## **W.E.B. Du Bois’s Constructivist Theory of Justice**

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Abstract:

This essay presents the normative foundation of W.E.B. Du Bois’s constructivist theory of justice in three steps. First, I show that for Du Bois the public sphere in Anglo-European modern states consists of a dialectical interplay between reasonable persons and illiberal rogues. Second, under these nonideal circumstances, the ideal of autonomy grounds reasonable persons’ deliberative openness, an attitude of public moral regard for others which is necessary for constructing the terms of political rule. Though deliberative openness is the essential vehicle of construction, reasonable persons only have a pragmatic political obligation to forge ties of deliberative reciprocity with likeminded persons whom they trust will listen and not harm them. Finally, I present Du Bois’s defense of black suffragists’ support of the 19th Amendment to illustrate pragmatic political obligation in action. I sketch successful democratic engagement that reconstitutes a nonideal public sphere.

Key words: justice, public reason, democratic theory, autonomy, race, gender, Rawls, Kant.

## Introduction.

Immanuel Kant and John Rawls are perhaps the best known exponents of political constructivism.[[1]](#footnote-1) Political constructivism rejects the view that there are moral facts based on natural law and, instead, argues that deliberative agents establish the terms of political rule using uncontroversial values that are “implicit” in public habits of reasoning, namely “public reason.”[[2]](#footnote-2) Political constructivism articulates the normative basis of political judgment that all persons can agree is objectively reasonable, despite intractable disagreement about conceptions of the good in a pluralistic modern society.[[3]](#footnote-3) It treats consensus about political rule as a solution to the problem of living together well. Because ordinary persons authorize their binding normative force, public reasons are epistemically accessible and motivating for all, and provide “an appropriate conception of objectivity.”[[4]](#footnote-4) If for whatever reason persons forego the requisite exercise of political judgment, then the public sphere degenerates and justice becomes impracticable. The key of political constructivism is, then, a conception of reasonable deliberative agency that is thin enough to appeal to the public’s sense of justice, but sufficiently robust to ground fair and mutually acceptable terms of political rule.

Notwithstanding its crucial function, political constructivism neglects to provide a plausible account of the nature and emergence of reasonable deliberative agency in nonideal circumstances. Rawls holds that “in normal social circumstances” or under “reasonable conditions” persons have an “effective desire to comply with existing rules and to give one another that to which they are entitled [as persons] of equal moral worth.”[[5]](#footnote-5) Like Rawls, Kant sketches a speculative theory of moral education, suggesting that the historical development of the human species has shaped a natural capacity for practical judgment. In essence, political constructivism *postulates* the practical efficacy of the public use of reason, as part of a philosophical anthropology about how persons can and do act on universalizable reasons. But such a postulate hardly seems tenable in our world, the “normal” social circumstances of which are dysfunctional and inegalitarian. One might dogmatically insist on the transcendental normativity of reason, which obtains regardless of whether or not any particular person recognizes it. Still the constructivist approach requires that the terms of political rule are epistemically accessible and motivating for all. Pointing to the history of racial terror in the U.S., even sympathetic critics of liberalism note that not only are existent institutional arrangements unjust, but the American people seldom meet a minimal standard of reasonable judgment, particularly with respect to racial matters. It is therefore unclear whence reasonable deliberative agency can emerge to indicate that the prospect of justice is not a lost cause for the American people.[[6]](#footnote-6)

All is not lost. Philosophers must, however, look elsewhere for a viable constructivist theory of justice. The Africana philosopher and social scientist W.E.B. Du Bois dedicates his scholarship to cultivating a sense of justice in the American people. During the Jim Crow era, Du Bois appealed to Americans’ inalienable—but underdeveloped—capacity for social cooperation. His writings underscore that we can together advance an ideal of justice to overcome systematic racist misrecognition and the dominance of white-controlled capital in the nonideal public sphere. Though he aims to *vindicate* the moral power of democratic reason in a modern society that is liberal in name only, rather than in actuality, the political constructivist tradition has completely ignored his work and that he shares a constructivist approach to theorizing justice. His writings offer a promising alternative for theorizing justice whose moral groundwork I lay here.[[7]](#footnote-7)

In this essay, I argue that Du Bois’s constructivist theory of justice provides a unique account of the ground and emergence of a reasonable deliberative agency. Given the size of the project I propose, I limit myself here to sketching the theoretical core of his constructivist approach. I focus, first, on the normative foundation of political judgment and, second, I outline the pragmatic obligations that it generates in nonideal circumstances. With respect to the foundation of political judgment, Du Bois argues that reasonable deliberative agents must assert a democratic ideal of autonomy, which reimagines the polity as a universal moral community of free and equal deliberative agents who co-legislate the binding terms of political power.[[8]](#footnote-8) Specifically, the democratic ideal of autonomy grounds the attitude of deliberative openness for reasonable persons. With respect to the pragmatic nature of political obligations, reasonable deliberative agents must establish deliberative reciprocity as a public value for illiberal rogues and institutions. The fewer ‘fixed’ points of consensus there are in the public sphere, the more onerous become the burdens of judgment for deliberative agents reasoning in good faith.[[9]](#footnote-9) For this reason, reasonable deliberative agents *pragmatically* exercise political power to build ties of deliberative reciprocity with *likeminded* persons whom they trust will listen and not harm them. Rather than assume it to be implicit in public political culture, Du Bois emphasizes that a public model of reasonable deliberative agency is a historical byproduct of democratic engagement that has successfully cultivated the public recognition of democratic ideals in an otherwise dysfunctional public sphere.

In Section I, I define reasonable deliberative agency and explain that for Du Bois the nonideal circumstances of justice in Anglo-European states consist of a dialectical interplay between the many illiberal rogues and the few reasonable deliberative agents. In Section II, I ground the attitude of deliberative openness that characterizes reasonable deliberative agency in the democratic ideal of autonomy. Rather than take it for granted, Du Bois holds that democratic agents struggle to introduce deliberative openness as a rationally-binding norm in a dysfunctional public sphere. Finally, in Section III, I defend a model of pragmatic political obligation that mitigates the risk vulnerable persons incur by entering a hostile public sphere. I take as a case study Du Bois’s discussion of the passage of the 19th Amendment in *Darkwater* to illustrate pragmatic political obligation in action and that it can reconstitute an exclusionary public political culture. Often the most vulnerable groups are put in a position to assert and model deliberative openness and thereby fashion a public standard of reasonableness. The irony is not lost on Du Bois that precisely those who are the least respected and most vulnerable often do the most—at greatest sacrifice—to protect the democratic ideals that makes justice possible.

I limit the scope of this essay to establishing the theoretical core of Du Bois’s constructivist approach, focusing on the democratic construction of the public moral authority of political judgment, which I argue rests on an ideal of autonomy. I address elsewhere the difficult problem of identifying the substantive content of political judgment, as it relates to economic redistribution, unions, and democratic control of the workplace.[[10]](#footnote-10)

## What is a Reasonable Deliberative Agent in our Peculiar Circumstances?

W.E.B. Du Bois does not propose principles of justice in a philosophical treatise. If one is inclined to be charitable to analytic political philosophers writing in the constructivist tradition, this is perhaps why they have ignored him. But his neglect to propose principles is instructive for reimagining a viable constructivist theory of justice in the first place. The advance of fair and reciprocal terms of political rule is contingent on how deliberative agents enter intersubjective relations in the public sphere. Du Bois’s constructivist theory of justice, in effect, relies on a conception of democratic reason and deliberative agencyto reform prevailing habits of judgment in a nonideal public sphere. To be sure, the normative structure of democratic reason is prescriptive: the reasons that deliberative agents offer should be intelligible, actionable, and universalizable. His theory of justice is therefore neither deflationary nor relativistic. Rather it supports reasons that all persons should adopt, once their use of reason is constrained by the public standard that political judgment ought to take.

The impetus of progress is, then, democratic engagement that upholds the normative authority of the people, rather than that of a philosophical treatise. The philosophical reconstruction of principles isnever the source of progress, even if it vindicates the absolute epistemic or moral worth of a standard of judgment. For better or for worse, philosophers do not have a special normative authority as deliberative agents, particularly in a nonideal public sphere. Du Bois concentrates on charting the emergence of a robust sense of justice, given flawed democratic institutions and the unequal social relations that they foster. He identifies the people’s habits of democratic reasoning with the advance—or regress—of justice.[[11]](#footnote-11)

The sense of justice is the basis of Du Bois’s constructivist theory of justice—first principles that might derive from a hypothetical decision procedure or thought experiment. And so, he holds that a moral conception of persons is essential to the idea of justice, for it explains the key features of reasonable deliberative agency and attaches those features to ordinary persons’ capacity for judgment. An essential feature of reasonable deliberative agency rests on the attitude of deliberative openness. In *The Souls of Black Folk*, he writes: “Honest and earnest criticism from those whose interests are most nearly touched,—criticism of writers by readers, of government by those governed, of leaders by those led,—this is the soul of democracy and the safeguard of modern society.”[[12]](#footnote-12) A reasonable deliberative agent adopts a public attitude of moral regard for others, such as a willingness to listen to others and to treat others as agents capable of acting for reasons. They identify the members of their political community as civic fellows who might share a practical interest in fair political rule for its own sake. Their social cooperation should, with time, cultivate a disposition to engage and advocate for each other. Reasonable deliberative agents aspire to actualize the free and equal standing of their civic fellows.

Unfortunately, with the exception of Du Bois, constructivists neglect to explain from whence such a robust sense of justice emerges in nonideal circumstances. Consider that how philosophers portray the public sphere frames how they understand the emergence and the exercise of reasonable deliberative agency. For example, Rawls asserts that his picture of reasonable persons is “elicited” from “our shared moral experience” in “normal social circumstances” or under “reasonable conditions.”[[13]](#footnote-13) For Rawls, deliberative agents develop reciprocal intersubjective relations—and are reasonable—*inasmuch as* that is what their public political culture is *already* like. The idea of the reasonable is therefore “implicit” in public political culture. In other words, the public use of reason presupposes that democratic practices have sufficiently refined habits of judgment to make justice practicable with the establishment of Anglo-European modern constitutional states. Onora O’Neill observes that on Rawls’s model of public reason “citizens [are] taken to share certain fundamental commitments. Their shared civic commitments to liberalism, to democracy and to the continued existence of their bounded society provide a basis for debating or justifying specific political arrangements.”[[14]](#footnote-14) So too Kant posits that though Anglo-European constitutional republics are not enlightened, they nonetheless partake of an age of enlightenment and at least partially exemplify the institutional conditions of public right.[[15]](#footnote-15) In a practical sense, the pure principles of practical reason shape social reality. That is not to say that modern states do not have a long way to go still, yet for the most part Kant and Rawls consider the public sphere to be bounded by a political culture that supports constitutional norms and the public values of freedom and equality for all.

Conversely, the public use of reason is meaningless in the context of pervasive institutional dysfunction, which Rawls and Kant equate with a failed state and the state of nature, respectively. Any attempt to assert public normative authority would fall outside the purview of a public sphere and would be a hapless exercise in a society collapsing into the state of nature.[[16]](#footnote-16) For the public use of reason requires, well, a public, and for that matter, a public sphere whose members and institutions are somewhat sensible in their recognitive practices. In the absence of a functional public sphere, it would be as if one asserts oneself into “the universal void”—to borrow a line from the Soviet poet Osip Mandelstam.[[17]](#footnote-17)

To put the point another way, the Rawlsian and Kantian variants of political constructivism assume that a reasonable, rather than a simple, pluralism defines Anglo-European constitutional states. Reasonable pluralism is the outcome of the public use of reason under institutional arrangements that protect deliberative reciprocity in the public sphere. A reasonable plurality might hold incompatible conceptions of the good, but nonetheless agree about constitutional essentials to motivate a shared practical interest in advancing the public good. An unreasonable people, however, constitute a simple plurality.[[18]](#footnote-18) A simple plurality rejects the “essential” features of a modern constitutional regime and lacks a practical interest in constraining their judgment and action on the basis of shareable reasons.

On my view, Du Bois theorizes the discursive advance of an ideal of justice inasmuch as the American people are largely a *simple plurality* and public institutions are *dysfunctional and inegalitarian.* Whether out of ill will, indifference, or ignorance, the American people have failed—and will likely continue to fail*—*in the public use of their reason, particularly with respect to racial matters.[[19]](#footnote-19) Yet he refuses to concede that democratic reason is impotent and justice is a lost cause for the American people. He maintains that an attitude of deliberative openness defines what it means to be a reasonable person with a robust sense of justice. The upshot is that he theorizes how the American people can discursively construct an ideal of justice inasmuch as they are largely illiberal rogues and have failed—and will likely continue to fail*—*in the public use of their reason. Following Kant and Rawls, constructivists agree that in the circumstances Du Bois confronts we cannot construct a viable ideal of justice. To put it bluntly, their writings suggest that what Du Bois proposes is impossible. In contrast, Du Bois submits that if justice is *ever* realizable in the U.S., then we must confront the polity for what it really is and figure out where to go from there.

Du Bois’s constructivist theory of justice, I submit, entails novel characterizations of the nature of (1) the public sphere and (2) political obligation to showcase the potential discursive advance of justice in profoundly nonideal polities such as the U.S. First, with respect to Du Bois’s account of the public sphere, at least twokinds of persons enter it: the reasonable deliberative agent and the illiberal rogue who constitutes a simple plurality. Though the illiberal rogue tends to control public conversation, Du Bois argues that reasonable persons still uphold deliberative reciprocity, *even when others do not and democratic institution appear to collapse into mere shams*.[[20]](#footnote-20) He demonstrates that the public use of reason can be practically effective, as the few reasonable deliberative agents assert their voices into “the universal void” of the many illiberal rogues, so to speak. He thereby rethinks what it means to make public use of reason under the peculiar conditions of Anglo-European political modernity. He demonstrates that in the formal public sphere there is a *dialectical interplay* *between the reasonable and the illiberal* (hereon referred to as DIRI), and it is on the basis of this interplay that the advance—or the regress—of deliberative reciprocity occurs.[[21]](#footnote-21)

Second, with respect to the nature of political obligation, in their treatment of failed or dysfunctional states, Kant and Rawls appeal to the so-called ‘natural’ duty of persons to exit the state of nature and to establish a just constitutional regime. However, they offer no account of the nature of political obligations in nonideal circumstances, in which one cannot trust one’s civic fellows to enact public joint commitments. On the one hand, Kant ignores the disastrous impact of the refusal of others to cooperate.[[22]](#footnote-22) On the other hand, Rawls paradoxically argues that political obligations are *voided* by others’ bad behavior. One only pursues justice, so long as others are prepared to do the same. Otherwise, one need not act to further “just institutional arrangements not yet established, at least when this [action invites] too much cost to ourselves.”[[23]](#footnote-23) Rawls continues, “for while we have a natural duty to bring about a great good, say if we can do so relatively easily, we are released from his duty when the cost to ourselves is considerable.”[[24]](#footnote-24) In stark contrast, Du Bois offers a unique conception of political obligation under DIRI circumstances, which identifies not reasonableness, but *risk* as a defining feature of the public sphere, at least for members of vulnerable groups. Reasonable deliberative agents are often forced to address would-be interlocuters who refuse to recognize their normative authority and might wish to destroy their physical bodies. As I explain below, he defends the *pragmatic* pursuit of deliberative openness and shows how such a reasonable attitude can still disrupt the longstanding poor use of reason by illiberal rogues.

One might object that the public political culture in the U.S. is not characterized by simple, rather than reasonable, pluralism. Though there have been serious problems, one might maintain that on the whole public institutions work as they should and that constitutional norms protect persons. Yet, if we assume with Du Bois, as I think we must, that American public political culture is, indeed, illiberal, particularly with respect to racial matters, then we need to reimagine the viable construction of the terms for political rule and political obligation under radically different circumstances than most philosophers are prepared to imagine.[[25]](#footnote-25) In line with the Africana philosophical tradition from Frederick Douglass to Charles Mills, Du Bois argues that the black historical perspective on modern American society—through which black and brown Americans perceive the U.S. “darkly, as through a veil”—constitutional norms remain, at best, *nominal* rather than a substantive practical force for immigrant, working poor, and black and brown communities.[[26]](#footnote-26) For Du Bois, we cannot take for granted that democratic institutions will work as they should for members of these vulnerable groups. To be sure, this is an empirical observation that he supports with rigorous social scientific and historical evidence.[[27]](#footnote-27) Yet a sound empirical appraisal of public political culture is crucial for a viable constructivist theory of justice precisely because a viable constructivist theory of justice is supposed to disrupt prevailing habits of judgment. Philosophers can then demonstrate that progress is possible in the circumstances in which we actually find ourselves. Yet philosophers downplay—to the point of willful denial—that the prevailing habits of judgment obstruct deliberative reciprocity in the public sphere.[[28]](#footnote-28)

## How to Reason with the Void: Grounding the Value of Deliberative Openness in a Dysfunctional Public Sphere

On the July 4th weekend in 2020, Vauhxx Booker, an African-American Human Rights Commissioner in Monroe County, Indiana was the victim of an attempted lynching at Lake Monroe, near Bloomington. On a radio program, he details the assault:

So, a friend and I went down to see if we could just talk to some of these folks and build a rapport and reason. The conversation was going well. Then this gentleman with the Confederate flag hat on […] joined. He quickly became belligerent. We felt a situation developing, so we just simply walked away.

A few moments later, as we were walking away, I heard footsteps quickly approaching. This man came at me and swung his fist at me. Another gentleman came. So, I was on the ground with them. A third gentleman came. We tussled for a moment. Two more men came. And from there, they were able to pin and drag my body to this tree and put their bodyweight on me.

[…] It was scary. […] People just started coming to my defense. They yelled at the man to let me go. They came forward as these men pushed them away or swatted at them.

There was a moment where I hear a lady yell out, “Don’t kill him!” And it’s a moment where you realize that you’re hearing your own potential death being narrated in front of you, and you have to be aware of George Floyd and how many other Black folks in our history have heard their executions spoken before them in real time.[[29]](#footnote-29)

Booker relates his initial desire to establish a “rapport” and to “reason” with the white men who in the course of their conversation became belligerent. Sensing their hostility, he attempted to walk away before he was attacked. The intervention of passersby likely prevented his murder. His initial attitude of deliberative openness and the violence that he experienced capture what I take to be the essential features of the way Du Bois rethinks democratic deliberation under DIRI. In this section, I explain why under these circumstances political judgment can rest on a democratic ideal of autonomy, which grounds the attitude of deliberative openness, and defend a pragmatic conception of political obligation for engaging hostile interlocuters.

But first a clarification is in order. In using the example above to frame my discussion, I do not mean to imply that for Du Bois all potential public encounters in the U.S. break out into racist violence. Nevertheless, it is important to appreciate if not the outright violence of American public life, then that its threat remains live for participants of color.[[30]](#footnote-30) Moreover, indifference and ignorance about racial matters are sufficient to exert the kind of illiberal force that Du Bois believed upheld the racial caste regime of the antebellum and the Jim Crow eras. In other words, there remains a strong tendency to condone racist violence and injustice among those who are not active participants in it.

Additionally, one might object that DIRI is not about democratic reasoning at all. Indeed, as in Booker’s case, we see the failure of any conversation to take place. Violence and its omnipresent threat are the death of reason. Yet confronting the prospective death of reason in our polity is what Du Bois asks of us. Robert Gooding-Williams and Danielle Allen assert that in a public sphere that expects deference to anti-black violence—or its threat—what is called for is nothing less than the “radical reconstruction of habits of citizenship.”[[31]](#footnote-31) Under reasonable pluralism, an attitude of deliberative openness is part of the unreflective acceptance of the practical and epistemic rules that frame democratic deliberation. The discursive ground rules are not themselves subject to public scrutiny. However, because Du Bois cannot take for granted the deliberative openness of others, actual democratic agents are tasked with asserting and modeling its value. Booker’s inclination to even *talk* to the group of white men showcases that he is, in fact, assuming the daunting task of reconstituting a profoundly nonideal public sphere. And yet we must ask with Du Bois, on what basis might one engage and try to reason with a void pregnant with violence?

For Du Bois, in DIRI circumstances, deliberative openness must be, to use Barbara Herman’s term, “didactic”: it is meant to instruct others about the value that should anchor complex moral deliberation and thereby qualify as a publicly shareable value that shapes the foundation of modern moral life.[[32]](#footnote-32) Though Herman’s concern is with whether or not morality has content, her overview of what makes moral deliberation didactic is helpful for plotting the radical reconstruction of a dysfunctional public sphere and inculcating rationally-binding content into the latter. She claims that we need “a grounding conception of value [that] could […] offer an explanation of the wrong- or right-making characteristics of action that renders moral requirements intelligible in a way that is then able to guide deliberation.”[[33]](#footnote-33) For democratic reason to reconstitute an existent order of values, a deliberative agent introduces a conception of value that makes intelligible the very idea of what democratic life, ideally, ought to be like. Such a grounding conception of value fashions an objective standard through which deliberative agents can distinguish right from wrong by using their own capacity for reason.

I submit that for Du Bois the value of deliberative openness shapes all other public values and commitments. Without it, the very prospect of justice is impossible. What it means to be a “person” or, for that matter, a “reasonable moral person” are constructs elicited and shaped by the public use of reason.[[34]](#footnote-34) It is the fundamental value based on which one enacts a sense of justice, defining the moral meaning of free and equal civic fellowship and the terms of political rule. Booker approaches the men prepared to explain what matters to him and why because deliberative openness *constitutes* the means and the final end of democratic life.[[35]](#footnote-35) His attitude is required to establish *any* terms of political rule. In the absence of a shared commitment to deliberative openness, the terms of political rule can have no public vehicle for its actualization.

But it is still unclear why such a shared practical commitment *is* the public vehicle for the actualization of justice, without further specification for how one ought to engage in democratic deliberation. The attitude of deliberative openness must offer a normative standard for political judgment, one that demonstrates to all what one ought to do and why being an illiberal rogue is bad. It must be a normative standard to which all persons can assent as deliberative agents. One pursues deliberative openness as a properly *public* value that is constrained by the universal form that political judgment ought to take. Deliberative openness is essential for agents who are tasked with sharing political power in a constitutional democracy.[[36]](#footnote-36) In a democracy, adjudicating political power is a burden we must share equally, appealing to the evaluative perspective and interests of all in our deliberations. Reasonable deliberative agency is therefore grounded in a robust *universal* ideal of deliberative autonomy that reconceives *all* persons as *prospective* ideal co-legislators in a *prospective* ideal public sphere. That is, the ideal of autonomy is a democratic ideal that gives all persons the moral standing to set the terms of political rule. In treating others as possessing the capacity to be an ideal co-legislator, a reasonable deliberative agent recognizes others as capable of acting on the basis of intelligible, actionable, and universalizable reasons. One can, then, assume the attitudinal stance that introduces deliberative reciprocity into a toxic public political culture, even against seemingly impossible odds.[[37]](#footnote-37) This attitude makes possible the pursuit of the final end of democratic public life, namely the ongoing democratic reconstruction of the terms of political rule that all can accept, which Du Bois identifies with the discursive advance of justice.

I affirm that grounding deliberative openness in the democratic ideal of autonomy illustrates at least three important features of Du Bois’s constructivist approach:

1. The democratic ideal of autonomy reconceives all persons as ideal co-legislators, regardless of whether or not they are full members of the formal public sphere. Political judgment must *achieve* a universal scope that challenges who is considered a full member of the public sphere as it now stands. One thereby not only acts as if illiberal rogues can in principle change their minds, however unlikely, but more importantly, one addresses excluded persons. Even if they are not respected members of the political community, which incidentally might include one’s own self, one offers reasons for those who are *not* there, pushing against the arbitrary faultlines delineating the formal public sphere. Du Bois often muses that we must vindicate the humanity of those who died at the hands of lynching bees or were enslaved on plantations and never had the chance to speak for themselves as democratic deliberative agents.[[38]](#footnote-38) One proposes reasons that “the crankiest, humblest, poorest, and blackest peoples” would find acceptable and fair.[[39]](#footnote-39) Furthermore, by underscoring the democratic ideal of autonomy, one does *not* seek to compromise with one’s current interlocuters, as much as one seeks to reconstitute the public sphere by introducing and foregrounding new voices who are prepared to assume the formidable obligations of public life. The democratic ideal of autonomy thus underscores the *systematic moral failure* of deliberative agents in a nonideal public sphere.

2. If one cannot take for granted one’s public standing, one is often forced to *withdraw* from the public sphere. In spite of his initial openness, Booker withdraws once he senses that his would-be interlocutors are resolved to become his would-be murderers. Yet an attitude of deliberative openness might still foster public encounters elsewhere in informal, or quasi-formal associations, which function as provisional extensions of the public sphere. After all, deliberative openness is an *attitude* based on a valuewhich one actively pursues. *In concreto* deliberative openness motivates actions that can integrate one’s life and self-conception. Of course, one should not settle for an imagined sense of personal power in lieu of meaningful political change. Rather, one asserts one’s self-conception as an effective democratic deliberative agent, whose normative authority is recognizable by likeminded others. Such persons intervened to save Booker’s life. Ergo Du Bois’s constructivist theory of justice begins with a positive *value*, not a first principle, inasmuch as it must not only provide a standard to constrain political judgment and action, but must actually motivate it too. To be sure, Du Bois considers the modern constitutional state to be essential for the advance of justice, but his conception of democratic practice fosters the ideal of autonomy well beyond the formal public sphere. For any dysfunctional public sphere will be poorly defined inasmuch as it lacks the institutional integrity that should sustain reciprocal relations among likeminded persons.[[40]](#footnote-40) Under DIRI circumstances, what constitutes the public use of reason—and the informal extension of the public sphere—has no clear boundaries.

What is more, often local moral communities protect and advance democratic ideals, despite a dysfunctional formal public sphere. In DIRI circumstances, Du Bois asserts that deliberative reciprocity often takes the form of racial solidarity among vulnerable racial groups in informal or quasi-formal associations in civil society.[[41]](#footnote-41) In fact, unjust racist coercion often inadvertently strengthens intragroup racial solidarity. Excluded persons come to share a sense of mutual respect, trust, and political destiny, and develop a local political culture manifest in a shared commitment to deliberative reciprocity in democratic deliberation.[[42]](#footnote-42) Thus, for Du Bois, victims of coercion must not resign themselves to political irrelevance. Indeed, theorizing justice under DIRI circumstances centers on just how one might assert political power on its basis in the context of one’s systematic exclusion.

3. Finally, under DIRI, there is an unresolvable conflict between the democratic ideal of autonomy as the discursive vehicle of justice and the unconditional moral value of one’s own humanity. Inasmuch as philosophers assume that reasonable pluralism frames the circumstances of justice, no such conflict exists: public institutions protect the equal moral worth of persons. But under DIRI the values conflict, often in jarring ways.[[43]](#footnote-43) For reasonable deliberative agents forgo personal security and contend with the prospect of self-sacrifice, if they attempt to pursue deliberative reciprocity when most others do not. That is, Booker bothered to engage in the first place, presumably after numerous unsuccessful or partially successful attempts at mediation as the black Human Rights Commissioner in Monroe County, Indiana. He confronts, indefinitely, a conflict between the preservation of his own life and that of democratic life. By hoping that the values might one day align, he gestures with Du Bois, “To a hope not hopeless but unhopeful.”[[44]](#footnote-44)

Du Bois maintains that one need not become a martyr for the prospect of democratic life. Though reasonable persons uphold deliberative reciprocity when others do not, one cannot expect of particular persons suicide by politics.[[45]](#footnote-45) So too Tommie Shelby suggests, “There are moments [on]e acquiesces to injustice to avoid serious physical harm, to protect loved ones, to live to fight another day, or to die a more meaningful death at a later time.”[[46]](#footnote-46) Or in Du Bois’s words:

I tried to say to the American Negro: during this time of frontal attack which you are making upon American and European prejudice, and with your unwavering statement and restatement of what is right and just, not only for us, but in the long run, for all men; during this time, there are certain things that we must do for your own survival and self-preservation. […] *Negroes have no Zion*. There is no place they can go today and not be subject to worse caste and greater disability from the dominant white imperialistic world than they suffer here today [in 1940].[[47]](#footnote-47)

That self-sacrifice often advances democratic ideals illustrates something important about democratic politics under DIRI that preoccupies and disturbs Du Bois. The democratic ideal of autonomy is neither reducible to nor grounded in the unconditional moral value of the humanity of particular deliberative agents.[[48]](#footnote-48) In practice, the pursuit of the former often involves the brutal destruction of the latter.[[49]](#footnote-49) Du Bois struggles to explain how much destruction a group can accept for the sake of the advance of a far-flung democratic ideal.[[50]](#footnote-50) This conflict of the value of persons and of democratic life persists so long as risk is a fixed norm in the political culture of a nonideal public sphere.[[51]](#footnote-51) To mitigate the conflict as best as one can, one should *pragmatically* experiment with public encounters *among those similarly committed to deliberative autonomy*, and work together with them to apply pressure on illiberal rogues and institutions. Ergo, “We the darker ones come even now not altogether empty-handed: there are today no truer exponents of the pure human spirit of the Declaration of Independence than the American Negroes.”[[52]](#footnote-52) Du Bois’s focus thus shifts to cultivating a sense of pragmatic political obligation among *moral communities* that value democratic life for its own sake. Under conditions of systematic exclusion, political solidarity often supports intra-racial and social solidarity for members of vulnerable groups. The more robust and extensive one’s social network in a local moral community, the less risk one incurs over time by entering a toxic and dysfunctional formal public sphere. One begins by building up a local moral community whose democratic practices increase both pressure on the polity-at-largeand the likelihood of one’s survival.

## Building Zion, Brick by Brick: On the Practical Success of Democratic Engagement

Du Bois’s approach to theorizing justice is not quite as formidable and daunting—or idiosyncratic—as it might appear prima facie. In charting the impact of DIRI on the emergence and exercise of reasonable deliberative agency, Du Bois surveys, in effect, the background conditions that must develop a functional public sphere, consistent with the requirement of the universal adoption of the democratic ideal of autonomy. Philosophers have sketched numerous philosophical histories of political modernity. For example, Habermas emphasizes public discussions in salons that flourished on the eve of the French Revolution. Rawls reflects on the historical origin of public reason in the European Reformation that bolstered religious pluralism and the spread of the liberty of conscience and the freedom of thought.[[53]](#footnote-53) I submit that Du Bois’s approach to theorizing justice complements these philosophical histories of political modernity. However, he centers the exclusion of vulnerable groups—and African and Afro-descendent peoples in particular—as *the* key obstacle to the rise of political modernity and to the practical success of democratic ideals in American public political culture:

The concrete test of the underlying principles of the great republic is the Negro question, and the spiritual survival of the freedmen’s souls is the travail of souls whose burden is almost beyond the measure of their strength, but who bear it in the name of a historical race, in the name of this the land of their fathers’ fathers, and in the name of human opportunity.[[54]](#footnote-54)

In what follows below I elaborate his novel conception of democratic development in nonideal circumstances. In centering the “Negro question,” I reflect with Du Bois on the peculiar nature of, first, the successful exercise of pragmatic political obligations and, second, moral literacy that he presupposes to challenge an exclusionary formal public sphere.

With respect to the first matter, I have argued that the ideal of autonomy acts as a grounding conception of public value in the absence of a functional and trustworthy public sphere. Persons, however, only carry the pragmatic political obligation to be deliberatively open to facilitate the discursive advance of justice. They act in concert through a network of intersubjective relations that uphold deliberative reciprocity, even in quasi-formal or informal associations into which they are often forced to withdraw. Perhaps the most difficult aspect of Du Bois’s pragmatic model of political obligation is the notion that the withdrawal of reasonable deliberative agents from public life does not amount to their exit. For Du Bois, that “Negroes have no Zion” cannot mean that black Americans have no public voice despite the deafening indifference and cruelty of the white-controlled polity. But what can it mean to protect “pragmatically” the democratic ideal of autonomy, when one is excluded—often forcibly—and must cultivate ties of deliberative reciprocity in one’s often neglected and derogated local moral community?[[55]](#footnote-55)

Du Bois’s defense of universal suffrage and the ratification of the 19th Amendment, which gave American women the right to vote in 1920, illuminates his pragmatic conception of political obligation in action, capturing the normative force of black deliberative agency under the conditions of systematic exclusion.[[56]](#footnote-56) He treads a fine line. On the one hand, he aims to vindicate the unappreciated sacrifices of black suffragists who facilitated the passage of the 19th Amendment; and he grants that winning the right to vote was a meaningful political victory for all American women. On the other hand, he condemns black suffragists’ cruel exclusion from the white-controlled women’s movement and the latter’s alliance with white supremacist ideology. Black suffragists’ persistent disenfranchisement after 1920, however, does not render their voices politically irrelevant or their organizing efforts a ‘failure.’ Rather, he highlights what historians and philosophers alike are still grappling with today: women remained at the heart of the black public sphere—before and after 1920—and their organizing helped spark the U.S. Civil Rights Movement.[[57]](#footnote-57)

The politics of race impacted the alliances that were forged and broken among suffragists. White suffragists resented the Reconstruction Amendments that gave black men the right to vote in the aftermath of the Civil War. They perceived black suffrage to be a threat to their claim to equal citizenship and disparaged black suffrage as “anti-woman.” They often invoked white supremacist themes that created a hostile—and dangerous—environment for black organizers.[[58]](#footnote-58) The NAACP Field Secretary James Weldon Johnson dubbed the year before the passage of the 19th Amendment the “Red Summer.” Violent white mobs pillaged black communities in Chicago, Washington, D.C., and Elaine, Arkansas. Many white women used their newfound political power elect to white supremacists who celebrated the scourge of lynching for protecting white womanhood against the mythical black rapist.[[59]](#footnote-59) In her original investigative reporting on lynching, Du Bois’s contemporary and occasional collaborator Ida B. Wells-Barnett submits that the tactic by white suffragists was an effective tool for amassing white political power.[[60]](#footnote-60)

In this toxic political scene, Du Bois centers the work of black suffragists and their sustained efforts at community organizing leading up to—and after—the passage of the 19th Amendment. To be sure, winning suffrage does not mean that the public sphere is a reliable mechanism of progress or that all persons will respect one another as autonomous deliberative agents. The granting of the ballot, however, does indicate that to some degree the unconditional value of deliberative openness has achieved public recognition as a substantive practical force.[[61]](#footnote-61) At the very least, it showcases that the discursive practices of a local moral community have successfully revised the public conception of who is considered a reasonable deliberative agent. However, for Du Bois, it was vital to underscore that racial restrictions continued to limit the ballot and the public moral perception of who is a credible deliberative agent.[[62]](#footnote-62) Yet he also points to their “revolutionary ideals” that continued to sustain black organizing behind the color line. And so, while he supported the passage of the 19th Amendment, he condemned the U.S. polity’s failure to heed the “revolutionary ideals” of black suffragists:

Today the dreams of the mothers are coming true. We still have our poverty […] but we have, too, a vast group of women of Negro blood who for strength of character, cleanness of soul, and unselfish devotion of purpose, is today easily the peer of any group of women in the civilized world. And more than that, in the great rank and file of our five million women we have the up-working of new and revolutionary ideals, which must have vast influence on the thought and action of this land. For this, their promise, and for their hard past, I honor the women of my race. Their beauty […] is perhaps more to me than to you, because I was born to its warm and subtle spell; but their worth is yours as well as mine.[[63]](#footnote-63)

Du Bois thus argues that even in their formal exclusion, black women remained critical, though often invisible and unrecognized, democratic agents. Underscoring their democratic agency and contributions to the informal and formal public sphere is a crucial element of Du Bois’s constructivist approach to justice. For it requires us to center their evaluative perspective in charting the radical reconstitution of American democracy.[[64]](#footnote-64)

Further, with respect to (2) the nature of moral literacy in nonideal circumstance, Du Bois’s unique defense of women’s suffrage illuminates his view of the nature of the moral insight among the excluded. Pace Rawls, moral knowledge of the ideal of autonomy can neither be taken for granted, nor, pace Kant, derived from the willings of a rational agent.[[65]](#footnote-65) Yet Du Bois takes the incompleteness of public moral knowledge to be anopportunity to demonstrate that moral literacy is both accessible and a laborious sociohistorical construction, often spearheaded by excluded groups—precisely those groups dismissed as morally ignorant and suspect.

Du Bois thus affirms women—black and nonblack—and people of color as self-authenticating sources of valid moral claims, when they are not formal members of the public sphere. He criticizes the disenfranchisement of women and citizens of color on the basis of their supposed “ignorance” as potential voters.[[66]](#footnote-66) In the early twentieth century, reactionary critics accused women and people of color of lackingthe requisite knowledge and experiences to participate in democratic politics—as if white men would best protect their interests. He objects, “it is simply the old cry of privilege, the old assumption that there are those in the world who know better what is best for others than those others know themselves, and who can be trusted to do this best.”[[67]](#footnote-67) Not only does he defend the moral literacy of the excluded as *manifest* in their inalienable capacity for deliberative openness, but he argues that inclusive democratic engagement leads to the enrichment of public moral knowledge about who is, and what it means to be, a reasonable moral person. Autonomous democratic deliberation is thus “didactic” because it challenges the received conception of who are *the people* with whom one should freely and publicly enter into intersubjective discursive relations.

Du Bois distinguishes knowledge in general (of letters, industry, and craftsmanship) from the moral literacy requisite for democratic engagement.[[68]](#footnote-68) Derrick Darby thus argues that Du Bois rejected a model of political rule by educated elites and notes that Du Bois views all persons as “sage souls.”[[69]](#footnote-69) Du Bois specifies that moral literacy has no empirical conditions whatsoever insofar as each person possesses the inalienable moral power necessary to be the master of their own lives, even if they or their forbearers were denied access to an education, private property, and meaningful employment opportunities. Moral literacy does not entail a technical know-how that builds a state as a shipwright builds a ship. One therefore cannot demand of the people technical expertise about statecraft and optimal bureaucratic administration as a condition of their political enfranchisement. Nor does moral literacy for democratic engagement assume expertise about arts and letters that elites possess by virtue of an excellent education. Du Bois is an ardent critic of poll taxes and literacy tests to restrict suffrage.[[70]](#footnote-70) Rather, he argues that all persons possess—and can refine—their moral power to find “solutions [for] political problems,” even if they lack formal “experience” in the practice of finding such solutions.[[71]](#footnote-71) “Liberty trains for liberty,” he writes, “Responsibility is the first step in responsibility.”[[72]](#footnote-72) That is, “practical liberty is a good school.”[[73]](#footnote-73) On the one hand, liberty is a “good school” in the sense that the only kind of “preparation” one needs is to uphold, in good faith, the attitude of deliberative openness and the ideal of autonomy on which it rests. On the other hand, liberty is a “good school” in the sense that it rebuffs the shortsightedness of illiberal rogues whose claim to power is contingent on the exclusion of others. Democratic politics should, instead, compel one to value the inalienable capacity of others to participate in setting the terms of political rule. Otherwise one cannot appeal to a democratic ideal to ground one’s claim to power. By refusing to grant credibility to another as a democratic agent, one loses credibility oneself. For democratic engagement necessitates challenging a received conception of who arethe people with whom one must enter into intersubjective discursive relations. One must, then, consistently *redefine* one’s political identity as a credible member of a moral community bound to constitutional norms.

Du Bois’s defense of the moral literacy of the excluded showcases the development of the moral integrity of the public sphere. An excluded group, he claims, “can educate, not only the individual unit, but generation after generation, until they [the people] accumulate vast stores of wisdom.”[[74]](#footnote-74) He captures the didactic function of autonomous democratic deliberation for transforming the moral character of the public sphere. In essence, the *form* of political judgment challenges prevailing poor habits of judgment to gradually extend a universal scope in the public sphere. Excluded groups are in a unique position to reflect on their situated knowledge and experiences to demonstrate the practical contradiction between social reality and the idea of a prospective universal moral community of ideal co-legislators. In doing so, democratic reason incorporates new “wisdom” that the formerly excluded share with the public, and specifies additional content and values to anchor democratic engagement. Though I cannot pursue the matter further here, I must stress that the attitude of deliberative openness mediates the introduction of all other rationally-binding commitments into the public sphere. It sets the practical problems that deliberation must solve. The important point for Du Bois is that through deliberative openness one interprets one’s own experiences—and the experience of others—from a shareable public standpoint whose form is universal but whose substantive content and commitments are open-ended.

## Conclusion

In this essay, I present the moral groundwork of Du Bois’s constructivist theory of justice and begin the formidable project by grounding a conception of reasonable moral persons and obligation in a dysfunctional public sphere. I submit that Du Bois identifies the nonideal public sphere in Anglo-European states as involving a dialectical interplay between reasonable deliberative agents and illiberal rogues. Three important implications follow: (1) Democratic engagement strives to create a universal moral community of ideal democratic co-legislators by treating all persons as potential reasonable deliberative agents, including illiberal rogues and those who are not formal members of the public sphere. (2) Coerced withdrawal from the public sphere does not signify that one becomes politically irrelevant. (3) The value of deliberative openness often conflicts with the value of humanity and as a result generates pragmatic political obligations. I then briefly turn to Du Bois’s defense of the 19th Amendment to illustrate the successful exercise of pragmatic political obligation and moral literacy. There is much more work to be done to present his constructivist theory of justice, but I lay its moral groundwork here with much excitement.

**Biographical Note**

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2. Rawls, John. “Justice as Fairness: Political not Metaphysical,” *Philosophy & Public Affairs* 14.3 (1985): 223-51; Rawls, John. “Themes in Kant’s Moral Philosophy,” in Eckart Foerster (ed.). *Kant’s Transcendental Deductions*. Stanford: Stanford University Press, 1989. p. 95. See also O’Neill, Onora. *Constructing Authorities: Reason, Politics, and Interpretation in Kant’s Philosophy*. New York: Cambridge University Press, 2015. Ch. 4. [↑](#footnote-ref-2)
3. O’Neill, *Constructing Authorities*, pp. 69-71. [↑](#footnote-ref-3)
4. Rawls, John. *Political Liberalism*. New York: Columbia University Press, 2005. p. 89. [↑](#footnote-ref-4)
5. Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1999. pp. 41-42, pp. 274-75; *Political Liberalism*, pp. xx-xxi. [↑](#footnote-ref-5)
6. The branch of Africana philosophy of Afro-pessimism posits that the prospect of racial justice in the U.S. is not viable in the light of anti-black state violence. For a philosophical treatment of the topic, see Gordon, Lewis R., et al. “Afro-pessimism,” *Contemporary Political Theory* 17 (2018): 105-37. [↑](#footnote-ref-6)
7. To my knowledge, there is no publication explaining Du Bois’s political constructivism. [↑](#footnote-ref-7)
8. Du Bois asserts “The advance of all depends increasingly on the advance of each.” In “The Development of a People,” in *The Problem of the Color Line at the Turn of the Twentieth Century*. Ed. Nahum Dimitri Chandler. New York: Fordham University Press, 2013. p. 244 [↑](#footnote-ref-8)
9. I follow Rawls’s definition of the burdens of judgment: “the hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life.” *Political Liberalism*, pp 55-56. [↑](#footnote-ref-9)
10. For further discussion, see Basevich, Elvira. “W.E.B. Du Bois’s Socialism: On the Social Epistemology of Democratic Reason,” *Philosophical Topics* (forthcoming). [↑](#footnote-ref-10)
11. Du Bois, W.E.B. *Darkwater*. Mineola: Dover, 1999. pp. 81-92. At best, philosophers can suggest decision-making procedures and standards of public judgment to guide the public use of reason or public moral perception. See also Basevich, Elvira. “The Function of the Philosopher and the Public in Du Bois’s Political Thought,” *Australasian Philosophical Review* 4.1 (2020): 63-68; Richardson, Henry S. *Articulating the Moral Community: Towards a Constructivist Ethical Pragmatism*. New York: Oxford University Press, 2018. pp. 41-48. [↑](#footnote-ref-11)
12. Du Bois, W.E.B. *The Souls of Black Folk*. New York: Oxford University Press, 2007. p. 36. [↑](#footnote-ref-12)
13. Rawls, “Themes in Kant’s Moral Philosophy,” pp. 98-99. [↑](#footnote-ref-13)
14. O’Neill, *Constructing Authorities*, p. 92. [↑](#footnote-ref-14)
15. Kant, Immanuel. “What is Enlightenment?” in *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. pp. 54-60. p. 58. [↑](#footnote-ref-15)
16. Kant argues that political judgment is *unintelligible* in a state of nature, which is devoid of justice. Only in a functional public sphere can persons have equal public standing, making modern politics possible and social interaction among strangers something other than the arbitrary assertion of private interests. [↑](#footnote-ref-16)
17. Mandelstam, Osip. “We Shall Meet Again in Petersburg,” in *Mandelstam: Selected Poems*. New York: Farrar, Straus, and Giroux, 1975. pp. 68-71. “Extinguish then our candles if you will / in the black velvet of the universal void. / Still the steep shoulders of blessed women sing / and you will not notice the nocturnal sun.” Mandelstam died in the winter of 1938 in a labor camp. [↑](#footnote-ref-17)
18. Rawls, *Political Liberalism*, p. xxx. [↑](#footnote-ref-18)
19. Du Bois, *Radical Reconstruction*, pp. 674-79. [↑](#footnote-ref-19)
20. For a compelling discussion of “sham” practical reasoning brought on by nonideal circumstances, see Schapiro, Tamar. “Compliance, Complicity, and the Nature of Nonideal Conditions,” *Journal of Philosophy* 10.7 (2003): 329-55. pp. 336-51. [↑](#footnote-ref-20)
21. To be clear: Du Bois countenances that America *is* a modern state, despite its treatment of communities of color. He tracks the social ontology of public reason to discern how it might become a formidable countervailing force in democratic politics: “The democracy that the white world seeks to defend does not exist.” The U.S. has a greater potential for democratic development than, say, present-day Russia or Indonesia, in which journalists and opposition leaders are imprisoned and subject to extra-judicial killings. The circumstances of DIRI are therefore distinction from outright illiberal states. Du Bios, *Dusk of Dawn* in *W.E.B. Du Bois*. New York: The Library of America, 1986. p. 677. [↑](#footnote-ref-21)
22. In *Perpetual Peace*, Kant asserts: “As hard as it may sound, the problem of setting up a state can be solved even by a nation of devils, so long as they possess understanding.” in *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991. p. 112. In contrast, highlighting this weakness in Kant’s model of reform, O’Neill submits that if institutions are “not knave-proof, it helps to not have too many knaves around.” *Towards Justice and Virtue*. Cambridge: Cambridge University Press, 1996. p. 187. [↑](#footnote-ref-22)
23. Colleen Murphy proposes a scheme of political obligations that arise in unstable circumstances. I am sympathetic to her position, but on my view DIRI circumstances *are* the circumstances of justice as such and not limited to periods of historical crisis:

[T]here are four circumstances of transitional justice. These are widely recognized as characteristic of paradigm transitional societies: pervasive structural inequality, normalized collective and political wrongdoing, serious existential uncertainty, and fundamental uncertainty about authority. Societies are transitional when these four circumstances of justice obtain. By contrast, the circumstances of justice obtaining in stable democracies are limited structural inequality, deviant individual and personal wrongdoing, minor existential uncertainty, and narrow uncertainty about authority.

In *The Conceptual Foundations of Transitional Justice*. New York: Cambridge University Press, 2017. p. 27, p. 41. [↑](#footnote-ref-23)
24. Rawls, *A Theory of Justice*, p. 100; Rawls, *Political Liberalism*, p. 129. [↑](#footnote-ref-24)
25. Others have attempted to explain that the idea of public reason is “realistic.” After all, pressing whether the prospect of justice is viable is not novel, but confronting the extent to which it is compromised from the black historical perspective is. Freeman, Samuel. “Public Reason and Political Justifications,” *Fordham Law Review* 72.5 (2004): 2021-72. p. 2071; Gilabert, Pablo. “Justice and Feasibility: A Dynamic Approach,” in M. Weber and K. Vallier (eds.) *Political Utopias: Contemporary Debates*. New York: Oxford University Press, 2012. pp. 95-126; Fung, Archon. “Deliberation Before the Revolution: Towards an Ethics of Deliberative Democracy in an Unjust World,” *Political Theory* 33.2 (2005): 397-419. [↑](#footnote-ref-25)
26. Du Bois, *Souls*, pp. 11-32; Gooding-Williams, Robert. *In the Shadow of Du Bois*. Cambridge: Harvard University Press, 2011. pp. 15-18; Mills, Charles. “W.E.B. Du Bois: Black Radical Liberal,” in Nick Bromell (ed.), *A Political Companion to W.E.B. Du Bois.* Lexington: University Press of Kentucky, 2018. pp. 19-56. [↑](#footnote-ref-26)
27. Du Bois views the triumph of the Southern “redemption” movement that dismantled the state constitutions and federal policies of Radical Reconstruction as deforming the moral character of the postbellum republic: “It was a triumph of men who in their effort to replace equality with caste and to build inordinate wealth on a foundation of abject poverty have succeeded in killing democracy, art, and religion.” *Black Reconstruction*. New York: The Free Press, 1992. p. 707. [↑](#footnote-ref-27)
28. The notion that the U.S. is ‘decently’ liberal is not taken seriously in Africana philosophy, marking a significant departure from mainstream analytic political philosophy, which Charles Mills aptly calls “white-stream” in *Black Rights/White Wrongs*. New York: Oxford University Press, 2017. pp. 206-9. [↑](#footnote-ref-28)
29. There are numerous illustrations of what I identify as DIRI circumstances in Du Bois’s writings. Perhaps best known, in *Souls*,Du Bois depicts the lynching of a fictional young black teacher, John Jones, by a white mob. I present here Vauhxx Booker’s first-person account of his ordeal to show the promise of Du Bois for theorizing justice today. Amy Goodman interviewed Booker for *DemocracyNow!* For a full transcript of the interview: <https://www.democracynow.org/2020/7/13/vauhxx_booker_attempted_lynching_indiana> [↑](#footnote-ref-29)
30. In the spirit of Du Bois’s historical sociology, the premise requires empirical confirmation. Philosophical analyses of democratic deliberation should reflect our actual circumstances, if philosophers are to be a helpful guide. In the protests against the police murder of George Floyd, protestors have been run over by vehicles, subject to beatings and arbitrary arrests, and lost body parts, especially eyes shot out by a teargas cannisters and rubber bullets. The de facto vulnerability of the black and brown communities to state and vigilante violence is the reason for the protests. [↑](#footnote-ref-30)
31. Gooding-Williams, *In the Shadow of Du Bois*, pp. 191-97; Allen, Danielle. *Talking to Strangers*. Chicago: University of Chicago Press, 2004. pp. 6-8. [↑](#footnote-ref-31)
32. Herman, *The Practice of Moral Judgment*, pp. 216-17. [↑](#footnote-ref-32)
33. ibid, p. 216. [↑](#footnote-ref-33)
34. Herman argues that intersubjective relations shape the “substantive core” of a person’s “conception of herself as a moral agent,” which involves learning “preprocedural” rules for picking out the moral salience of the social world. One acquires this skill through moral practice to discern, among other things, who has moral value and what sorts of activities inflict or repair moral injury. *Practices of Moral Judgment*. Cambridge: Harvard University Press, 1993. pp. 86-93 & *Moral Literacy*. Cambridge: Harvard University Press, 2007. pp. 130-53. See also Dean, Moyar. *Hegel’s Ethical Conscience*. New York: Oxford University Press, 2011. pp. 166-72; Moran, Kate. “Can Kant Have an Account of Moral Education?,” *Journal of Philosophy of Education* 43.4 (2009): 471-84. [↑](#footnote-ref-34)
35. “This [abolition] philosophy of freedom was a logical continuation of the freedom philosophy of the eighteenth century which insisted that Freedom was not an End but an indispensable means to the beginning of human progress and that democracy could function only after the dropping of feudal privileges, monopoly and chains.” Du Bois, *Black Reconstruction*, p. 20. [↑](#footnote-ref-35)
36. Under the circumstances of reasonable pluralism, public institutions, not persons, are primarily responsible for protecting the integrity of the public sphere public and are the subjects of justice. [↑](#footnote-ref-36)
37. Japa Pallikkathayil defends “responsiveness” in intractable disagreement, but does not address the deeper problem of grounding responsiveness as a conditional value in nonideal circumstances. See her “Disagreement and the Duties of Citizenship,” *American Philosophical Quarterly* 56.1 (2019): 71-82. [↑](#footnote-ref-37)
38. Democratic politics should “redeem” past losses. Cf. Frank Kirkland’s Du Boisian proposal to retrieve a “future-past unfulfilled.” The “future-past” Kirkland refers to is a vision of the future encapsulated by the dreams of black generations, a future that was supposed to—but never did— deliver the hopes of enslaved Africans. See his “Modernity and Intellectual Life in Black,” *The Philosophical Forum* 24.1-3 (1993): 136-65. pp. 159-60. See also Rogers, Melvin L. “The People, Rhetoric, and Affect: On the Political Force of Du Bois’s *The Souls of Black Folk*,” *American Political Science Review* 106.1 (2012): 188-203. [↑](#footnote-ref-38)
39. Du Bois, *Darkwater*, p. 88. [↑](#footnote-ref-39)
40. Political liberalism rejects a “perfectionist” commitment to public life as a moral virtue. Under DIRI circumstances the objection is moot: forgoing a public value as a moral virtue results in the death of public life. Hence it is vital for Du Bois to show that deliberative openness has value in nonideal circumstances—indeed, one that the informal public political culture of the segregated African-American community continued to protect on its own initiative. [↑](#footnote-ref-40)
41. Du Bois, *Souls*, chp. 10; Basevich, Elvira. “W.E.B. Du Bois’s Critique of American Democracy in the Jim Crow Era: On the Limitations of Rawls and Honneth,” *Journal of Political Philosophy* 27.3 (2019): 318-40. [↑](#footnote-ref-41)
42. From 1934 onward, Du Bois controversially favors black self-segregation to cultivate deliberative reciprocity among those he trusts and with whose political destiny he identifies: “If you do not wish to associate with me, I am more than willing to associate with myself. Indeed, I deem it an honor and a privilege to work with and for Negroes.” Du Bois, “Segregation in the North,” p. 1244; Du Bois, *Dusk of Dawn*, pp. 696-99. For further discussion, see Basevich, Elvira. “Self-Respect and Self-Segregation: A Du Boisian Challenge to Kant and Rawls,” *Social Theory & Practice* (2022): Forthcoming. [↑](#footnote-ref-42)
43. Rawls thus frees persons from political obligations in nonideal circumstances. Cf. Barbara Herman’s rather sanguine discussion of risk and sacrifice for the sake of historical progress in her *Moral Literacy*, pp. 147-48. [↑](#footnote-ref-43)
44. Du Bois, *Souls*, p. 141. [↑](#footnote-ref-44)
45. There is a parallel between the nature of political obligations under DIRI and what just war theory argues that soldiers and civilians should expect to suffer in wartime. [↑](#footnote-ref-45)
46. Shelby, Tommie. “The Ethics of Uncle Tom’s Children,” *Critical Inquiry* 38 (2012): 513-32. p. 517. [↑](#footnote-ref-46)
47. Du Bois, *Dusk of Dawn*, pp. 776-777. Emphasis added. [↑](#footnote-ref-47)
48. For further discussion in contemporary Kant scholarship about why the idea of public right (political autonomy) is not reducible to the moral law (moral autonomy), see Horn, Christoph. “Kant’s Political Philosophy as a Theory of Non-Ideal Normativity,” *Kant-Studien* 107.1 (2016): 89-110; Ripstein, Arthur. *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press, 2009. pp. 355-88. [↑](#footnote-ref-48)
49. Hence in his writings on the St. Domingue Revolution, slave rebellions, and the U.S. Civil War, Du Bois is ambivalent about the use of political violence as an instrument of historical progress, though he is painfully aware that “history is a slaughter-bench,” as Hegel puts it. [↑](#footnote-ref-49)
50. Likewise, historians debate whether the Warsaw Ghetto Uprising was a pointless bloodbath or a necessary assertion of self-respect by Polish Jews. Ultimately neither resistance nor resignation stopped Jews from inadvertently becoming the instruments of their own systematic destruction. [↑](#footnote-ref-50)
51. Du Bois, *John Brown*, pp. 223-34. [↑](#footnote-ref-51)
52. Du Bois, *Souls*, pp. 13-14. [↑](#footnote-ref-52)
53. Rawls, *Political Liberalism*, p. xxiv. [↑](#footnote-ref-53)
54. Du Bois, *Souls*, p. 14. [↑](#footnote-ref-54)
55. To make matters more difficult, for Du Bois, a history of racist coercion patterns the public moral perception of racial groups. Habits of judgment become bifurcated by the color line. The dialectical interplay between a reasonable and simple plurality is, then, mediated by ties of racial and social belonging. From the perspective of the black historical experience, public institutions are in a legitimation crisis that does not register as morally salient for white communities that benefit from white supremacy. From the perspective of the white-controlled polity, vulnerable groups are often viewed as neither intelligible nor credible. The phenomena make it difficult to discern how democratic engagement can lead to intergroup political solidarity. In other words, how can the discursive practices of a local moral community *succeed* in transforming the public sphere? [↑](#footnote-ref-55)
56. Du Bois, *Darkwater*, chp. 6. [↑](#footnote-ref-56)
57. See E.B. Higginbotham. *Righteous Discontent: The Women’s Movement in the Black Baptist Church, 1880-1920*. Cambridge: Harvard University Press, 1994; Morris, Aldon. *The Origins of the Civil Rights Movement: Black Communities Organizing for Change*. New York: Free Press, 1986. [↑](#footnote-ref-57)
58. Feimster, Crystal. *Southern Horrors: Women and the Politics of Rape and Lynching*. Cambridge: Harvard University Press, 2009. pp. 62-86. [↑](#footnote-ref-58)
59. Feimster, *Southern Horrors*, pp. 62-86. See also Giddings, Paula J. *When and Where I Enter: The Impact of Black Women on Race and Sex in America.* 2nd edition. New York: W. Morrow, 1996. [↑](#footnote-ref-59)
60. Wells-Barnett, Ida B. *Crusade for Justice: The Autobiography of Ida B. Wells*. Chicago: University of Chicago Press, 1991. pp. 229-30, 345-46. [↑](#footnote-ref-60)
61. *Any* inclusive reworking of law and public policy signifies as much. [↑](#footnote-ref-61)
62. At the very least, reliable access to the ballot would showcase that the discursive practices of a local moral community—and the efforts of black women—have revised the public conception of who is considered a reasonable deliberative agent and a legitimate member of the public sphere. [↑](#footnote-ref-62)
63. Du Bois, *Darkwater*, p. 107. [↑](#footnote-ref-63)
64. In chapter five, I discuss at length black women’s “veiled” deliberative agency in the segregated black community. [↑](#footnote-ref-64)
65. In spite of Kant’s claim to the contrary, I reject that our conception of ourselves as autonomous moral agents is derivable from our subjective access to a free will. Kant conflates the concept of a rational agency with our conception of ourselves as practically free. Most Kantians disagree with me, but that is a problem for another day. In any case, for Du Bois, developing a public conception of deliberative autonomy is an outcome of social activity. [↑](#footnote-ref-65)
66. Du Bois, *Darkwater*, pp. 80-81. [↑](#footnote-ref-66)
67. Du Bois, *Darkwater*, p. 81. [↑](#footnote-ref-67)
68. ibid., p. 78. [↑](#footnote-ref-68)
69. Darby, Derrick. “Du Bois’s Defense of Democracy,” *NOMOS LXIII: Democratic Failure*. Melissa Schwartzberg and Daniel Viehoff (eds). New York: New York University Press, 2021. pp. 207-46. p. 230. [↑](#footnote-ref-69)
70. Du Bois, *Black Reconstruction*, Ch. 15. [↑](#footnote-ref-70)
71. Du Bois, *Darkwater*, p. 81. [↑](#footnote-ref-71)
72. Du Bois, *John Brown*, p. 236. [↑](#footnote-ref-72)
73. Du Bois, *Black Reconstruction*, p. 203. [↑](#footnote-ref-73)
74. Du Bois, *Darkwater*, p. 84. [↑](#footnote-ref-74)