

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

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## I. Introduction

### a. Thesis

Du Bois argues that reasonable deliberative agents assert the ideal of autonomy to ground the attitude of deliberative openness; the ideal of autonomy reimagines the polity as a universal moral community of ideal legislators. Reasonable deliberative agents must, then, establish deliberative reciprocity as a public value for illiberal rogues and institutions. But they do so through the pragmatic exercise of political power in formal and informal public encounters that build ties of deliberative reciprocity with likeminded fellows. Du Bois's defense of the passage of the 19<sup>th</sup> Amendment illustrates a pragmatic conception of political obligation in action.

### b. Method & Scope

- *On Method.*

I reconstruct the normative foundation of Du Bois's critique of American democracy, clarifying and defending its underlining ideals. I save for another time his defense of poetry and the arts. This is not to minimize poetry and the arts, or even to posit that deliberative democracy is most effective for advancing justice. Rather, given that philosophers have yet to engage Du Bois's theory of justice at all—or to notice that he has one—I begin by outlining his constructivist commitments.

- *On Scope.*

I am proposing an ambitious project. I limit this talk to establishing **the moral authority and grounds of political judgment**, which rests on a democratic ideal of autonomy in Du Bois's theory of justice. I address elsewhere the substantive content of political judgment in relation to Du Bois's discussion of redistribution, unions, and reparations.

## II. What is Reasonable Deliberative Agency?

**Reasonable deliberative agency** is the attitude of deliberative openness. In *The Souls of Black Folk*, Du Bois 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.”<sup>1</sup> A reasonable deliberative agent thus 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. A reasonable deliberative agent identifies the members of their political community as civic fellows who might share an interest in the fair terms of political rule for its own sake.

- The background nonideal conditions of the public sphere are characterized by a dialectical interplay between the many illiberal rogues and the few reasonable deliberative agents (hereon referred to as **the dialectical interplay between the illiberal and the reasonable** or **D.I.R.I.**).

## III. Where do we go from here? Grounding the Value of Deliberative Openness in a Dysfunctional Public Sphere

- a. The American public sphere today captures **D.I.R.I.** in action:

On the July 4<sup>th</sup> 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

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<sup>1</sup> Du Bois, W.E.B. *The Souls of Black Folk*. New York: Oxford University Press, 2007 p. 36.

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.<sup>2</sup>

- b. On what basis might one try to reason with a void pregnant with violence?
  - On the basis of **the ideal of autonomy**, which grounds the value and attitude of deliberative openness.
  - What is the ideal of autonomy? It is a deliberatively open attitude that reimagines one’s potential interlocuters as capable of acting on the basis of shareable reasons and of pursuing public joint commitments.
- c. Why is the ideal of autonomy so important for Du Bois?
  - i. It shapes all other public values and commitments; without it, democracy is impossible, practically speaking.
    - There can be no democracy if no one talks to each other.
  - ii. It provides a universal standard for political judgment about how people *should* talk to each other and the kind of reasons they *should* offer to others.
    - A universal ideal of autonomy reconceives *all* persons as ideal legislators in a prospective moral community. Deliberation is thus constrained by reasons to which all persons can freely assent using their own capacity for reason.

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<sup>2</sup> There are numerous illustrations of what I identify as DIRI circumstances in Du Bois’s writing. Perhaps best known, in *Souls*, Du Bois depicts the lynching of a young black teacher, John Jones, by a white mob. I begin here instead with Vauhxx Booker’s first-person account of his recent 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](https://www.democracynow.org/2020/7/13/vauhxx_booker_attempted_lynching_indiana)

- By reconceiving all others as ideal legislators—even when they are plainly not acting as such—one works to introduce deliberative reciprocity in an otherwise toxic public sphere.
- d. Grounding deliberative openness in the ideal of autonomy illustrates at least three important features of Du Bois’s constructivist approach:
  - i. The ideal of autonomy reconceives all persons as ideal legislators, regardless of whether or not they are full members of the formal public sphere. One thereby not only acts as if illiberal rogues can in principle change their minds, however unlikely, but more importantly, one addresses excluded persons. Du Bois thus often muses that we must vindicate the humanity of those who died at the hands of lynching bees or enslaved on plantations and never had the chance to speak for themselves. One proposes reasons that “the crankiest, humblest, poorest, and blackest peoples” would find acceptable and fair.<sup>3</sup>
  - ii. If one cannot take for granted one’s public standing, one is often forced to *withdraw* from the public sphere. Yet an attitude of deliberative openness might still foster public encounters elsewhere in informal or quasi-formal associations. Thus, coerced withdrawal from the formal public sphere need not signify that one is resigned to political irrelevance. In fact, Du Bois asserts that coercion inadvertently strengthens intragroup solidarity among excluded persons, who come to share a sense of mutual respect, trust, and political destiny.
  - iii. Under DIRI, there is an unresolvable conflict between the value of deliberative openness as the discursive vehicle of justice and the innate value of one’s rational humanity. Most constructivist philosophers assume that no such conflict exists: public institutions reliably protect the equal moral worth of persons. But under DIRI the values conflict, often in jarring ways. For reasonable deliberative agents are often disproportionately forced to make extreme sacrifices for the sake of advancing the ideal of autonomy in democratic life.

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<sup>3</sup> Du Bois W.E.B. *Darkwater: Voices from Within the Veil*. Mineola: Dover, 1999. p. 88.

#### IV. A Radical, Cautious Hope? Pragmatic Political Obligations and Women's Suffrage

Perhaps the most difficult aspect of Du Bois's critique is the notion that coerced withdrawal from the formal public sphere does not amount to an exit from public life. After all, what can it mean to pragmatically "protect" the democratic ideal of autonomy, when one is excluded—often forcibly—and must instead cultivate deliberative ties in one's local moral community?

- Consider the case of the passage of the 19<sup>th</sup> Amendment as an illustration of pragmatic political obligation in action (it applies to Booker's case today as well).
  - a. On the one hand, Du Bois aims to vindicate the unappreciated sacrifices of women of color—and black women specifically—that facilitated the passage of the 19<sup>th</sup> Amendment. He asserts that American women winning the right to vote was a meaningful political victory and that democratic engagement in the formal public sphere is a laudable political value and goal.
  - b. On the other hand, Du Bois stresses the cruel exclusion of black suffragists from the white-controlled mainstream women's rights movement. White suffragists' alliance with white supremacists created an extremely toxic environment for women of color, who remained disenfranchised after the passage of the 19<sup>th</sup> Amendment in 1920.
  - c. Persistent disenfranchisement, however, did not render their voices politically irrelevant. Rather, Du Bois 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 efforts helped spark the Civil Rights Movement. Unfortunately, the dominant narratives about the leaders of the U.S. Civil Rights Movement still struggle to center women's voices and the so-called 'invisible' counter-publics that put pressure on the formal public sphere from without.<sup>4</sup>

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<sup>4</sup> See Higginbotham, Evelyn Brooks. *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880–1920*. Cambridge: Harvard University Press, 1994. pp. 7–13; Dawson, Michael C. "A black counterpublic? Economic earthquakes, racial agenda(s), and black politics," *Public Culture* 7 (1994): 195–223.

## V. A Synopsis of the Talk

I present the theoretical core of Du Bois's constructivist theory of justice in three steps.

First, I demonstrate that the nonideal public sphere in Anglo-European modern states is characterized by a dialectical interplay between reasonable deliberative agents and illiberal rogues. Reasonable deliberative agents have an attitude of deliberative openness and are committed to social cooperation for its own sake. In contrast, illiberal rogues lack a basic sense of justice; they make participation in the public sphere risky for reasonable deliberative agents. In line with the African 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.

Next, I show that for Du Bois reasonable deliberative agency is grounded in the ideal of autonomy. The ideal of autonomy reimagines the polity as a universal moral community of ideal legislators who enact a joint commitment to public ends. Political judgment, then, acquires a valid moral authority and a universal scope even in profoundly nonideal circumstances, if persons appeal to the ideal of autonomy in their public reasoning. Rather than take its authority for granted, however, Du Bois holds that democratic agents struggle to introduce deliberative openness as a rationally-binding norm in a dysfunctional public sphere.

A conception of deliberative openness grounded in the ideal of autonomy illustrates at least three important features of Du Bois's constructivist theory of justice:

- The ideal of autonomy in democratic deliberation reconceives all persons as ideal legislators, regardless of whether or not they are recognized to be full members of the formal public sphere. To wit, political judgment *achieves* a universal scope that extends beyond the public conception of who is considered a member of the public sphere as it now stands. One thereby proffers reasons for those who are *not* there and aims to engage the proposals of “the crankiest, humblest, poorest, and blackest peoples.”<sup>5</sup> Furthermore, one does *not* seek to compromise with hostile and illiberal interlocutors whose claims are unfounded, as much as one seeks to radically reconstitute the nonideal public sphere by introducing and foregrounding new, deliberatively open voices who are prepared to assume the formidable obligations of public life.

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<sup>5</sup> Du Bois, *Darkwater*, p. 88.

- Unfortunately, reasonable deliberative agents are often forced to *withdraw* from public encounters due to the hostility they face. However, coerced withdrawal from the formal public sphere does not entail political resignation. For one does not forgo one's values and self-conception as a reasonable deliberative agent. In fact, Du Bois asserts that deliberative reciprocity often takes the form of racial solidarity among similarly situated members of vulnerable and excluded racial groups in informal or quasi-formal associations "behind" the color line. Coerced withdrawal from the formal public sphere thus often inadvertently strengthens intragroup racial solidarity based on a joint commitment to deliberative reciprocity in the informal public sphere.
- Additionally, there is an unresolvable conflict between the value of deliberative openness as the discursive vehicle of justice and the value of one's own rational humanity. For in spite of their best efforts to protect themselves and their community, reasonable deliberative agents are often forced to forgo personal security for the sake of public life, for they attempt to be deliberative open and to pursue deliberative reciprocity, when many others are not similarly committed to the ideal of autonomy.

Finally, I present an account of pragmatic political obligations under the nonideal circumstances described above. Du Bois argues that if one remains committed to deliberative openness when the polity-at-large is not, one must be pragmatic about pursuing public encounters with likeminded persons. Du Bois provides a bidirectional interpretation of pragmatic political obligations in his discussion of black feminist activism in support of the 19<sup>th</sup> Amendment in the early twentieth century. It is bidirectional in the sense that it posits two seemingly oppositional strategies for the pragmatic exercise of political power by excluded persons. On the one hand, Du Bois advocates that members of excluded groups cultivate deliberative reciprocity in their local moral community through which likeminded persons can engage in joint political action. On the other hand, he directly condemns political movements and institutions for their failure to evince reasonable and inclusive standards of joint political action. Each strategy ultimately aims to exert pressure on the formal public sphere and to center the legitimate demands of the excluded.