

**Racial Stigma and the Persistence of White Supremacy:
Transforming a Democracy that Never Was**

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In this essay, I will join the many writers who have characterized the United States as a white supremacist nation. While there have been many ways that white supremacy has been explicitly promoted in the U.S., at least one way that it persists today is within the failure to separate issues of individual responsibility and responsibility for racial inequality. An understandable, but finally incorrect and stigmatizing logic of responsibility is perpetuated whenever the individual choices of some black people are assigned even partial responsibility for racial inequality. Racial stigma, I contend, is the central cause of persistent racial inequality in the United States and the greatest obstacle to overcoming this inequality. I argue that democracy as currently constituted cannot respond to the problem of a stigmatized people. Thus, the problem of racial justice becomes a problem of not only transforming democracy, but also enabling it to be born for the first time in the United States. I conclude the essay by arguing that a religious affirmation of equal human worth, and the religious institutions informed and embolden by that affirmation, will play an essential role in making this new democracy possible. Religions, and perhaps religions alone, are able to advance a non-hierarchical understanding of human worth. Only an understanding of human worth that insists that the true measure of our worth comes from a reality beyond human convention is capable of countering the very hierarchical separation of human worth that stigma creates.

Before moving to the consideration of this argument, let us begin with some of the realities of racial inequality in the United States. All of the following are taken from the National Urban League's 2014 *State of Black America*:

	Black	White
1. Unemployment Rate:	13.1%	6.5%
2. Median Household Wealth	\$6,314	\$110,500
3. Homicide Rate Per 100,000 Male	33.4	3.3
4. Incarceration Rate Per 100,000 Male	2,841	463
5. Maternal Mortality Per 100,000 live births	23.8	8.1
6. All Infant Deaths Post and Neo Natal Per 1,000 live births	12.7	5.5
7. AIDS Cases Per 100,000 Males 13+	72.9	8.6
8. AIDS Cases Per 100,000 Females 13+	32.2	1.4

Countless other statistical representations of racial inequality can be easily documented, especially concerning incarceration rates and the impact on children whose parents experience incarceration. Additional inequalities can be found related to housing experiences and the persistence of long-term poverty. I will end this presentation of facts with one final startling inequality. Based on research of poverty during the second half of the 20th century, and we have no reason to believe this reality is changing for the better, the chances of a white child born into poverty still being poor between the ages of 25-27 is 1 in 14, the chances for a black child born into poverty still being poor at this age is 1 in 3.¹ 1 in 14 vs. 1 in 3. How does the United States remain unmoved in light of these realities? It is unmoved because the inequalities do not create alarm in our national consciousness because for too many people in the United States these inequalities are not surprising. Thus, the most recent expression of the devastating experience of

black people in the United States is the collective conclusion that massive racial inequality is *normal*. It is the latest formulation of an old justification for white supremacy: black people get what they deserve.

I am not black, and I am not poor. I do not suffer from racial injustice, although I am diminished by it. What business I have trying to write about how poor black people, and black people as a group, are and should be understood in the United States is not obvious. However, every year, for more than ten years now, I have taught religious and philosophical ethics to about two hundred black college students, some of whom are quite poor and many of whom come from underserved communities. This has provided me with frequent opportunities to reflect on how I think about race and racial justice, and how my students, neighbors, fellow academics, and our wider society think about these issues. Moreover, black people are my colleagues, my friends, my fellow citizens, and above all my fellow human beings who travel with me in this human adventure. The racial injustice that is widespread in the United States is no mere subject for theoretical speculation. It is the daily crushing, contorting, demeaning, deflating, demoralizing, abandoning, ignoring, and exploiting of countless beautiful human beings. The more one reflects on this, the more difficult it becomes to sit still, and the more one needs to shout “Emergency!” to all who will listen. At the very least, solidarity with those who suffer the consequences of racial injustice requires clear thinking, especially from those of us who make it our vocation to think about the norms of human life and society. It requires tenacity and humility, both of which may require rethinking the obvious.

The use of the phrase “white supremacy” to characterize law and policy in the United States may strike some as both unjustified and excessive. Indeed, I recently had an op-ed essay accepted by an associate editor of a significant metropolitan newspaper and placed as the central

essay of the page only to have it spiked by the Head Opinion editor less than an hour before going to press because of the repeated use of the phrase “white supremacy” in the essay. For him, the phrase conjured images of the Ku Klux Klan and was, he claimed, both inaccurate and inflammatory when used to characterize the United States. I imagine that most Americans, and perhaps even many in this room, would agree with this editor’s position. So why do I use it? I use it because I contend that the stigmatization of blacks as a group is the most important cause of racial inequality in the United States and the greatest obstacle to eliminating that inequality and so to achieving racial justice. Glenn Loury defines racial stigma as the “dishonorable meanings socially inscribed on arbitrary bodily marks.”² In the terms of Erving Goffman, stigma creates “spoiled collective identities.”³ That is, racial stigma is the understanding of a group of people as inferior, and membership in this group is signified by the color of one’s skin. If racial stigma causes black people as a group to be understood as inferior to whites, then the necessary implication of this is to understand whites as superior to blacks. That is white supremacy. While few people explicitly affirm white supremacy, we all implicitly affirm it when we fail explicitly to challenge racial stigma and the policies, laws, and logics that perpetuate racial inequality. We implicitly affirm white supremacy when we are unsurprised and unmoved by racial inequality, suggesting that it is not an emergency but rather an expected state of affairs. Silence in the face of devastating racial inequality is far more powerful than any burning cross. I do not think it is either inaccurate or inflammatory to claim that black people in the United States are presumed by a significant percentage of white people and even many black people to be broken until proven otherwise, and white people are assumed to be not broken, whole, and ready for success until proven otherwise. This is the core of our racial problem.

One of the most powerful explorations of the prevalence of white supremacist assumptions in European and U.S. political and philosophical thought is in *The Racial Contract* by Charles Mills. According to Mills, the Racial Contract is the realistic foundational set of ideas and commitments that explain the expansion of Europe and the creation of the United States, as opposed to the ideal social contract theory that is often invoked. Mills writes, “the general purpose of the Contract is always the differential privileging of the whites as a group with respect to the nonwhites as a group, the exploitation of their bodies, land, and resources, and the denial of equal socioeconomic opportunities to them.”⁴ Mills persuasively shows that actual political and intellectual foundations of the United States assume a white supremacist worldview and that these foundations best explain the subsequent history of the United States. Rather than viewing racism and racial inequalities as aberrations from egalitarian social contract thinking that in turn require explanation, the Racial Contract shows that racism and racial inequalities are the necessary outcomes of our foundational ideas and actions. I seek to add to the account offered by Mills in three ways. First, I seek to show one additional form of implicitly white supremacist thinking, or a new clause to the Racial Contract; namely, the idea that black individuals making bad decisions bear most, or at least some, responsibility for eliminating racial inequality. Second, I problematize Mill’s conclusion that the Racial Contract must be “torn up altogether”⁵ by indicating how difficult it is to imagine either the contract actually being torn up, or to imagine what it would be replaced with. Finally, I will present a theistic account of human worth that I think better accounts for an egalitarian understanding of human worth than does the secular liberalism of a philosopher like Mills.

Before continuing, I offer a qualification. In my discussion thus far and in what follows, I consider the problems of racial inequality and racial justice only from the perspectives of

blacks and whites. This is an obvious limitation, but a justified one because of constraints on the length of this paper, and more importantly because of the unique and terrible history of the relations between blacks and whites in the United States. Much of what I write can be applied to efforts to think about other realities of racial inequality, but I will not pursue such efforts today.

The argument of my paper can be broken down into five central claims:

- 1) Failure to separate the issue of personal responsibility for individual actions from responsibility for racial inequality creates racial stigma.
- 2) Racial stigma creates a vicious cycle of self-fulfilling expectations that further entrenches both inequality and stigma.
- 3) Anti-discrimination commitments cannot reduce racial stigma.
- 4) Democracy as currently constituted in the United States, including all Constitutional resources, is incapable of reducing racial inequality.
- 5) Religious affirmations of great and equal human worth will play an essential role in what will need to be a revolutionary transformation of democracy in the United States

While I contend that democracy in the United States as currently constituted cannot produce racial justice, I am genuinely confounded as the question of alternatives. When black leaders and writers have appealed to the importance of democracy as a framework for pursuing racial justice, they seem to mean the political affirmation of the equality of all people, and they seem to assume that a commitment to democratic ideals will, however slowly, achieve this political in both word and deed. Yet, as I will argue, a democracy that is born in the midst of chattel slavery, and continues despite brutal racial oppression, creating the stigmatization of blacks a group, cannot correct itself in the absence of some Constitutional requirement for racial equality. No black writers that I know of call for such a Constitutional requirement, and it is not clear to me

what such a requirement would look like. But it is the creation of such a requirement that I have in mind when I speak of political revolution. Not the overthrowing of democratic government, but, instead, a transformation of that government to make democracy for the first time genuinely possible in the United States.

As I will make clear in Step 5, the problem of racial stigma and the demand for racial justice is a religious problem as well as a political problem. If the true worth of human beings has its foundation in God, and is derived from the humanity as such of every person, rather than from the actions of those persons, then a people and a nation that stigmatizes a group of people and so calls into question their full worth as human beings would stand accused before God of one the greatest of injustices. The United States stands so accused. I will draw on the writings of Nicholas Wolterstorff to advance this part of the argument. The imperative to achieve racial justice is implied by our democratic ideals, but it is grounded in ultimate reality.

1.Failure to separate the issue of personal responsibility for individual actions from responsibility for racial inequality creates racial stigma

Persistent racial inequality over time can have only three possible explanations: 1) it is caused exclusively by forces external to the lives of black individuals and blacks as a group (External Only); 2) it is caused exclusively by forces internal to the lives of black individuals and blacks as a group (Internal Only); or 3) it is caused by a combination of external and internal forces (Both Argument). By external forces I mean both structural forces that are political, economic, educational, cultural, and social in nature, as well as the consequences of the day to day interpersonal interactions between black people and non-black people. By internal forces I mean both the choices and abilities of black individuals.

So where does public opinion stand on this issue? Lawrence Bobo and Camille Charles note that “whites...are increasingly less inclined to believe that blacks and other minorities face structural barriers to upward mobility. Rather, if blacks cannot get ahead, whites increasingly blame blacks themselves for a lack of effort, motivation, or will.”⁶ Drawing on the research of Matthew Hunt, Bobo and Charles claim that “between 1977 and 2004, the proportion of whites fully embracing this perspective increased from 21 to 27 percent.”⁷ William Julius Wilson writes that “[t]he idea that the Federal government “has a special obligation to help improve the living standards of blacks” because they “have been discriminated against for so long” was supported by only one in five whites in 2001, and has never exceeded support by more than one in four since 1975.”⁸ Wilson continues, “the lack of white support for this idea is not related to background factors such as level of education and age.” Again drawing on the work of Hunt, Bobo and Charles indicate that the move away from structural explanations toward greater emphasis on personal decisions is also strikingly present among blacks. “[B]etween 1977 and 2004, the share of blacks asserting purely motivation-based explanations for their group’s inequality nearly doubled, from 6 to 11 percent. During this same period, those asserting purely structural explanations for black disadvantage declined by roughly a third, to 41 percent.”⁹ These data show that in 2004, 27 percent of whites, and 11 percent of blacks endorse explanation 2 – that the causes of racial inequality are exclusively internal to black individuals. Moreover, Hunt’s research shows very little support for explanation 1 – that causes of racial inequality are exclusively structural in nature. Thus, explanation 3 is by far the most widely held position among whites and even among many blacks.

Let us call explanation 3 the “Both Argument.” It is the most widely held explanation for persistent racial inequality. The plausibility of the Both Argument might be explained by an

assumed analogy of racial inequality to economic inequality. In considerations of responsibility for economic inequality, personal choices are an essential partial cause of economic outcomes. Choices related to effort and motivation, as well as factors related to ability, are clearly at least partially responsible for economic outcomes. Thus, a full accounting of responsibility for economic inequality would include both external and internal forces. The Both Argument is clearly true regarding economic inequality, but the presumed analogy of economic inequality to racial inequality is very misleading and must finally be wrong. If there is no difference in character and ability between races, and so no grounds for asserting superiority and inferiority, then differences in motivation, effort, and ability should track equally between racial groups. However, there are many economic differences that are racially relevant, such as unemployment and household wealth. To suggest that these differences are at least partially the result of forces internal to blacks as individuals is to suggest that blacks as a group are inferior to whites because their individual natures seem to have something to do with their economic outcomes. The comparison of racial inequality to economic inequality is thus inherently stigmatizing.

A second reason many might support the Both Argument is the similarity of bad outcomes between the external causes of racial inequality and the bad choices made by some black individuals. Considerable research shows that actions that seem clearly to be matters of individual choice such as staying in or dropping out of school, become a parent at a very young age, or committing a crime, have a direct impact on the likelihood of someone being poor. Thus, even if external forces related to issues such as housing, education, and criminal punishment are partially to blame for levels of black poverty and so for this expression of racial inequality, it would certainly seem that individual choices have a clear impact on poverty rates as well. Thus, the both argument would clearly seem to be correct.

However, a simple thought experiment can show that the mere similarity of bad outcomes ends up begging the question of responsibility for those outcomes by failing to differentiate between responsibility for the bad outcomes of individual actions and responsibility for an inequality of bad outcomes. Imagine two towns, Town A and Town B, that are in all respects identical. The different characteristics of the populations of the towns are identical, and the various structural realities are identical with one exception. In Town B, there is a factory up wind from the town that emits significant amounts of air pollution. Prior to the factory being built, the rates of smoking and lung disease were identical in both Towns. Ten years after the factory is built, the percentage of heavy smokers remains equal between the towns, but the rate of lung disease is now ten percent higher in Town B than in Town A. Individual heavy smokers in both towns who get lung disease must accept equal responsibility for their lung disease. It is a bad outcome for which they are reasonably held responsible. But the smoking choices of the individuals in Town B cannot be responsible for the ten percent increase in lung disease. Within the parameters of this thought experiment, only the pollution from the factory can be responsible for that. Thus, we have two different forces, one internal and one external, both producing similar bad outcomes, yet there is no justification for assigning any individual responsibility for the inequality in bad outcomes. The question of assigning responsibility for racial inequality is not a matter of assigning responsibility for bad outcomes in the lives of individual black people. The personal choices of those black people may have a lot to do with those bad outcomes. Instead, the issue is explaining the relative difference in bad outcomes between blacks as group and whites as a group. As the thought experiment makes clear, one can have individuals behaving badly in both groups and, and yet the difference in bad outcomes is still exclusively external.

External forces can make it more likely that individuals will make bad decisions, even if those individuals should still be held responsible for those decisions. Probability, after all, is not fate. Thus, even if the number of individuals making bad choices goes up, one may still assign responsibility for that increase entirely to external forces. The same can be said of a culture of poverty, a culture that is reinforced and perpetuated by the bad choices of some individuals. When thinking about responsibility for racial inequality, the issue is not deciding why there is a culture of poverty, which is almost certainly explained by both external and internal forces. Rather the question to ask is why a culture of poverty is disproportionately present in black communities. If even a portion of the explanation for that disproportionate presence is the responsibility of individual black people, then once again, blacks as a group must be understood as more likely to make bad decisions. Using the culture of poverty argument to defend the Both Argument is inherently stigmatizing.

Twice, now, we have come to the same conclusion. If even of a portion of responsibility for racial inequality is assigned to the individual choices of some black people, then blacks as a group must be understood as more likely to produce individuals who make bad decisions. All versions of the Both Argument lead to stigma. It follows then, if we assume that the Internal Only version of the argument is obviously stigmatizing, that the only non-stigmatizing way to explain responsibility for racial inequality is the External Only argument is the correct one, and so responsibility for eliminating racial inequality must be exclusively public and political in character. However, as we will see in Section 4, how that public and political responsibility can reasonably be accepted given racial stigma and the historical consequences of racial inequality is not at all clear. Let us now consider more carefully the consequences of racial stigma.

2. Racial stigma creates a vicious cycle of self-fulfilling expectations that further entrenches both racial inequality and stigma.

According to economist Glenn Loury, racial stigma begins in the very natural and not at all pernicious act of meaning-making. He writes, “because human beings look for and derive meaning from the material substratum in which they are embedded, human behavior is determined not only by material and institutional structures but also by what those structures are understood to signify.”¹⁰ This process of meaning-making becomes racialized when, “the arbitrary bodily marks associated with racial distinction are among the structures in our social environment to which meanings about the identity, capability, and worthiness of their bearers have been imputed.”¹¹ As a result, race becomes a “social truth” of great significance, even if it is also a biological and ontological fiction.

Racial stigma occurs when the common humanity of those who are stigmatized is undermined by the production of racial meaning. “When the meanings connoted by race-symbols undermine an observing agent’s ability to see their bearer as a person possessing a common humanity with the observer – as “someone not unlike the rest of us” – then...this person is “racially stigmatized,” the group to which he belongs suffers a “spoiled collective identity.”¹² Stigma creates an “Us vs. Them” sorting of human beings. Those with spoiled identities are now dishonored within the population that creates racial meaning. This dishonor, according to Loury, creates “an entrenched if inchoate presumption of inferiority, of moral inadequacy, of unfitness for intimacy, of intellectual incapacity, harbored by observing agents when they regard the race-marked subjects.”¹³ Such spoiled identities would endure in social meaning-making even if a large majority of individuals in that society rejected claims regarding the inferiority of people based on race. This is so, argues Loury, because *there is a difference between attitude and*

meaning. He writes, “to reject my argument...with the claim that “stigma cannot be so important because attitude surveys show a continued decline in expressed racism among Americans over the decades” is to thoroughly misunderstand me. I am discussing *social meanings, not attitudes*—specifically the meanings conveyed by race-related public actions and events.”¹⁴ Loury follows Orlando Patterson in finding slavery to be the primordial event of dishonor in racial meaning-making.¹⁵ However, these meaning making events include countless interpersonal interactions, media portrayals, laws and policies, employment and educational experiences, and numerous other events that are able to convey racial meaning simply because the individuals involved in these events are racially marked.

Racial stigma causes racial inequality to seem natural rather than anomalous. Consider the following thought experiment related to Advanced Placement Exams. Suppose that 35 percent of males passed at least one AP exam, but only 8 percent of females passed them. Of those who took the exams, 70 percent of males could pass them, but only 28 percent of females could. Finally, suppose 79 percent of females who could succeed in AP courses were not even being offered them. If these numbers represented actual outcomes, there would be a massive public outcry. Teachers and legislators would be called to account for these disparities. Why? Because it would be insisted by all that there is no relevant difference between males and females that could explain these outcomes. Something must be very wrong with the AP system and with the educational system within which the courses and tests are offered. No doubt, you have by now guessed that the true realities reflected by those numbers are between whites and blacks not males and females. In the first two comparisons the numbers come from an analysis of 2012 AP test outcomes in my home state of Maryland, and the last case represents black students nationally. Now listen for the outrage. Listen for the demands that teachers and

legislators explain these differences. Look around for commitments to transform how AP tests are offered and to transform the educational system within which they are given. You will hear and see none of this outrage, none of these demands. Why? Because the numbers do not reflect anomalous outcomes. Instead, the outcomes are expected. This is the consequence of racial stigma.

Because racial inequality is expected, there is little political motivation to reduce it. Laws and policies designed to offer special opportunities to blacks will be opposed as unjustified special treatment. Even more importantly, laws and policies will get passed that seek to isolate and control those with spoiled identities. The classic examples of such laws and policies are those related to housing and criminal punishment, and include housing covenants, lending regulations, the location affordable housing, the connection of housing to schools, the war on drugs, racial profiling, and police brutality. At the same time, laws and policies that disproportionately benefit whites and so further increase racial inequality go unchallenged. The result of this combination of political action and inaction is a vicious cycle where “the low social conditions of (some) blacks persist, the negative social meanings ascribed to blackness are thereby reinforced, and so the racially biased social-cognitive processes are reproduced, completing the circle.”¹⁶ Because stigma is a matter of meaning-making relative to group identity, rather than of attitudes toward individuals within that group it is highly resistant to individual level efforts to secure racial justice.

3. Anti-discrimination commitments cannot reduce racial stigma.

Public acts of discrimination against blacks in law and commerce, while still numerous, have been illegal for decades. There is broad public support for such laws and there are clear remedies in the courts when such continuing discrimination can be documented. Loury refers to

these forms of discrimination as “discrimination in contract” and he notes that it “occurs in settings over which a liberal state could, if it were to choose to do so, exercise review and restraint in pursuit of social justice.”¹⁷ Individuals who experience such discrimination have clear legal recourse. If this were the only form of discrimination, individuals and companies that do not engage in such discrimination would have reason to believe that they are not complicit in racial injustice. It is because they neither engage in nor support such discrimination in contract that most people believe they are advocates for racial justice rather than complicit participants in white supremacy.

However, Loury identifies a second kind of discrimination called “discrimination in contact.” This refers “to the unequal treatment of persons on the basis of race in the associations and relationships that are formed among individuals in social life, including the choice of social intimates, neighbors, friends, heroes, and villains. It involves discrimination in the private spheres of life.”¹⁸ While granting that some discrimination in contact is inevitable and sometimes unobjectionable, Loury claims that the “real-world consequences can be just as debilitating for a racially stigmatized group” as those of discrimination in contract. “This is because the mechanisms of social mobility and intergenerational status transmission operative with any society are crucially sensitive to the patterns of contact, as well as the rules of contract, at work in that society.”¹⁹ Discrimination in contact produces what Loury calls development bias that works against the ability of blacks to flourish in society. Discrimination in contact and the creation of development bias “takes place outside the reach of public regulation,”²⁰ and so a liberal democratic state can neither legally prevent such discrimination, nor can it meaningfully compensate those who experience it.

Some have argued that reparations are an appropriate response to past racial injustice.²¹ Loury opposes at least the language of reparations on the grounds that it conceives the problem of racial justice in compensatory rather than interpretive terms, and if the problem of stigma is grounded in meanings, in spoiled identities, then only changes in interpretation can produce racial justice. Both frameworks emphasize the importance of history, but while reparations seek compensation for a causally identified sequence of past harms, an interpretive framework seeks to “establish a common baseline of historical memory...through which the past injury and its continuing significance can enter into current policy discourse.”²² Changing racial meaning requires “a commitment on the part of the public, the political elite, the opinion-shaping media, and so on to take responsibility for such situations as the contemporary plight of the urban black poor, and to understand them in a general way as a consequence of an ethically indefensible past.”²³ Unfortunately, Loury provides no indication of where this broad-reaching commitment will come from. If he is correct about the pervasiveness of racial stigma, then I see no reason to believe that the public, nor the political elite who are elected by the public, nor the opinion-shaping media that is financially bound to reinforce rather challenge existing racial meanings, will be either motivated or able to pursue this interpretive project. Loury is not alone in calling for a transformation of public consciousness within the body politic and the pursuit of a robust legislative agenda. What he does not explain is how either of these can happen given the pervasiveness of racial stigma. I will argue, shortly, that they cannot happen in the United States given the absence of a political commitment to the elimination of racial inequality.

Before leaving my consideration of the work of Glenn Loury, however, I would like to indicate why I think Loury is vulnerable to being described as an advocate of the “Both Argument.” If he is, then I argue that he has not taken his own position regarding racial stigma to

its logical and necessary outcome. When he reviews possible explanations for persistent racial inequality he offers three possibilities:

- 1) External structures have failed (to afford fair opportunity for development or reward for achievement).
- 2) Non-external structures have failed (to provide appropriate opportunity for development)
- 3) The essential nature of the race-marked subjects precludes development.²⁴

By “non-external structures” Lounsbury means “communal” and “private” structures that create an “in group “culture” that mediates relations between subjects and the opportunity provided through external structures.”²⁵ If I understand Lounsbury correctly, he seems to believe that the nature of these structures can legitimately be said to have some responsibility to reduce racial inequality. For example, he writes, “Black civil society heroes (inner-city Christian pastors, black Muslims working in prisons) may practice “pro-black discrimination in contact” in the service of looking into and remedying (2) [non-external structures].”²⁶ In other words, Lounsbury seems to suggest that it is legitimate to claim that some forms of poor, black culture need to be changed, and so poor black culture can be held partially responsible for racial inequality.

Elsewhere, Lounsbury indicates the “mutual obligation”²⁷ shared by political and cultural structures to eliminate racial inequality. However, in suggesting the relevance of black culture to the problem of racial inequality, he seems to be making the same mistake of those who blame a portion of racial inequality on a culture of poverty. While a culture of poverty may certainly be said to cause poverty, it is not necessarily true that it can be said to be the responsible cause of racial inequality. It is necessary to ask why there is a disproportionate presence of a culture of poverty in black communities. In order to avoid stigmatizing conclusions, external forces alone

must be the cause of that disproportionate presence. Thus, I think Loury needs to clarify or change his position in order to avoid affirming his own version of the Both Argument.

4. Democracy as currently constituted, including all Constitutional resources, is incapable of eliminating racial inequality and so is incapable of achieving racial justice.

Black writers have long had a love/hate understanding of democracy. Consider the following from James Baldwin:

To be an Afro-American, or an American Black, is to be in the situation, intolerably exaggerated, of all those who have ever found themselves part of a civilization which they could in no wise honorably defend – which they were compelled, indeed, endlessly to attack and condemn – and who yet spoke out of the most passionate love, hoping to make the kingdom new, to make it honorable and worth of life.²⁸

More recently, Manning Marable writes, “after a period of several centuries, a mountain of accumulated disadvantage has been erected, a vast monument to the pursuit of inequality and injustice that to most black Americans is the hallmark of our “democracy.””²⁹ Marable goes on to call for “Democratic transformation” that “will require new kinds of strategies, new approaches, and new thinking.” He claims that we must “transcend the earlier paradigms of our racial politics.”³⁰ Thus, both Baldwin and Marable embrace democracy while calling for its transformation. But democracy can be changed in either its constitution or its practice. My suspicion is that both Baldwin and Marable intend to call for its transformation in practice. In what follows, I will argue that democracy in the United States must change at its constitutional level because as it is currently constituted, it cannot respond adequately to racial inequality, and so cannot achieve racial justice.

Democracy is inadequate to the task of achieving racial justice for both political and procedural reasons. If stigma is pervasive in a body politic, it is irrational to believe that the members of that body politic will take the actions necessary to reduce racial inequality. Rather,

they will insist that no injustice exists in the first place. Inequality, remember, is the expected outcome for a stigmatized group of people. Thus, those who would call for the transformation of democracy must first explain how the political order will support transformation. This becomes especially difficult when we consider that most citizens in the United States would strongly deny that they live within a country characterized by white supremacy. That is, they will not see the problem that requires the transformation of democracy. One of the reasons stigma is so hard for people to see is that they do not realize that they are able to think well of individual black people, but poorly of blacks as a group. They can elect a black president and work for a black boss, but still see persistent racial inequality as normal. Moreover, because the vast majority of them affirm what I have been calling the Both Argument, they will wait until others, especially poor, black people accept responsibility for changing their lives before any significant transformation would be supported. The political consequences of stigmatization, therefore, place a burden on those who would appeal for political responses to stigmatization to explain how such responses are possible.

Democracy is procedurally hobbled because of the individualistic character of the rights it confers. Thus, while it is capable of verbally affirming equal protection under the law for individuals, it cannot guarantee such protection for groups, and therefore cannot protect individual members of stigmatized groups. Democracy in the United States cannot face its unjust past. Instead, it must ignore that past, and so then deny standing to those who say that the past lingers in present inequality. If the primary result of stigmatization is finally the denial that those who are stigmatized are of equal worth as those who are not, equality under the law is impossible.

Some might wonder if the courts could be resource for addressing the problem of racial stigma. In “Understanding the Mark: Race, Stigma, and Equality in Context,” Robin Lenhardt provides a thorough analysis of the Supreme Court’s use of the idea of stigma, and racial stigma in particular.³¹ She relies heavily on Loury’s work in her presentation of the relevance of stigma to matters of racial justice. In her analysis of she notes both the resources and their limitations in the Court’s analysis of stigma. On the one hand, the Court has recognized the constitutional relevance of stigma. She writes, “In the years since the Fourteenth Amendment was enacted, the Court has plainly concluded that the harms imposed by racial stigma lie at the core of the problem of inequality the Fourteenth Amendment was designed to address.”³² On the other hand, claims that, “the Court has a very narrow understanding of both the sources of racial stigma and the harms it imposes.” For example, “the Court repeatedly casts racial stigma as problem of intentional discrimination alone.”³³ To use an earlier distinction, the Court interprets racial stigma as a consequence only of discrimination in contract rather than contact. Given this narrow understanding of stigma, the Court has no conceptual foundation for thinking about its relevance to discrimination in contact, and the harm caused by such discrimination. Lenhardt concludes, that “the Court has no consistent, structured mechanism for analyzing cases involving a risk of racial stigmatization.”³⁴ In order to correct this problem, Lenhardt proposes a four-step judicial analysis for racially stigmatic meaning and harm” that considers “the full range of racially stigmatizing acts and policies.”³⁵

While I do not have the legal training to evaluate the legal merits of Lenhardt’s proposal, I do find it to be excessively broad in its scope. She seeks to apply the analysis to “acts and policies that have racially stigmatic meaning and effect.”³⁶ However, given the prevalence of stigma and the social and economic complexity of racial inequality, countless policies are going

to have racially stigmatic meaning and effect. Lenhardt claims that under her proposed judicial analysis, “policies with even moderate stigmatic effect would be hard to justify.”³⁷ She realizes that some might think this “could result in the invalidation of a vast array of policies and programs,” but she thinks that requirements of standing and strict scrutiny would be enough to limit such invalidation. But if policies with even a moderate stigmatic effect would be hard to justify, I fail to see how Lenhardt’s proposal would not invalidate countless educational policies, housing policies, and law enforcement policies. Yet, once these policies were invalidated, what would they be replaced with? So long as racial inequality is persistent, almost any policy that does not explicitly seek to reduce that inequality will be influenced by the reality of that inequality and so will be at risk of being complicit in the perpetuation of stigma. Lenhardt’s proposal may succeed in challenging new policies that could be determined to be likely to have stigmatizing effects, but once it is used to invalidate a complex web of existing policies, it would do more harm than good.

The alternative to the invalidation of existing policies on the grounds that they exacerbate racial stigma is the creation of policies designed to reduce racial inequality. As we have seen, however, it is unlikely that such policies will get created in a political environment characterized by stigma. If democracy is currently procedurally incapable of overcoming racial stigma, it needs some formative, constitutional rule requiring the elimination of racial inequality. What that rule would say and how it would work is not clear to me, but only such a rule would succeed in affirming that the responsibility for eliminating racial inequality is solely a public and political responsibility.

Racial justice is a precondition for democracy, not something to be pursued in order to create a better democracy. A group of people stigmatized as inferior cannot participate as equal

citizens in the political process, nor would it be rational for them to conclude that the political process could effectively respond to their needs so long as they remained stigmatized. Equality before the law and in the law is impossible when conditions exist that coerce the minds of citizens and legislators to assume the inferiority of people simply because of the color of their skin. Racial stigma creates a racialized political caste system and such a system is, by definition, anti-democratic. Pretending that the United States is currently a democracy is both a farce and an obstacle to achieving racial justice because it requires us to avoid confronting a core consequence of racial injustice – the impossibility of political equality.

Although racial stigma is especially devastating to poor, urban black people, every black person lives under a suspicion of inferiority as a result of it. Every black person in the United States, young, old, rich, poor, wakes up to a country that assumes her or his inferiority. Some may succeed in overcoming that suspicion, at least temporarily, but they will never escape it entirely. This is intolerable. No black person should be asked to accept this condition, and no one who seeks to live in solidarity with their black friends and neighbors should stand silent.

5. Religious affirmations of great and equal human worth will play an essential role in what will need to be a revolutionary transformation of democracy in the United States

One problem that any transformation of democracy will face is that procedural affirmations of equality cannot by themselves establish that different people are of equal worth as human beings. The core evil of stigmatization is the implicit affirmation of the inferiority of an entire group of people, an inferiority that is signaled by the color of their skin. While I have called for constitutional transformation of democracy in the United States, that transformation will likely fail if it remains strictly procedural in character. So long as the transformation of democracy is grounded on conventional understandings of human worth, that transformation will be mired in

the hierarchical valuations of human worth that inform so much of our law and policy, and it will be entirely incapable of eradicating denial of equal human worth that is the defining feature of racial stigma.

I would like to close the paper by arguing that many of the religious traditions of the world have within them the resources to make a meaningful response to racial stigma possible. Two resources in particular will prove crucial. First, many of them affirm a great and equal value of all human beings by virtue of their humanity alone. We read that humans are created “a little lower than God, and crowned with glory and honor” (Psalm 8:5). In Mahayana Buddhism, all humans are said to possess Buddha nature, of greater worth than a wish fulfilling jewel. Islam speaks of *fitra*, an innate capacity for Oneness with God created in humans by God. In all of these traditions, the worth of a human person is not determined by the actions of a human being, but rather simply by being human. As a result, these religious traditions have an advantage over any strictly secular effort to reconstruct a social contract on more egalitarian terms. Secular affirmations of equal human worth amount finally to mere assertions of that worth. The affirmations lack any foundation upon which they might be justified. Absent a clear justification, it seems unlikely that they would be successful in countering entrenched stigmatized understandings.

Nicholas Wolterstorff argues that the fundamental worth of a person, and so the fundamental justification for rights, is derived from the worth of a person that results from that person being loved by God. According to Wolterstorff, every person has a right not to be treated in such a way that undervalues or “under-respects” her or his worth. As Wolterstorff puts it, “one treats a human being with under-respect when the respect-disrespect import of one’s actions would only fit someone of lesser worth.”³⁸ Those things that perpetuate stigma perpetuate an

under-respecting of blacks as a group and of every black person in particular. This follows because the stigma attached to blacks results in the conclusion that blacks in general are of “lesser worth” than whites; they do not have the same claim to worth as whites. Some might object that every injustice involves under-respecting the worth of individuals. While this may be true, racial injustice would be an especially egregious form of injustice because it denies the equal worth of persons, rather than harming a worth that can be assumed. Wolterstorff’s project is complicated and, no doubt, controversial. It does, however, represent a very important resource for framing the idea of justice, and racial justice in particular, as an obligation at least for all Jews and Christians.

The language of obligation is important. When we fail to pursue racial justice, we fail not simply to pursue something that is good to do, something that will make the United States a better place, we fail instead to meet a basic obligation of any person who stands before God and before their black neighbors who are loved by God. Racial justice is not one good among many. It is a religious and democratic duty.

Religious institutions are in a good position to explain the obligation to pursue justice grounded in an affirmation of equal human worth and to place that obligation before their members. They are also in a good position to recount the history of racial injustice in the United States. History is important for religions and history is essential for understanding that racial inequality has been caused exclusively by forces external to the lives of black individuals and blacks as group. Along with the political revolution that will transform democracy, there must be an *epistemological revolution* in the minds of Americans that will enable them to change the meaning that they have attached to those who are darkly marked. Instead of seeing inferior

character and ability as the causes of racial inequality, they must learn to see the countless forms of oppression that have created this inequality.

In this paper, I have argued that racial inequality must be understood as exclusively the product of external forces acting oppressively on the lives of black individuals and on blacks as group. The history of these external forces is long and complicated, but not mysterious. Ignorance of this history makes racial stigma inevitable, because it makes it impossible to understand the impact of these external forces and it makes it much easier to believe that the personal failings of some poor black people are to blame instead. An imperative to hear this history must be a part of the transformation of democracy in the United States.

¹ Mary Corcoran, "Mobility, Persistence, and the Consequences of Poverty for Children: Child and Adult Outcomes," in *Understanding Poverty*, ed. Sheldon H. Danziger and Robert H. Haveman (New York: Russell Sage Foundation, 2001), 127-161

² Glenn Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2002), 59

³ See Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Simon and Schuster, 1963)

⁴ Charles Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1997), 11

⁵ Mills, 133

⁶ Lawrence D. Bobo and Camille Z. Charles, "Race in the American Mind: From the Moynihan Report to the Obama Presidency," *Annals of the AAPSS*, January, 2009, p. 5

⁷ *ibid*

⁸ William Julius Wilson, *More Than Just Race: Being Black and Poor in the Inner City*. (New York: W.W. Norton & Company, 2009), p. 16

⁹ Bobo and Charles, p. 5. See also, Hunt 2007, p.401

¹⁰ Loury, 58

¹¹ Loury, 58

¹² Loury, 67

¹³ Loury, 70

¹⁴ Loury, 70, emphasis in original

¹⁵ See Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982)

¹⁶ Loury, 53

¹⁷ Loury, 96

¹⁸ Loury, 95-96

¹⁹ Loury, 99

²⁰ Loury, 103

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- ²¹ See Raymond A. Winbush, editor. *Should America Pay? The Raging on Reparations* (New York: Amistad, 2003). See also Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic*, June, 2014
- ²² Lory, 126
- ²³ Lory, 127
- ²⁴ Lory, 162-163
- ²⁵ Lory, 162
- ²⁶ Lory, 163
- ²⁷ Lory, 106
- ²⁸ James Baldwin, *No Name in the Street*, 1972, citation incomplete
- ²⁹ Manning Marable, *The Great Wells of Democracy: The Meaning of Race in American Life* (New York: BasicCivitas Books, 2002), 3
- ³⁰ Marable, 64
- ³¹ R. A. Lenhardt, "Understanding the Mark: Race, Stigma, and Equality in Context," *New York University Law Review*, vol 79:803, 2004
- ³² Lenhardt, 865
- ³³ Lenhardt, 875
- ³⁴ Lenhardt, 876
- ³⁵ Lenhart, 805, and 878-930
- ³⁶ Lenhardt, 890
- ³⁷ Lenhardt, 895
- ³⁸ Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008), 302. See also, Nicholas Wolterstorff, *Justice in Love* (Grand Rapids: William B. Eerdmans Publishing Company, 2011).