's definition of the intended focus of the Reconstruction Amendments. It held that the purpose of those Amendments related exclusively to the protection of Black citizens. But by dismissing the plaintiffs' claims because they were not members of the identity group intended for protection, the Court effectively divorced the social marker of *race* from the processes that fuel the engines of racial oppression, including economic exploitation. Thus, race and a racial caste in need of special protections by the federal government, are introduced as free floating entities.

Miller's reading of the Reconstruction Amendments as *additional* or *special* protections rather than *transformative* provisions also inaugurates a curious tension between all citizens' natural rights enumerated in the Constitution and the mandate that Blacks' citizenship rights also be upheld. That is to say, Miller reads the Fourteenth Amendment as a positive law where the Bill of Rights (presumably covering all citizens, including the newly enfranchised Blacks) are treated as man's natural rights. Miller's opinion pits not just positive against natural law, but in his move to isolate Black Americans as the 'intended' group for equal protection, groups who appeal to its promise of equal protection are effectively exceptionalized, as needing to appeal for *special* means to enforce their equality.

As Justice Field mentions in his dissent, it is not that the Fourteenth Amendment confers new privileges or immunities upon citizens, but rather that it assumes those rights to be universally held and protected against the proclivities of state governments. The structure of the Reconstruction Amendments were not positive, and therefore provisional, they were instead read as checks on arbitrary state power that attempted to treat any citizen as subject to provisional rights and duties. Here, Field employs a classical republican schema to his legal reasoning, where Miller had used a classical liberal conception of liberty<sup>11</sup>.

These two conceptions of citizenship—universal citizenship as being enshrined in natural law and special citizenship elaborated as positive law—cannot but induce a legal and political contest over the nature of equality, liberty, and the nature of membership itself. The Court majority implied in the *Slaughterhouse Cases* that the Fourteenth Amendment applies to a special body of citizens rather than a restriction of the processes of governmental power. Governmental and corporatist actions that carve up and circumscribe membership are normalized in Miller’s schema of citizenship, while similarly situated groups (like laboring white men and Black men) are arbitrarily separated from one another, and Blacks made the exceptional objects of civic membership. The effect of this partition resolves none of its internal inconsistency and attempts to make both patterns permanent. Far from ensuring Black equality before the law, Miller’s opinion codifies the exceptionality of Blackness by isolating its appearance (qua race) from its causes (political and economic exploitation). Justice Bradley’s dissent elaborates just this point, that the Reconstruction Amendments were explicitly introduced to the effect of articulating a new Constitution, not merely a few additions to the old one. Hence, the recognition

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<sup>11</sup> Justice Miller’s liberalism is classical in the legal-constitutional theory that all governmental “positive” laws diminish personal liberty. But his opinion to uphold the state-sanctioned slaughterhouse monopoly rejects the economic tenets of classical liberalism (cf. Adam Smith).

of racial (or, any identity-based) difference while at the same time ignoring the processes that give rise to politically salient categories of difference, upholds two formulations of citizenship at the same time.

### ***The Emancipatory Moment: from Abstract Constitutionalism to the Racial Liberal Turn***

However salient other situational markers like regional context, (relative) class position, and gender<sup>12</sup>, mainstream Black liberation platforms from the Niagara Movement to the National Association for the Advancement of Colored People's (NAACP) Anti-Lynching campaign to the early civil rights movement in the 1950s emphasized the urgency of mobilizing as a race. By 1905 W.E.B. Du Bois had voiced his opposition and criticism of Booker T. Washington's Atlanta Compromise that advocated for Black America's apolitical development in the post-bellum era. Washington's approach had been one of the primary subjects of Du Bois' 1903 *Souls of Black Folk*. Among the most pressing of the two leaders' differences was the priority Du Bois and his ilk placed on the enforcement and realization of Constitutional principles in the everyday lives of Blacks. The primacy of political activism in the Black community was only one strain of internal strata.

Abstract Constitutional language in the early twentieth century gave way to a more pointed movement to uphold Black Americans' due process rights as Black activists came to focus more explicitly on the lynching epidemic. The "Niagara Declaration of Principles," written by Du Bois and William Monroe Trotter frames Black emancipation as legally and constitutionally inscribed, but unrealized in practice.<sup>13</sup> What could not be enforced by robust

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<sup>12</sup> Gender was virtually ignored in the main stream Black civil rights movements up through King's Southern Christian Leadership Conference. One notable exception is Du Bois, whose personal support was also minimized because of pragmatic concerns.

<sup>13</sup> <http://scua.library.umass.edu/collections/etext/dubois/niagara.pdf>

government policy might be achieved through hospitable and complementary direct action. It is striking how similar the aims and formulations that came out of the Niagara Movement are to the civil rights movement fifty years later. The NAACP was one of the most important outgrowths of the increasing political lynching in the Black community. Its initial platform was populated by a moderate liberals (with the exception of Du Bois) beginning in 1909, but the liberal platform was still one of many political alternatives for Black emancipation. Public law scholar Megan Francis charts the organizational path of the NAACP's anti-lynching campaign through the Progressive Era, documenting its failure time and again to mount sufficient force in the guise of interest group lobbying to pass legislation outlawing lynch law.<sup>14</sup> Francis documents the contingency that defined the group's transformation from its public interest advocacy platform to the development of litigation tactics in the quest Constitutional protection for Black criminal defendants in the South.

Racial liberal visions of minority protection coincided with a federal government eager to unify the meaning and process of the rule-of-law throughout the nation. The event that sparked the NAACP's narrow emphasis on procedurally-minded litigation occurred in October of 1919, when one of the bloodiest race riots during the Red Summer of 1919 occurred in Elaine, Arkansas. A white posse fired on a group of Black sharecroppers meeting with a lawyer and a local union to sue the local planters for back pay. Like other race riots in the post-WWI context, what made this spate of white racial violence unique was the armed Black self-defense in the initial conflict. In the ensuing days, a white mob killed over 200 Black citizens. In the aftermath of the Elaine race riot, 12 Black men were put on trial for the death of a white railroad employee.

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<sup>14</sup> Cf. Francis, M., *Civil Rights and the Making of the Modern American State*.

The trial was mob-dominated and the juries<sup>15</sup> decided the verdict in under five minutes. Initially, the NAACP's Walter White led investigations of the riot and the puppet court in Helena County, Arkansas whose leadership all but promised that the defendants would be found guilty.<sup>16</sup> Eventually, as Francis details, the NAACP created its Legal Defense Fund and appealed the death sentences of the accused to the Supreme Court that, in 1923, resuscitated a substantive reading of due process rights.<sup>17</sup> The political contingencies that marked the NAACP's repeated attempts and failures to push Congress for anti-lynching legislation put activists in the position of appealing to the judiciary as the last resort for government intervention on behalf of Black citizens. Not only did this entrench the Court's overarching view of race and citizenship, but it also created a new path of mobilization and activism that would appeal to this basic framework again and again. Thus, political claims couched in abstract constitutional language that challenged entrenched liberal formulations applied to 'the problem of the color line' gave way to the contingent institutional collision between the NAACP and the Supreme Court, facilitating a decisive racial liberal turn in Black emancipation.

Black activists who were in a position to speak publically and mobilize political campaigns were often wealthier and usually liberals, and so it makes sense that the picture of "universal" Black consciousness was historically reflective of a politically-dominant aspiring middle class. This much is apparent from the platform developed by the NAACP by racial liberals like White and, a generation later, Thurgood Marshall. Racial liberal Constitutional and legal arguments were often deployed in editorials published in the NAACP's *Crisis*. Later, one

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<sup>15</sup> Two trials were held; one for six defendants and another for the remainder.

<sup>16</sup> The Committee of Seven, a collection local prominent whites appointed by the Arkansas governor made public statements to this effect.

<sup>17</sup> As compared to the Court's earlier decision in the *Frank v. Magnum* in 1915. The Georgia trial for which Jewish factory superintendent stood charged for murder was mob dominated, resulting in his extrajudicial hanging.

of Marshall's editorials<sup>18</sup> viewed the Supreme Court's affirmation of procedural justice for Blacks as a foundational affirmation of Black citizenship and part of a larger litigation platform to secure civil rights. This fairly innocuous position, that basic due process and civil rights were necessary for political membership exemplifies racial liberalism. It twins formalized victories of racial inclusion and procedural justice with the achievement of substantive social justice. Far from viewing the identity-based interpretation of the Fourteenth Amendment as codifying two asymmetric and conflicting structures of citizenship, the nascent civil rights movement from *Moore v. Dempsey* to *Brown v. Board of Education* adhered to a political vision that viewed racial disparity the product solely of an aberrant Southern exception.

From bare life, subject to the whim of white mob violence and lynch law, the formal recognition of a Black right to substantive due process by the Supreme Court (and state courts) is a clear gain. But it is an historical bias to think that the racial liberal outlook adopted by the NAACP leadership was the only possible approach. Black insecurity to white mob violence, at first glance, clearly exemplifies the primacy of the *racial* aspect of oppressed citizenship.<sup>19</sup> But for as much as oppressive forces posed group-wide risk to the Black community, one cannot forget that the Elaine race riot began as a labor conflict and was compounded by extant fears of Black self-defense and the asymmetrical munitions belonging to whites in the Delta region. The voice of the laborers who sought to organize and sue for back pay was completely submerged as

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<sup>18</sup> These decisions [twelve of thirteen total cases successfully handled by the NAACP in the United States Supreme Court] have served as guide posts in a sustained fight for full citizenship rights for Negroes. They have broadened the scope of protection guaranteed by the Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution in the fields of the right to register to vote, equal justice before the law, Negroes on juries, segregation, and equal educational opportunities... One of the [first and] most far reaching decisions on the question of equal justice came in the 'Elaine, Arkansas, Cases.' *Moore v. Dempsey*, decided in February, 1923. These cases were the result of an armed clash at Elaine, Arkansas in October, 1919... This decision establishing the principle that a trial dominated by a mob is not due process of law has become the guide post and has replaced the Frank case. It has been cited numerous times in important cases, including the famous Scottsboro cases, and has outlawed trials by mob violence. (*The Crisis*. July, 1939.)

<sup>19</sup> In the red summer riots, particularly in places of widespread violence like Helena County, laboring and middle-class Blacks were killed indiscriminately.

the issue became focused on procedural justice for all Black citizens.<sup>20</sup> Even at this stage, where a racial liberal interpretation clearly effective substantive gains for all Black citizens, it would be foolish to trivialize situational differences within the community just as it would be to dismiss alternative emancipatory strategies.<sup>21</sup>

### ***The Limits of Racial Liberalism: the Civil Rights Movement and King's Where Do We Go from Here?***

The racial liberal solution to social inequality advocates for the increase of federal oversight in enforcing Constitutional rights, which entrenches the supremacy that federal citizenship had over state citizenship. It is a quintessentially legal, formalistic solution. From someone like Marshall's standpoint, the existing state of affairs of racial exclusion, economic isolation and exploitation, are seen as ruinous deviations from the inherent equality and liberty of all persons regardless of color, rather than the presupposed exclusions from a liberal constitutional democracy. The Constitution is not the problem, only those individuals and subordinate governments that will not follow its laws. This vision of difference and membership fails to question other kinds of oppression and marginalization that many Blacks faced other than, and in addition to, provincial regional codes like Jim Crow. It seems difficult from our current historical situation to disaggregate the arch-racial liberal perspective from an overarching, almost dogmatic commitment to federalist expansion. Ultimately these entwined political beliefs facilitated a double-blind spot: first, that Black difference was caused by

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<sup>20</sup> Many middle-class Blacks did not support laborers' unionizing activities, and they were particularly dismissive of armed self-defense in any context, again, with Du Bois as one important foil.

<sup>21</sup> The Progressive Farmers and Householders Union of America (PFHUA), as well as the integrated International Workers of the World (IWW) and American Communist Party demonstrate this. Most of the labor movement was staunchly racist, and most of the NAACP leadership was staunchly anti-labor. Du Bois split with the NAACP over tensions resulting from this basic fissure, along with his position over the use of violent self-defense.



provincial racism, and that Black difference was itself a unified experience that could be prioritized above other forms of marginalization affecting Black Americans.

This outlook is criticized heavily by political theorists like Joel Olson in *The Abolition of White Democracy*, where he argues that the political (and economic and cultural) hegemony of whiteness was only achievable through the marginalization of another group, Black Americans. Where Marshall and other racial liberals approached the realization of social equality from the standpoint of colored integration into dominant white society, Olson offers a contrasting theory. He argues that it is not Black society that needs to be protected or legally integrated as a special object or ward of government. Rather, the structure of citizenship needs to be reorganized, whiteness needs to be dismantled as a regulative construct of normalcy.<sup>22</sup> Martin Luther King Jr. also realized this in the midst of his political and social engagement. Twelve years after the Supreme Court issued its *Brown* decision, little felt change was evident in the lives of most Black school children.<sup>23</sup> The Watts riots in 1966 and King's own work in Chicago's ghettos pressed him to deal with the situational difference between northern (urban) Black communities and the southern (rural) experience.

Near the end of his life, King recognized the way that the civil rights movement had framed racial oppression as an exponent of Southern exceptionalism. King's *Where Do We Go from Here: Chaos or Community?* grapples with 'the negro dilemma' at the limit of American liberal discourse. Ultimately, King critiques earlier civil rights platforms and advocates for a 'radical restructuring' of America as the only way to realize an authentic democracy. *Where Do*

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<sup>22</sup> Naomi Murakawa has also recently critiqued racial liberalism in the guise of elite race liberals in the federal government, who framed Southern Jim Crow policies as exceptional while at the same time, (northern) practices of urban surveillance and law-and-order punishment were normalized and were declared race-neutral policies because they did not specifically target Blacks.

<sup>23</sup> This 'social policy' period in the Court's history has captivated public law scholars. It is now sufficiently treated as an aberration of American jurisprudence rather than a 'problem.'

*We Go from Here* was written in 1967 in a context where internal divisions in the civil rights movement were so profound they threatened to shatter any semblance of tactical and visionary unity. Black power, and to a lesser extent, Black separatism and Black supremacy, emerged as a frustrated reaction (in King's mind) to incremental legalistic victories<sup>24</sup> and economic tokenism resultant from a politically liberal and tactically litigious orientation by civil rights leaders. King's defense of nonviolent direct action was far from a defense of "a narrow, legalistic understanding of their [King and his coworkers'] work." Instead, the King of 1967 indicted white liberals' and the new Black middle-class's apathy, and articulated the basic tenets of a multi-racial poor people's movement.<sup>25</sup>

Part of King's disenchantment with a liberal program for emancipation was precisely because of its legalism. It may be that the 'lesson' of the civil rights movement's emphasis on litigation tactics was borne out historically, with the collective realization that legal proclamations do not translate to legislative and executive enforcement. It also reveals a keen recognition that what had been seen only as *patterns* of housing, educative, economic, and political oppression along race lines codified in provincial Jim Crow laws, were not the only causes, or even the most pernicious causes, of oppression. Racial difference was both a regional and a national experience, with situational variation that could not be essentialized to any singular dimension, legal, political, economic, Northern, Southern, rural, or urban.<sup>26,27</sup> But

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<sup>24</sup> "Despite mandates of law, equal employment still remains a distant dream. The legal structures have in practice have proved to be neither structures nor law. The sparse and insufficient collection of statues is not a structure; it is barely a naked framework. Legislation that is evaded, substantially nullified and unenforced is a mockery of law."

<sup>25</sup> "As we work to get rid of the economic strangulation that we face as a result of poverty, we must not overlook the fact that millions of Puerto Ricans, Mexican Americans, Indians and Appalachian whites are also poverty-stricken. Any serious war against poverty must of necessity include them," (Chapter 4, "The Dilemma of Negro Americans," *Where Do We Go from Here: Chaos or Community?*).

<sup>26</sup> Ibid. "Economic expansion cannot alone do the job of improving the employment situation of Negroes. It provides the base for improvement but other things much be constructed upon it..."

<sup>27</sup> Unfortunately, King was largely a uniform thinker in terms of gender, advocating for the assertion of Black manhood in such a way that subordinated the priority of women's emancipation.

neither could this marginalization be essentialized as a purely racial phenomenon; both forces were at work.

King came to appreciate that processes of oppression and segregation operate independently of the law, that laws may be reflective of those processes, and that they may exacerbate and entrench marginalizing mechanisms. King came to see racial oppression, in the last instance, as a national phenomenon located primarily in the economy and reinforced in the law on a provisional basis. King advocated for a basic restructuring of American government, including basic income provisions for all poor persons, the right to high quality housing, and the right to a job. He says,

So far, we have had constitutional backing for most of our demands for change, and this has made our work easier, since we could be sure of legal support from the federal courts. Now we are approaching areas where the voice of the Constitution is not clear. We have left the realm of constitutional rights and are entering the area of human rights. (King, *Where Do We Go from Here*)

To go beyond the Constitution does not mean to destroy it, but to reorganize its interpretation.

King upholds Paine's vision of American democracy as one that truly embodied the political promises of equality and liberty. It may also be more accurate to say that King's position, rather than 'going beyond' the Constitution, goes beyond a liberal-legalist interpretation of it that became entrenched in the late nineteenth and early twentieth centuries, returning to the abstract Constitutionalism in the "Declaration of Principles." King's statement recalls Justice Field's reading of the Constitution: that the Reconstruction Amendments articulated an entirely new political compact.

It is important to note that King's newfound appreciation for the situational differences within the Black community did not lead him to suggest that race was the wrong banner under which to rally, so to speak. He argued for both situational solidarity among poor people of all

racism as well as a unified Black consciousness in spite of situational diversity. Space constraints prevent a full treatment of King's political thought, but it would be a mistake to say that it represents a transcendence, rather than the limit, of liberal thought.<sup>28</sup>

### ***Race as Ruin: Situation Transcends Identity***

The statutory and legal victories for racial equality on paper reflected an American political world that was colorblind and free from ascriptive bigotry. Elite political discourse, too, had undergone a sea change: it was no longer politically salient or viable to mount conservative social campaigns using racist language.<sup>29</sup> Equally important, it was just as difficult to critique social, political, and economic forces of marginalization and oppression using identity-based categories of difference, such as race. As King stated, emancipation did not lie complete with formal promises and declarations, but in policy enforcement<sup>30</sup> and protection from incremental gutting processes of federalism.<sup>31</sup> Adherents to racial liberal discourse suddenly lacked a concrete referent to the "causes" of group oppression, and adversaries were quick to remind them of this fact. What remained, then, was a *racialized* conceptual and political idiom, where neither racial identity nor other situational markers were distinct from one another.

In this section, I summarize recent scholarly attempts to come to grips with the breakdown of race as a unifying category of difference and mobilization in the post-civil rights era. Second, I argue that this paradigm, marked by the double erasure of both race and situation

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<sup>28</sup> For as much as King recognized the source of 'the Negro dilemma' stemming from white America's moral and political ambiguity, his criticism of middle-class Blacks and white liberals remained in the personal, opposed to structural, register of social consciousness.

<sup>29</sup> Cf. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy."

<sup>30</sup> Cf. King: "Genuine integration will come when men are obedient to the unenforceable."

<sup>31</sup> Cf. Miller, L., *The Perils of Federalism*.

in our critical vocabulary, leads activists and scholars in the human sciences to talk about modern phenomena like mass punishment in an outdated and reifying idiom.

After the assassination of King, the severe destabilization of the civil rights movement, and the resurgence of conservatives in federal policy-making, rapid deindustrialization continued to ravage the most economically insecure populations. This was accompanied by an explosion in drug abuse and fear of crime across identity groups. Social conservatives mobilized a militant discourse of law and order, anti-crime, and anti-drug that was conspicuously located at the heart of the deindustrialized city. Liberals and other critics of law-and-order politics and its consequences (like mass punishment and surveillance) tend to focus on the racial disparities of policing and punishment. But in the end, this is a losing battle since criminal discourse is structured by deep-seated notions of personal responsibility and legal deviance, not ascription.

Michael Javen Fortner in the course of his analysis of the Rockefeller Drug Laws in New York, recounts how rising crime and drug use culminated in a breakdown of the language of racial solidarity. Fortner interrogates the role that Black middle-class residents in Harlem played in constructing narratives of criminality and drug abuse in the 1970s. He shows that the discourse developed in the crisis of rising drug abuse and crime in Harlem highlights a cultural and economic striation within the Black community. After years of increased robberies and burglaries, it was clear that Harlem was a community in distress. Drug abuse and criminality were seen by middle-class and older Blacks as a repudiation of that slight margin of personal freedom that had marked earlier generations of protest and moral appeal to the greater public. In a word, the internal consciousness of the Black community was split. Members who were middle class or identified with a liberal vision of racial difference emphasized the individuals

participating in an epidemic of deviance and ignored the possibility that this crisis was the result of a constellation of structural forces.

Lou Borders, whose clothing store had been burglarized twelve times in twenty years, remarked, 'That soul brother stuff—you can forget it.'<sup>32</sup>

Fortner suggests that these working- and business-owning Blacks crafted the language of tough punishment in their own communities, and that this vocabulary was picked up and co-opted by politicians. Fortner's disdain for the Black middle-class's abrogation of Black-on-Black crime and their emphasis on personal responsibility over structural explanations, ironically, leads him to blame Blacks for engineering the discourse of mass punishment politics. Fortner's argument implicitly assumes that liberal middle-class Blacks could see both individual deviance and structural cause, choosing the former. However, I argue that it is more compelling to interrogate the role that racial liberal ideology as the epicenter of the conceptual breakdown of race as a unifying concept to resist oppression. If one considers the ordering properties of an ideology, it seems unlikely that the layman racial liberal was conceptually equipped to recognize structures of oppression that were not ascriptive and blatantly racist, but rather the result of pernicious structures that racial difference articulates incompletely.

There is persistent structural difference within racial and ethnic identity groups. That does not mean that racial identities and communities have ceased to exist as meaningful categories of difference. Indeed, there is a deeply interactive effect. In many important ways, dominant social narratives, which scholars have reproduced, conflate the persistently poor urban Black male with Blackness as a racial category, precisely because race is a political construct designed to subordinate groups. This is obvious in Fortner's article, where he mentions that

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<sup>32</sup> Quoted from Fortner, M. "The Carceral State and the Crucible of Black Politics: An Urban History of the Rockefeller Drug Laws."

middle class Blacks saw criminals as individuals, not groups, even though the broader public and media came to see that “criminal” was code for “urban Black.”

In the post-civil rights era, the questions of Black marginality and mass punishment have often been conflated, where critics like Michelle Alexander and Andrew Dilts argue that mass incarceration is an ascriptive social exclusion based on racial identity. The overwhelming majority of scholarly treatments of American crime and punishment take the most striking feature of ‘mass incarceration’ for its cause. These well-meaning assessments myopically focus on the highly formalized institutional phenomena of mass incarceration (Alexander) and felon disenfranchisement (Dilts) and virtually exclude the context in which criminals emerge. These contexts are communities that are simultaneously over-surveilled and under-protected by police, welfare, economic and healthcare infrastructure. When they are discussed, these communities are often confined to the post-industrial urban center of Black (sometimes Latino) life.<sup>33</sup> Simultaneously, the most influential social theories of criminal exclusion overwhelmingly and uncritically embrace a theory of racial ascription as the necessary and sufficient cause in mass punishment. These scholars accept as an article of faith that mass exclusion occurs, despite the lack of any empirical legal or structural mechanism or even a salient discourse of racial difference, because of explicitly racist policies. The point is that we, as scholars, have to unearth not only racial difference and seek to eliminate difference from the standpoint of its appearance. We must formulate a theory of situated difference that emphasized the processes that create difference full stop.

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<sup>33</sup> Here, Olson’s bipolar theory of race [white: member :: Black: non-member] helps clarify the odd place Latinos have in many contemporary theories of mass punishment. Insofar as urban Latinos may be poor and excluded from property and political power, they are submerged under the “Black” category of non-member.

As Murakawa has pointed out,<sup>34</sup> these explanations rely on a sort of maniacal racist master-agent, or a ‘ghost in the machine.’ Critical appraisal of the structure of law and liberal identity-based ideologies reveals that identity-based theories of difference simultaneously presuppose essential (pre-political) racial difference and advocate to erase recognition of difference in legal and political institutions. The usual explanation, even for Murakawa, is that crime discourse emerged as a coded way to talk about urban Blackness and that this historical fact explains all the dimensions of modern social marginalization in the United States. The discursive development of law and order rhetoric and urban Black poverty is a well-documented historical fact. But the discourse surrounding crime does not reflect the totality of the phenomenon of mass marginalization and criminal exclusion. Empirically, Black Americans<sup>35</sup> do not make up a majority of those incarcerated,<sup>36</sup> under parole, or living in poverty<sup>37</sup> (which is the strongest of all situational marker of criminogenic conditions).<sup>38</sup> Most theories of marginalization and criminal exclusion also ignore the salience between poverty, drug use, and incarceration in rural districts like Appalachia, the Rio Grande Valley, the Rural South, and Indian Reservations.<sup>39</sup> If mass punishment really is ‘the new Jim Crow,’ why do its policies have such a hard time keeping poor drug addicts, women, whites, Indians, and Latinos out?

The most characteristic dimension of a phenomenon is not its cause but only our most familiar way of intuiting its appearance. Our theoretical failure to grapple with the multiple dimensions of and structural processes that undergird mass punishment is partly problem with

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<sup>34</sup> Murakawa, N., *The First Civil Right: How Liberals Built Prison America*. Chapter One.

<sup>35</sup> There are substantial differences in poverty rates between naturalized Blacks (~12%) and native-born Blacks (~25%). < Source: U. S. Census, Family Income Tables, <http://pubdb3.census.gov/macro/032006/faminc/toc.htm>.>

<sup>36</sup> <<http://www.bjs.gov/content/pub/pdf/pim09st.pdf>> Although native born Black Americans are incarcerated at the highest rate compared to other racial groups.

<sup>37</sup> [http://www.census.gov/newsroom/releases/archives/income\\_wealth/cb11-157.html](http://www.census.gov/newsroom/releases/archives/income_wealth/cb11-157.html)

<sup>38</sup> Cf. Bruce Western’s *Poverty Politics and Crime Control in Europe and America*.

<sup>39</sup> <http://www.prb.org/Publications/Articles/2009/ruralchildpoverty.aspx>



the geographic measurement units: the city versus the rural county versus the region. But more importantly, it is a symptom of a culturally-inherited way of thinking about marginality exclusively as an identity-based phenomenon. Theories that zero-in on racial disparities in punishment end up reifying the situational markers of poverty, post-industrial spaces, and police surveillance, submerging them under a single “master” identity, usually Blackness. How is this different from the conservative discourses they oppose?

Theories that reproduce outdated narratives of racial ascription in order to explain phenomena that must prioritize both the discursive conflation of Blackness with criminality and the conflicting empirical data that demands a cross-identity explanation of marginalization and exclusion. If one is forced to create an absolute scale of marginalization and insecurity, poor urban Blacks may very well populate the absolute bottom at higher rates than whites aggregated across the country. But first, we must be skeptical of the demand to create an absolute scale based on identity, rather than a theory of marginalization and exclusion that begins from the perspective of critiquing institutional, systemic processes that effect all of these groups (to different degrees) but in strikingly similar ways.

### *Conclusions*

The concept of ‘ruin’ is useful in political theory for a number of reasons. First, as the basic metaphoric usage suggests, ‘ruin’ forces the theorist to consider the mediatory role linguistic and interpretive structures play between (arti)facts<sup>40</sup> and events.<sup>41</sup> Second, ‘ruin’ invites us to examine historically-embedded narratives from our own embedded present moment fully aware that meaning, cause, and effect are highly contingent and mangled in something more like a

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<sup>40</sup> Such as legal documents, codes, and Constitutions, and public speech.

<sup>41</sup> Such as protest movements, interpretive battles, and social phenomena like ‘mass punishment’ and racialized, politicized spaces.

palimpsest than a linear causal chain. To be explicit, this paper is not premised on any causal narrative about the trajectory of racial liberal interpretive prisms or about the inherent success or failure of identity-based mobilization.<sup>42</sup> I have merely dropped in at various, paradigmatic, moments in the long trajectory of racial liberalism from the present insight that this way of conceptualizing marginalization and (criminal) exclusion is defunct and pernicious.

In the concluding portion of the analysis of “racial liberalism” I suggested that a situated theory of group difference is more viable than an outdated identity-based theory of difference, particularly in light of the contemporary problem of mass punishment and social marginalization. Space constraints limit a full development of a theory of situation. However, in future versions of this piece I plan to account for it. For now it is enough to suggest that situation does not reduce identity-markers, but that it prioritizes the role that power and policing structures exert on groups “from above” rather than on the relative exploitation among groups “from below.”

Finally, this brief exercise toward building and deploying the concept of ‘ruin’ suggests the political theorist’s historical placement (away from an event) may not be enough to shed outmoded frameworks of its interpretation. It is my hope that the concept of ruin might be applied to political outlooks the way some counterfactuals are posed as first pass tools of conceptual interrogation. It is only by questioning our interpretive visions that we can ask what dimensions of a phenomenon we are failing to see and conversely, which ones we are projecting.

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<sup>42</sup> I am not saying these claims are impossible, or even problematic, to make, but simply that that I am not making them.