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The Public Realm and Public Reason: Environmental Justice and Its Public Grounds

Abstract:

This paper develops a novel interpretation of how John Rawls’s theory of justice can be applied to our consideration of environmental justice struggles, and grounds that interpretation in an assessment of current public space conflicts in New York City. I explore the possibility that Rawls’s idea of public reason can help explain and support the work of social movements for environmental justice. Few accounts have advanced a specifically Rawlsian account of environmental justice, based either on the ideas in *A Theory of Justice* or his later work in *Political Liberalism*. Generally speaking, social movements and the theorists who study them tend not to engage with mainstream liberal theories like Rawls’s—almost as often, Rawls and liberalism are seen as indifferent or even obstacles to the goals of movements for racial and environmental justice. I argue here that social movements for environmental justice are better served by Rawls’s theoretical apparatus than is typically granted. However, I also aim to show how Rawls’s lack of an actionable idea of public reason leads at least in part to this confusion. By applying Rawls’s work on public reason—together with recent work on law and social movements—to urban environmental justice conflicts, I show how a framework that better articulates the functions of public reason and the kinds of claims that arise from it can help explain how communities build political power through conflicts over public space.

The first section offers an exegesis of the American environmental justice movement’s growth, and the kinds of claims that have been central to its struggles. I explain how its method of power-building, described through key critical accounts, has focused on communities’ asserting an entitlement to power in the public realm. The second section then shows how the environmental justice movement’s calls for more democratic envisioning of our collective future is well-supported by Rawlsian liberalism. I approach three key criticisms of liberalism, and propose three *functions* of public reason—its *protective*, *corrective*, and *adaptive* roles—by which movements for environmental and climate justice reinforce and re-envision our public political conceptions of justice. In the third section, I further develop a practical structure for public reasoning, and detail three kinds of public reason *claims* by which the process advances democracy in political communities. I lean on the role of citizens and actual public space advocates, as well as Lani Guinier and Gerald Torres’s concept of “demosprudence” to show how *procedural*, *substantive*, and *constitutive* public reason claims can shift the balance of power in communities. The final section looks to conflicts over environmental and climate justice in New York City to outline a dialectics of public reasoning, focusing on passage of the recent Climate Leadership and Community Protection Act, rezoning of Brooklyn’s Gowanus neighborhood, and organizing for climate adaptation in the Rockaways. I then offer concluding remarks on the importance of on-the-ground struggles for Rawlsian thought.

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Introduction

Here, I explore the possibility that Rawls's idea of public reason can help explain and support the work of social movements for environmental justice. Few accounts have advanced a specifically Rawlsian account of environmental justice, based either on the ideas in *A Theory of Justice* or his later work in *Political Liberalism*. Generally speaking, social movements and the theorists who study them tend not to engage with mainstream liberal theories like Rawls's—almost as often, Rawls and liberalism are seen as indifferent or even obstacles to the goals of movements for racial and environmental justice. I argue here that social movements for environmental justice are better served by Rawls's theoretical apparatus than is typically granted. However, I also aim to show how Rawls's lack of an actionable idea of public reason leads at least in part to this confusion. Rawls's sophisticated account of public reason offered in his later work offers a robust framework within which ordinary citizens mobilized by social movements can (1) make claims to political power in society, and (2) justify their demands for justice through the transformation of institutions that mediate that power. This becomes clearer after attending to the ways social movements actually advance Rawlsian public reason claims in public deliberation. Doing so shows how Rawls can be a better ally to environmental and climate justice than typically granted.

The first section offers a brief exegesis of the American environmental justice movement's growth, and the kind of claims that have been central to its struggles. Looking to leaders of environmental justice scholarship, some central conflicts staged by movement actors, and recent attempts to synthesize theoretical characterizations of environmental justice, I distill the ways that the movement has focused on *power-building* in and through communities. As an exemplary model of grassroots organizing and action, the communities and groups advancing environmental justice have managed to transform their homes, the relationship of places and people to centers of power in public life, and our very understanding of the environment—as the places where we “live, work, and play.” I argue that this is a function of the environmental justice movement's exceptional and persistent focus on asserting their entitlement to power in the public realm, and over public space. This entitlement, we'll see, is often denied by structures of political economy and racism that subordinate environmental justice communities in public life. The success of the environmental justice movement, and potential of the evolving struggle for climate justice, hinges on the ability to assert a vision of the future where power over the shape of our shared world is more fairly exercised by a democratic people.

Turning to the possibility that Rawlsian liberalism can justify the claims of environmental justice, the second section delineates key features of Rawls's late work on public reason—especially its commitment to political constructivism. I approach three perennial criticisms of Rawlsian justice theory that might explain assessments that it is incompatible with the claims and hopes of environmental justice: a propensity for neoliberal politics, a commitment to structural racism veiled as ideological neutrality, and incompatibility of rights- and autonomy-based theories with the kinds of justice demanded by marginalized communities. Movement actors have good reason to find an ally in Rawls insofar as public reason is envisioned as a means of empowering citizens in governance, and protecting minority communities' stake in the political community and exercise of public power. In order to show how social movement actors help push society towards what Rawls calls the “ideal of public reason,” I propose three *functions* of public reason he did not outline in the later work: its *protective*, *corrective*, and *adaptive* roles. This typology helps make sense of the ways movements for environmental and climate justice reinforce and re-envision our public political conceptions of justice.

The third section further develops a practical structure for public reasoning. I detail three *kinds* of public reason claims that explicate how that process can actually advance democracy in political communities. I suggest that Rawls's account of *citizens'* roles in public reasoning is unhelpfully underdeveloped, even though he clearly sees the exercise of their moral powers as critical to the project of deliberative democracy. Looking to recent scholarship in law and social movements, especially the work of Lani Guinier and Gerald Torres emphasizing the role of a “demosprudence” of law and policy, I explore public reasoning's role in shifting public culture and conceptions of power. By making *procedural*, *substantive*, and *constitutive* public reason claims, social movement actors confront power in the various dimensions in which it is exercised in the public realm. A more complete conceptual framework for the kinds of ways we can engage

public reason makes it easier to understand how social movements transform our sense of justice and political institutions to create novel space in our public for a broader family of political conceptions of justice. I include examples from public realm advocacy to show how political conflict in “ordinary society” helps bring public life in line with the “well-ordered society” to which Rawls’s political liberalism aspires. Looking to the public reason claims made by movements for environmental justice illustrates how public reason can serve as the “synthetic justice frame” several scholars of environmental justice have argued is theoretically and practically necessary to advance political self-determination.

Turning to an actual ordinary society in New York City, the fourth section offers examples of how the mechanics and dialectic of public reasoning described in the earlier sections can be seen in real struggles for environmental and climate justice. I detail the history of environmental justice advocacy that led to passage of New York State’s Climate Leadership and Community Protection Act, conflict around the rezoning of Brooklyn’s Gowanus neighborhood, and organizing for climate adaptation in the Rockaways. These examples give empirical depth to the essay’s core assertion that the struggle for the future of urban environments and the people who call them home is a bona fide arena in which our political communities can work towards an ideal of public reason. The section also examines a number of ways these examples show how movements for environmental justice may be working towards an increasingly Rawlsian conception of justice, as well as shortcomings in our political and administrative institutions that signal work yet to be done.

There are any number of reasons why Rawls believed that environmental problems may not be fit for adjudication by public reason. The arguments here challenge that uncertainty by looking to a few of the ways movements for environmental justice and climate justice assert the necessarily political dimensions of questions determining the nature of the places, increasingly urban, we call home. There are good reasons—public reasons—to think that Rawls can throw more theoretical weight behind these struggles than he himself may have admitted. Giving due attention to both the theoretical architectonic Rawls provides and justice struggles on the ground gives us an idea of how precisely this is so.

I. The Claims of Environmental Justice

The environmental justice movement is, if not a singular, then a surely exemplary chapter in American political life. Through their struggles in and over our shared environment, environmental justice leaders and advocates have perennially asserted the possibility of transformative social change.¹ Commitment to that assertion is of course not unique to environmental justice. The same can certainly be said of many of the other storied American political movements. More precisely, I want here to explore how environmental justice movements and scholars have used aspects of our spatial, social, and political environments to ground their claims to power in communities. By contesting the form of our world and infrastructures, and demanding agency within the public realm, environmental justice has created a nearly wholly novel space for environmental questions in our politics.

While we may assume, as with any movement, some heterogeneity in methods and commitments of participants, looking to the history of environmental justice and its own self-understanding reveals much about its aspirations as a mode of building and structuring political power. Some observe that the movement’s entry points may extend back as far as time immemorial, in so far as environmental inequality has been with us since “the dawn of human history.”² Others emphasize the age of European and American settler colonialism and ensuing indigenous struggles for land as critical for our understanding of contemporary environmental justice struggles.³ Most directly, the present-day

¹ Benjamin Chavis asserted as much in 1993, stating “It is our intention to build an effective multiracial, inclusive environmental movement with the capacity to transform the political landscape of this nation.” p. xii in Bullard, ed. (1994) *Unequal Protection: Environmental Justice and Communities of Color*. See also Taylor (2009) *The Environment and the People in American Cities, 1600s-1900s*, p. 24, Cole and Foster (2000) *From the Ground Up* and Schlosberg (2007) *Defining Environmental Justice*, Ch. 3, for helpful background on the origins of the American environmental justice movement.

² See Pellow (2000) “Environmental Inequality Formation” p. 591.

³ See Taylor (2016) pp. 19-21, 350-356, and, generally K. Sue Park (2020) “This Land is Not Our Land.”

movement in the United States emerged from the Civil Rights Era and conflicts over toxics and environmental quality in the twentieth century.⁴ Dr. Robert Bullard reminds us that Martin Luther King Jr. was in Memphis on an economic and environmental justice mission for striking Black garbage workers when he was assassinated in 1968.⁵ While the activism of people of color and poor Americans is often overshadowed by the legacy of the mainstream “modern” environmental movement during the 1960s and 1970s, we would be remiss to neglect the important foundations forged across struggles for justice in the middle of the twentieth century.⁶

With the conflict over landfill siting in Warren County, North Carolina, environmental justice erupted into national consciousness and crystallized as its own concerted social movement. Resistance to the creation of a PCB landfill in a predominantly African American community already overburdened with toxic waste facilities inspired protests and the first large-scale act of civil disobedience in the name of environmental justice in 1982.⁷ That Warren County was chosen as the site for yet another hazard betrayed a clearly intentional bias of government and stakeholders to unload undesirable land uses in poor Black communities. In the years following, that bias was confirmed in the United Church of Christ’s Commission for Racial Justice’s landmark study, *Toxic Wastes and Race in the United States*, which identified race as the most important factor in the siting of toxic waste sites.⁸ This propensity of government actors to marginalize poor people of color found something of a private analogue in the ongoing exploitation of largely nonwhite, immigrant farmworkers subject to intolerable working conditions and ongoing chemical exposure.⁹ The struggles of communities fighting unwanted land uses and labor abuse serve as informative markers of different threads in environmental justice advocacy against government institutions and private interests. In practice, however, the entangled character of these injustices reveals that the actions of public and private actors often coalesce intentionally and unintentionally to injure vulnerable communities.¹⁰ That this is the case underlines the pervasive, systemic nature of environmental injustices and their rootedness in more general facts pertaining to the relationship of political and economic forces in society.

Communities’ early struggles against acute environmental injustices culminated in the crystallization of a concerted national movement with transformative aims and catalytic energy. In October 1991, the First National People of Color Environmental Leadership Conference in Washington, D.C. assembled activist groups of color and led to the adoption of seventeen “Principles of Environmental Justice” consecrating their cultural relationship to the natural world and demanding respect as stakeholders in the global community.¹¹ The environmental justice movement delivered a thoroughgoing critique of modern environmentalism, which for most of its history had advocated for the protection of environmental quality in places largely bereft of poor people and people of color. Landmark environmental laws focused on wilderness, water, air, and other dimensions of environmental quality were crafted by establishment insiders representing the interests of wealthier stakeholders and the extra-urban environments for which they cared.¹² Cities and the people who called them home were typically left out of the conversation entirely. Grassroots environmental justice

⁴ See Bullard (1994) pp. 3-4; Bullard and Johnson (2000) “Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making” pp. 555-556; and Taylor (1999)

⁵ See Bullard (1994) and Bullard and Johnson (2000),

⁶ Bullard (1994) p. 3 and Cole and Foster (2000), Ch. 1.

⁷ Bullard (1994) *ibid.* pp. 5-6

⁸ United Church of Christ (1987) *Toxic Wastes and Race in the United States* p. xiii, and Bullard (1994) p. 17

⁹ Cole and Foster (2000) generally, Chapter Four “Buttonwillow: Resistance and Disillusion in Rural California”

¹⁰ *Ibid.*, pp. 58-66 on the structure and function of environmental racism in America.

¹¹ See Bullard (1994) pp. 6-7 and People of Color Environmental Leadership Summit (1991). Taylor (2000) notes six major thematic components of the *Principles*, including (a) ecological principles, (b) justice and environmental rights, (c) autonomy/self-determination, (d) corporate and community relations, (e) policy, politics, and economic processes, and (f) social movement building, pp. 538-539.

¹² Bosso (2005) *Environment, Inc.: From Grassroots to Beltway* offers a detailed account of the genesis and influence of the mainstream environmental movement. Jedediah Purdy’s recent article “The Long Environmental Justice Movement” offers a revisionist, if still sympathetic understanding of the work of “big green” environmental groups. See Taylor (2016) for a more critical evaluation of the American environmental and conservation movements.

advocates instead drew a broad circle around questions of the environment—redefining the “environment” as “the places where people live, work, and play.” The environmental justice framework that emerged elevated the need for equitable environmental protection, preempting harms and polluter abuses, and the targeted reduction of disproportionate risk burdens. Fundamentally, the environmental justice movement asserted the necessity of more democratic environmental protection. Contrary to the nonpartisan perception of environmental issues, it brought to the surface previously unexplored ethical and political dimensions of the United States’ environmental protection regime.¹³

As movement actors connected, organized, and strategized around the Principles, the academic community crafted an increasingly complex theoretical apparatus through which environmental injustices could be understood. Bullard and Johnson defined the core idea of environmental justice as “the fair treatment of and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁴ Analysis of environmental injustices re-focused attention away from mere risk management, towards the idea of environmental protection as a right and the development of holistic approaches to shaping the shared environment. Environmental racism emerged as an important frame within which movement actors could critique the administration of laws and other state or non-state institutions.¹⁵ An understanding of the law’s role in the injustices of environmental racism and larger social structure relied on a political economy approach that “examines the relationship among economic, political, legal, and social forces as they influence environmental decision making processes and environmental outcomes.”¹⁶ More general frameworks explaining environmental inequality formation delineated similar conceptual structures for parsing the ways public and private forces work to shape environmental harms and disempowerment in communities. David Pellow argued that those inequalities could be viewed as the product of a *process* of change, negotiation, and conflict among stakeholders. Actors within society struggle for resources within the political economy, resulting in the uneven distribution of benefits and costs of those resources.¹⁷ Environmental inequalities are subject to other social constructions shaping law and administration of the built environment—e.g., the designation of incinerators as “hazardous” and recycling facilities as “safe”—as well as resistance to those inequalities.¹⁸ Dorceta Taylor identified an emergent “environmental justice paradigm” as a unifying frame across movement actors that better accounted for the full range of environmental justice groups’ activities.¹⁹

Organized around the values identified in the *Principles of Environmental Justice*, the new paradigm was the first viewpoint to connect environment and race, class, gender, and the concerns of social justice in an explicit framework.²⁰ Taylor argues that the action and advocacy of grassroots groups alongside their partners in the academy and legal profession built both the conceptual and empirical credibility underpinning the movement’s injustice claims.²¹ As mainstream environmental groups began to support the struggles of movement actors with professional and legal support, environmental justice became difficult, if not impossible to ignore. The frame’s flexibility also enabled a multiracial coalition of actors concerned with social justice to develop policies and campaigns around environment and

¹³ Bullard (1994) pp. 10-11.

¹⁴ Bullard and Johnson (2000) p. 558.

¹⁵ Bullard and Johnson (2000) define “environmental racism” as “any environmental policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color.” p. 559. See also Taylor (2000), pp. 534-539, and Cole and Foster (2000).

¹⁶ Cole and Foster (2000) p. 11.

¹⁷ Pellow (2000), p. 589.

¹⁸ *Ibid.*, pp. 590-592.

¹⁹ Taylor (2000) pp. 533-545, 566.

²⁰ *Ibid.*, p. 542, and *supra* note 11 above.

²¹ *Ibid.*, p. 561.

inequality.²² Environmental justice built on the success of prior social movements—especially those of the civil rights era—to give cultural salience to the idea that environmental protection is a right. Their claims²³ exposed the systems and structures in politics and the economy that reinforce vulnerability in places called home by people most powerless to escape “sacrifice zones” of concentrated toxics and exploitations created and justified by institutional powers in terms of economic efficiency.²⁴ Through this work, the movement has inspired reevaluation of both our political ordering and the very idea of concepts like the environment, ecosystems, and nature.²⁵

Definitional and theoretical achievements aside, the environmental justice movement’s greatest contribution may rest in the extent to which it has served to *build power* in the grassroots communities who live and advance its struggles. Environmental justice conflicts have been “a crucial arena in which to restructure social relations through systems of localized environmental decision-making.”²⁶ Successful advocacy in that arena requires the concerted action and persistence of grassroots actors through various administrative and community-facing institutions at every level of government, from local land use bodies to the Supreme Court.²⁷ Generally speaking, these institutions are rarely designed or equipped to accommodate the perspectives, much less the contrarian justice claims, of movement actors. However, environmental justice actors and scholars have shown how the shared process of organizing, strategizing, and collectively working through and against these institutional processes can empower the voices of those who have been systemically marginalized by those institutions.²⁸ This action requires learning, communication, and the building of other kinds of social infrastructures capable of sustaining prolonged engagement in bureaucratic and legal conflict, along with the reimagining of abilities and purpose on the part of movement actors. The growth of capacities in community and the self underpins the possibility of environmental justice as a variety of “transformative politics”—the struggles and innovations of grassroots movements work to reshape individuals, groups, networks, and the institutions that disempower them.²⁹ Environmental justice asserts the possibility of imagining and implementing new arrangements of power over the shape of our world, and the forms of governance necessary for that vision. It is with this transformative capacity in mind that Cole and Foster observe that environmental justice “expresses our aspiration and encompasses the political economy of decision making. That is, environmental justice requires democratic decision making, community empowerment, and the incorporation of social structure—for example, existing community health problems, cumulative impacts of preexisting environmental hazards, and the effect of segregative housing patterns—in environmental decision making processes.”³⁰ These are aspirations that our politics have, for the most part, failed to achieve in full.

Leveraging these movement reflections, one goal of this chapter is to more fully develop an understanding of environmental justice as a variety or inflection of political justice. Part of that project will entail an attempt to give theoretical depth to Laura Pulido’s assessment that environmental justice struggles are “embedded in the larger struggle against oppression and dehumanization that exists in the larger society.”³¹ The legacies of the movement described

²² Ibid., p. 562.

²³ Taylor (2000) defines claims of social movement actors as “complaints or grievances about social conditions that members of society find offensive, undesirable, or unjust.” p. 510.

²⁴ Bullard and Johnson (2000) pp. 573-574.

²⁵ Peña (2004)

²⁶ Cole and Foster (2000) p. 13.

²⁷ Foster (2002) “Environmental Justice in an Era of Devolved Collaboration” pp. 470-471 points out that often, economically, socially, and politically disadvantaged communities tend to be excluded in ostensibly “pluralist” politics of environmental administrative decision-making, which privileges powerful interest groups in a pseudo-market arena. Dissatisfaction with the pluralist model has given way to calls for approaches that better provide for meaningful participation of communities.

²⁸ Cole and Foster (2000), Pellow (2016) “Toward a Critical Environmental Justice Studies: Black Lives Matter as an Environmental Justice Challenge” p. 7 on agency and resource mobilization in environmental justice movements.

²⁹ Cole and Foster (2000) pp. 14-15.

³⁰ Cole and Foster (2000) p. 16.

³¹ Pulido (1996) *Environmentalism and Social Justice: Two Chicano Struggles in the Southwest* p. 25

above should underline the notion that the communities involved in environmental struggles are acutely aware of the political stakes of their conflicts. The leaders and actors working to achieve environmental justice need little reminding that the conditions crippling their communities could have been avoided or mitigated had the political process provided people with the power to object to the decisions from which they stem. Recently, David Schlosberg has argued that “[environmental justice] is about participation, empowerment, and voice, which brings us directly to the procedures used in making decisions on environmental policies; and it is about the essence of the public, collective realm, which relates directly to the capabilities and functioning of communities and their residents.”³² The public realm framework developed in this book provides the conceptual apparatus necessary to take seriously the notion that the conflicts waged by the environmental justice movement provide important insights regarding how society’s political institutions must be structured. It also shows, in a Rawlsian vein, what the environmental justice movement can teach us about how those structures are conditioned by the decisions made about how to shape our world, and the parts of public space, by their influence on public reason and our sense of justice.

These very questions are all the more important as we consider the new realities that climate change will realize. In the coming decades, temperatures and seas will rise, natural disasters will strike human communities with increased intensity and frequency, and more people will lose their homes than during any other era in modern history.³³ Already, superstorms, heatwaves, and other climatological catastrophes have illustrated the vulnerability of our physical infrastructures and the communities who rely on them for vital, life-supporting services.³⁴ For some critics, this new dimension of environmental instability in the anthropocene is accompanied by a distinct, if overlapping movement for climate justice.³⁵ Frontline communities and advocates in both national and international settings have raised claims against the pollution and other externalities produced by the energy sector, extractive activities of corporations compromising resilience to disasters, and other activities of the developed nations contributing to risk and vulnerability in poor, disempowered, and often indigenous communities.³⁶ Vulnerabilities to climate risk and powerlessness to do much of anything about them arguably follow a racialized “abyssal line” delineating those “presumptively entitled to liberty, equality, and autonomy from those relegated to zones of violence and dispossession.”³⁷ There is growing acceptance of the idea that our very systems of political economy,³⁸ and the laws in place that structure them,³⁹ are responsible for past and future devastation faced by these communities as ecological systems collapse. These institutions may be incapable of delivering justice to the peoples most in need of empowerment and authority. They likely also reinforce the inequalities enjoyed by those corporations and groups that stand to benefit from, say, the displacement of

³² Schlosberg (2007) p. 51. Emphasis added.

³³ See, generally, Reckien, D. et al (2018) “Equity, Environmental Justice, and Urban Climate Change” pp. 178-188 and Gonzalez (2020) “Climate Change, Race, and Migration”

³⁴ Reckien, D. et al (2018) *supra* note 33, and Aronoff, Kate et al. (2020) *A Planet to Win: Why We Need A Green New Deal* pp. 1-6.

³⁵ Schlosberg and Collins (2014) “From environmental to climate justice: climate change and the discourse of environmental justice” *WIREs Climate Change*, pp. 6-7. Schlosberg and Collins identify three “moments” of climate justice, occurring at the level of (1) ideal theory, (2) elite NGOs (e.g., the Mary Robinson Foundation), and (3) grassroots movements. They also note that the term “climate justice” was first used in the academic literature by Edith B Weiss in her 1989 book *In Fairness to Future Generations*.

³⁶ Gonzalez (2020) “Climate Change, Race, and Migration”

³⁷ *Ibid.*, p. 114. Gonzalez further adds “The racialized abyssal line is mapped onto space in the form of stigmatized geographic locations, including inner cities, reservations, the barrio, *el campo*, prisons, refugee camps, and the Third World—where the land and the people have been rendered expendable and, in the words of Fanon, ‘wretched...’ The abyssal line operates on a global scale between centers and peripheries, divides the North and the South, and also operates within nations.”

³⁸ Alperovitz, Speth, and Guinan (2015) “The Next System Project: New Political-Economic Possibilities for the Twenty-First Century” p. 7.

³⁹ See, generally, Gonzalez, Carmen (2020), Maxine Burkett’s (2018) “Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice” p. 456, and Part II, as well as Katharina Pistor (2019) *The Code of Capital* pp. 5-9, on the law’s determination of advantages and disadvantages in global systems of political economy.

poor and indigenous peoples whose homes are rendered inhospitable by climate change, as well as the extractive economy responsible for the ecological devastation faced by these communities.⁴⁰

While environmental justice and climate justice are occasionally treated as distinct dimensions of justice,⁴¹ there is good reason to treat the two notions as coterminous, or such that the latter is conceptualized as a sub-aspect of the former. The American environmental justice movement was integral to the rise of the international climate justice movement.⁴² Some make the case that concerns of the climate justice movement—especially adaptation of the built environment—serve to bridge climate justice, environmental justice, and social justice more broadly.⁴³ It can be further argued that climate justice has helped to redefine our understanding of environmental justice's relation to social justice. As Schlosberg and Collins argue, “climate change has helped move the understanding of environmental justice from one where environmental risk is seen as a symptom of social justice, to one where functioning environment is seen as necessary for any form of justice...”⁴⁴ Yet it is critical to recognize that from the beginning, even before the specter of climate change pressed the question of “transformative adaptation,”⁴⁵ the environmental justice movement offered a vision of a profoundly transformative politics rooted in the inheritances described above. Early in the movement's history, Luke Cole described the importance of abandoning a merely reactive politics in environmental justice work in favor of a model that inherently challenges the status quo. In order to support self-determination and overcome challenges of political economy, movement actors and their partners in the legal profession should embrace advocacy committed to the participatory activity of communities in decision making processes and the explicit confrontation of the powerlessness communities face.⁴⁶ This echoes Dr. Robert Bullard's early assessment: “What do grassroots leaders want? These leaders are demanding a shared role in the decision-making processes that affect their communities. They want participatory democracy to work for them.”⁴⁷ The desire to transform democratic governance into something it believed itself to be has always been internal to the environmental justice movement.

In their struggles for authority in decision making processes, as well as reparative justice for past harms, we should see environmental justice and climate justice advocates as fundamentally concerned with the same questions of power and autonomy in determining the shape of our shared world. Both movements challenge us to ask how we can ensure that fundamental political institutions across all levels of society deliver justice to the most vulnerable of our kin. These are matters of representation, but also inclusion and agency within the discourse directing government's influence on the lives of individuals and communities. As suggested above, communities demand government action and real say in how the power of the public realm is deployed. Regardless of whether questions of distributive justice, reparative justice, or some other variety of justice are at hand, we may preliminarily distill the general form of environmental justice claims at least to claims *on government*, or claims *on public power*. In this light, it should not be hard to make sense of environmental

⁴⁰ Gonzalez, *Ibid.*, p. 122. With an analysis explicitly grounded in racial capitalism, Gonzalez identifies six distinct groups that stand to benefit from stoked racism and militarized borders that come with the criminalization of migration and increased hostility towards climate migrants, including (1) the security industry, (2) the state security apparatus, (3) corporations reliant on low wage labor, (4) states neighboring the Global North eligible for monetary compensation (e.g., Mexico, Libya, and Morocco), (5) criminal enterprises that specialize in immigrant trafficking, and (6) authoritarian populists in the Global North inclined to scapegoat migrants and other racialized communities for the ills of capitalism. See also Burkett (2018) p. 458.

⁴¹ E.g., New York City's framework delineates between environmental and climate justice, available at <https://www1.nyc.gov/site/cpp/our-programs/environmental-justice.page>.

⁴² Schlosberg and Collins (2014, p. 8) characterize the contemporary climate justice movement as emerging out of, and indebted to, the environmental justice movement. Though “it is difficult to pinpoint exactly the origin story of the concept of climate justice in grassroots movements,” touch points include a general focus on mitigating the causes of climate change, and the environmental justice movement's resistance against the fossil fuel industry.

⁴³ Schlosberg and Collins (2014), p. 10.

⁴⁴ *Ibid.*, p. 12.

⁴⁵ *Ibid.*

⁴⁶ Cole (1994) “Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy”

⁴⁷ Bullard (1994) “Introduction” in *Unequal Protection: Environmental Justice and Communities of Color*, p. xvii.

justice claims as a variation on the civil right's movement's appeals to equal protection under law—they assert the possibility that environmental protection may be considered a *political right*.⁴⁸ An intermediate task in achieving that vision is wrangling the political *power* to institutionalize that right, and reinventing the institutions stifling its realization.

It is worth appreciating the degree to which the environmental justice movement has succeeded at precisely that. President Bill Clinton's signing of Executive Order 12898 in 1994, for all its shortcomings,⁴⁹ served as a watermark moment for the movement and harnessed the power of the presidential pen. By reinforcing Title VI of the 1964 Civil Rights Act and the requirements of the National Environmental Policy Act, President Clinton's directive to agencies to improve methodologies for assessing the disproportionate experience of environmental harms in communities addressed environmental injustices within existing federal laws and regulations.⁵⁰ In 2017, New York became the first city in the United States to follow suit, with the passage of Local Laws 60 and 64, establishing an environmental justice advisory board and writing environmental justice into the mission and strategy of every city agency.⁵¹ International governments have committed to multilateral frameworks guiding the advancement of sustainable development and reversing climate change.⁵² Major public financial institutions have started to shape monetary policy and other sector-based regulations around climate risk, and more ambitious investment in the well-being of communities.⁵³ Advocacy has also helped redirect government's approach to environmental policymaking. In addition to requiring some portion of state investment in energy and other infrastructure gets directed to environmental justice communities, New York's Climate Leadership and Community Protection Act empowers those communities to define the substantive work of the administrative bodies created by the bill, and how decisions will be made.⁵⁴ Since its humble, grassroots beginnings in the 1980s and 1990s, environmental justice advocates have forcefully redefined countless institutions in American government and political economy, as well as the very notion of environmental protection.

The success of the environmental justice movement to date has been unquestionably bolstered by its intersections with other movements for social justice. Cole and Foster argue that the movement's transformation of national environmental advocacy from a top-down, centralized approach to a “decentralized, geographically scattered but highly-organized and mutually self-conscious” strategy may have been its most important legacy.⁵⁵ What was organized as a pyramid became essentially a web of organizations, with distant branches connecting the movement to people and

⁴⁸ Bullard and Johnson (2000) pp. 558-559, and 573.

⁴⁹ See generally Lee (2021) “Evaluating Environmental Protection Agency's Definition of Environmental Justice” *Environmental Justice*. Lee faults 12898 for never addressing how “disproportionately high and adverse effects” of environmental risks faced by particular communities were to be addressed (p. 3). Further, Lee argues that (1) EPA's notion of environmental justice as “fair treatment” runs afoul of movement actors' assertion that no community be subject to disproportional environmental harm and (2) that overemphasis on “meaningful involvement” has essentially hamstrung environmental justice practitioners in actually realizing fair treatment beyond community planning efforts (pp. 3-4). Lee's points are certainly well-taken, though I believe the discussion below will address some of his concerns regarding the potential for justice embedded in the movement's key institutional victories.

⁵⁰ Bullard and Johnson (2000) p. 561. For an early account of the potential for administrative agencies to advance the goals of environmental justice, see Torres (1994) “Environmental Burdens and Democratic Justice”

⁵¹ See 2017 NYC Local Law No. 60 and 2017 NYC Local Law No. 64, and discussion at p. 397 in Bratspies (2020) “Renewable Rikers: A Plan for Restorative Environmental Justice”

⁵² See United Nations Framework Convention on Climate Change (2021) “Nationally determined contributions under the Paris Agreement”, elaborating the legally-binding obligations of 196 nations to fight climate change https://unfccc.int/sites/default/files/resource/cma2021_08_adv_1.pdf and the seventeen goals set as part of the UN Sustainable Development Goals in United Nations General Assembly (2015) Transforming our world: the 2030 Agenda for Sustainable Development https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E. Both the Paris Accords and SDGs were adopted in 2015.

⁵³ For an example of US central bank research, see Kiley, Michael T. (2021). “Growth at Risk From Climate Change,” Finance and Economics Discussion Series 2021-054. Washington: Board of Governors of the Federal Reserve System, <https://doi.org/10.17016/FEDS.2021.054>. In 2019, the Bank of England became the first central bank to provide regulated firms with a risk-assessment framework for climate change. Bank of England (2019) “Enhancing banks' and insurers' approaches to managing financial risks from the climate crisis” <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2019/ss319.pdf?la=en&hash=7BA9824BAC5FB313F42C00889D4E3A6104881C44>

⁵⁴ See Giacomelli (2020) “Climate Justice Working Group Holds First Meeting Under 2019 State Climate Act”

⁵⁵ Cole and Foster (2000) p. 151.

causes beyond the typical membership of environmental organizations. As discussed above, the civil rights and racial justice movements were early predecessors and consistent partners in environmental justice struggles and intellectual resources for examining environmental racism. Just as vital are the movement's ties to advocates for tribal rights and indigenous justice.⁵⁶ Preempting construction of the American Keystone XL pipeline⁵⁷ and protection of thousands of acres of indigenous homeland under the Antiquities Act⁵⁸ are but a few of the victories indicative of the movements' growing ability to turn the tide of politics and executive action. Movements for labor and economic justice, and especially the worker unions that sustain their base, are another set of invaluable partners to environmental justice.⁵⁹ Building on advocacy for safer workplaces, ecological protection, and workers' rights, labor has proved an increasingly critical ally in the push for a just transition away from extractive, carbon-intensive economy.⁶⁰ Workers movements see the green industrial revolution demanded by environmental justice advocates as a vital opportunity to reimagine our attitudes towards and requirements of working life—from wages and training to ownership and relation to management.⁶¹ Adding gender, sexuality, and even species to this multi-scalar analysis, some scholars have conceptualized a next-generation “Critical Environmental Justice Studies” that more capably emphasizes the role of categories of difference in environmental inequities and how social inequality and power is entrenched and embedded in society.⁶² As David Pellow argues—and as the movement's sustained focus on environmental racism shows—to understand environmental injustice is to grasp the pernicious effects and driving force of multiple overlapping forms of inequality.

While we may question the adequacy of existing reforms and environmental justice practice within the state,⁶³ or even the pragmatic efficacy of advocacy focused on government action,⁶⁴ the movement's achievements reinforce the

⁵⁶ Cole and Foster (2000) as well as Park (2020)

⁵⁷ See Arvin, Jariel (2021) “More than 20 Republican-led states sue Biden for cancelling the Keystone XL pipeline” *Vox* <https://www.vox.com/22306919/biden-keystone-xl-trudeau-oil-pipeline-climate-change>. The Native-led opposition to the pipeline's construction raised concerns both about the project's potentially destructive impacts on the land, water and air tribes rely on, as well as the patterns of violence against Native women committed by transient worker populations associated with pipeline projects.

⁵⁸ Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) under President Obama established the 1.35 million acres of Bears Ears National Monument. The advocacy process led by tribes in advance of the proclamation is described by Charles Wilkinson (2018) “‘At Bears Ears We Can Hear the Voices of Our Ancestors in Every Canyon and on Every Mesa Top’: The Creation of the First Native National Monument” *Arizona State Law Journal* 50

⁵⁹ See, e.g., Aronoff et al. (2020) *A Planet to Win* p. 88-100.

⁶⁰ See, for example, New York City Environmental Justice Alliance (2020) “NYC Climate Justice Agenda 2020” on the commitment to a just transition in New York's energy economy, pp. 38-47. (<https://www.nyc-eja.org/wp-content/uploads/2020/04/CJA-2020-FINAL-042020-for-web.pdf>). Labor's role in the New York City environmental justice movement is also exemplified in UPROSE's advocacy for resilience and protection of Brooklyn's industrial waterfront in Sunset Park, and the Protect Our Working Waterfront Alliance's (POWWA) partnership in the initiative. (https://static1.squarespace.com/static/581b72c32e69cfaa445932df/t/5d7fa701be8e5528f6bece11/1568646954044/GRID_UPROSE+EDITS.pdf)

⁶¹ Aronoff et al. (2020) *ibid*.

⁶² Pellow (2016) “Toward a Critical Environmental Justice Studies: Black Lives Matter as an Environmental Justice Challenge” p. 3, as well as an earlier statement in Pellow and Brule (2005) “Power, Justice, and the Environment: Toward Critical Environmental Justice Studies.”

⁶³ Lee (2021a) *supra* note 51, as well as Lee (2021b) “Confronting Disproportionate Impacts and Systemic Racism in Environmental Policy.” In both pieces, Lee argues that environmental justice practice in government agencies rarely moves past procedural justice, “afflicted with the problem of process without substance” (2021b p. 10213).

⁶⁴ In “Environmental Justice and the Political Process: Movements, Corporations, and the State” (2001), Pellow contests that because of key changes in political economy in the latter half of the 20th Century (e.g., weakened local and federal regulatory states, and increasingly powerful corporate actors in the private sector), environmental justice advocacy must acknowledge and organize around the role of non-governmental entities (p. 49). He questions (1) the state as the primary target of social movements and vehicle of reform, (2) the state's monopoly on policy making, (3) capital's role as merely another interest group, rather than as a shaper of policy, and (4) the nation-state as the primary analytical subject in political process research. His proposed “political economic process model” de-centers the state, acknowledges the role of the firm as often the most powerful actor in political conflicts, recognizes the importance to social movements of challenging both political and economic forces, and considers a broader variety of institutions that might create opportunities for actors to leverage for change (pp. 50-53).

possibility for transformative change within the political state. The sustained focus of movement actors on changing political institutions within the public realm—through its commitment to coalition-building and the kinds of radical, imaginative “non-reformist reforms” Amna Akbar has described as key to grassroots power building⁶⁵—offers vital insight into the very nature of political justice and its practical realization. Specifically, the remainder of this piece will argue that the environmental justice movement is exemplary of the kind of *public reasoning* John Rawls believed central to the very structure of political justice in democratic society. While Rawls was ambivalent (if not wholly skeptical) towards the possibility that questions of the environment could be resolved by public reason, the environmental justice movement’s struggles provide compelling evidence that our environment and parts of public space are fully within its bounds. I argue that the very fact of our appreciation of the environment as a matter for political justice, thanks to the environmental justice movement, is illustrative of the dynamics of public deliberation and our shared sense of justice in precisely the way Rawls describes their workings throughout his middle and late periods, from *A Theory of Justice to Political Liberalism* and “The Idea of Public Reason Revisited.” Understanding how this is so goes a long way towards helping ameliorate some of the intractable tensions observers have posited between liberal political philosophy and critical justice movements. It also, as I argue, helps us provide much-needed theoretical depth and articulation to key ideas in Rawls’s later work about power and our political infrastructure that go woefully under-developed.

II. Liberalism’s Complicity and Capaciousness

It is often—though not always—the case that liberal political philosophy, theories of justice, and legal theory are understood as unhelpful or even hostile to the claims of environmental justice and other left-leaning movements for social change. A variety of reasons and ideological commitments underpin these assessments. Some scholars have gone so far as to argue that liberal and environmental justice values are “incommensurable.”⁶⁶ Practically, others have emphasized liberalism’s role in advancing elite agendas, and laying the institutional and legal groundwork consecrating neoliberal, anti-egalitarian ideals in both courtrooms and dominant forms of environmental advocacy.⁶⁷

Rawls’s actual views are both more nuanced than most assessments from outside philosophy appreciate, and more sympathetic to the aims of environmental justice than either Rawls or his critics might expect. Engagements with Rawls’s work tend to focus on the much-discussed aspects of his theory like the difference principle, or the original position, intended as a device of representation.⁶⁸ This sustained characterizations of Rawls as offering essentially a theory of distributive justice.⁶⁹ Much as could be said of environmental justice, the reflections on distribution of goods within the basic structure of society certainly constitute one aspect of Rawls’s theory—but do not exhaust the purpose or potential of the enterprise. On his two principles of justice, Rawls emphasizes that questions regarding the basic rights and liberties to which citizens are entitled, and fair equality of opportunity, are both lexically and practically prior

⁶⁵ See Akbar (2020) “Demands for A Democratic Political Economy” *Harvard Law Review Forum* 134, esp. §I.

⁶⁶ Peña (2004) p. 135.

⁶⁷ Purdy (2020) *This Land Is Our Land* pp. 131-137 on legal liberalism’s role in shaping the modern mainstream environmental movement, and its limitations as a model of social change brought on by tendencies towards impartiality. Park (2020), while critiquing the general reference point from which Purdy approaches his project, levees a similar critique against American left/liberal movements’ tendencies to universalize, underpinning their difficulty building effective political coalitions (pp. 1985, 2026).

⁶⁸ Rawls (2005a) *Political Liberalism* p. 25.

⁶⁹ See, e.g., Kaswan, Alice (1997) “Environmental Justice: Bridging the Gap Between Environmental Laws and Justice”, describing Rawls’s *Theory* as arguing that a “just” outcome is one that increases welfare for the least advantage. She notes “Justice’ is this a function of the distribution of benefits and burdens.” p. 230n27. David Schlosberg (2007) similarly characterizes Rawls’s work—“For years, justice studies were defined by, and proceeded from, the theories of John Rawls. They focused on a conception of justice defined solely as the distribution of goods in a society, and the best principles by which to distribute those goods.” p. 3. Recent scholarship has begun to push back against this reading of the Rawlsian project. Stefan Eich (2021) observes in his article “The Theodicy of Growth: John Rawls, Political Economy, and Reasonable Faith” that Rawls himself was surprised by *Theory*’s reception. “Almost immediately the entire debate focused on questions of distribution, whereas few engaged with what Rawls himself had considered his central contribution, namely his account of stability and moral psychology in Part III.” p. 7.

to the difference principle in his theory.⁷⁰ So the very possibility of a just scheme of social cooperation is predicated *first* upon proper access of the citizenry to the political process, and *then* a just distribution of social goods.⁷¹ Before we can even ask whether or not some degree of inequality in society might be to the benefit of the least well-off in society, Rawls's theory of justice demands that those citizens must first have attained the fundamental rights and liberties guaranteed within a particular political conception of justice. That guarantee will almost certainly require dramatic changes to our institutions—government agencies and decision-making processes, social programs, as well as markets and other kinds of financial arrangements—that shape society's general scheme of inequalities and economic positions. To characterize Rawls's project as concerned fundamentally with distributive justice misses the more fundamental work of reimagining the institutions in society, and our own normative reasoning that justifies those changes.

The question of justification points us toward an oft-overlooked, general focus on the *construction* of a society's idea of justice in Rawls's later work, that could well contribute considerable theoretical weight to the claims of environmental justice advocates. From *A Theory of Justice* on, the substantive conclusions of Rawls's theory relied on a complex moral psychology explaining the development of moral motivation and a sense of justice in the individual.⁷² In short, the motivation to be just in ordinary life, for Rawls, relies on a long history of social teaching and reinforcement—not any complex act of abstraction or philosophical reflection.⁷³ Rawls's later work, in *Political Liberalism* and especially the essay "The Idea of Public Reason Revisited," preserves this core insight of the middle period and expands its scope. Social justice is not tethered to any one universal ideal of a "well-ordered society," but rather to a particular political community's idea of social justice. The very content of this idea is embedded in political culture and the institutions of society's "basic structure."⁷⁴ Rawls eschews any realism about justice that falls back on an intrinsic, definite nature of the individual, and is in fact highly context-dependent.⁷⁵ The program of justice as fairness Rawls advances is at least committed to reciprocity, civic friendship, and deliberative democracy as part of a liberal ideal.⁷⁶ But his political constructivism provides a basis for his theory of justice grounded in the normal lives and aspirations of an ordinary democratic people.

The constructivist thread described above highlights the thoroughgoing antifoundationalism in Rawls's thought. Importantly, for Rawls, any particular social arrangement cannot be just unless it is endorsed by citizens and acted upon out of commitment to their ideal of social justice—what Rawls calls *public reason*.⁷⁷ Because public reason is intended to create space for a plurality of political conceptions of justice, there is no fixed or favored scheme endorsed in the late

⁷⁰ Rawls (2001) *Justice as Fairness: A Restatement*, §13.1, p. 43, stating: "This priority means that in applying a principle (or checking it against test cases) we assume that the prior principles are fully satisfied. We seek a principle of distribution (in the narrower sense) that holds within the setting of background institutions that secure the basic equal liberties (including the fair value of the political liberties) as well as fair equality of opportunity."

⁷¹ Though as discussed *infra* notes 155-166 and accompanying text, Rawls acknowledges the necessity of both procedural and substantive justice in the proper attainment of political justice. See *Political Liberalism* (2005a) Lecture IX §5.1, pp. 421-424.

⁷² Rawls (1971) *A Theory of Justice* p. 490-491. See also Bates (1974) "The Motivation to Be Just", p. 11, noting that these are not "psychological laws" per se, but "tendencies which are presumed to operate, other things being equal." Rawls's commitment to the moral psychology outlined in *Theory* is reinforced at Rawls (2001) p. 196n17.

⁷³ See generally Bates (1974)

⁷⁴ The "basic structure" defined by Rawls in (2005a) "is understood as the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation. Thus the political constitution, the legally recognized forms of property, and the organization of the economy, and the nature of the family, all belong to the basic structure." p. 258. Later, at p. 266, Rawls argues that "the role of the institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and adjusted, an initially just social process will eventually cease to be just, however free and fair particular transactions may look when viewed by themselves."

⁷⁵ Discussed below, notes 102-103 and accompanying text. Here, I mean a more general "moral" or "normative" realism, not "legal realism" in the jurisprudential sense.

⁷⁶ Rawls (2005b) "The Idea of Public Reason Revisited" pp. 446-450.

⁷⁷ *Ibid.*, pp. 442-445.

work's political liberalism.⁷⁸ Social justice is advanced when public political discourse pushes government to act according to the ideal of public reason, and when citizens come to agree on the reasonable terms of social cooperation.⁷⁹ That public reason fundamentally determines the just use of political power by discursive means is, I will argue, why Rawls's theory creates a most useful conceptual space within which movement actors can make their justice claims. It also points towards where our ideas of justice can best learn from struggles for environmental justice, because the antifoundationalism implied by the idea of public reason shows us how the activity of social movement actors in fact redefines and reimagines the content of a society's political conception of justice.

I think these features of Rawls's account, and others developed below, give social movement actors good reason to find a theoretical ally in Rawls. As I will argue, we can often, but perhaps not always, understand environmental justice advocates as making the kinds of claims to public reason that Rawls describes. First, though, it is worth addressing three prominent kinds of concerns raised against liberal accounts in general, and Rawls's account in particular—a sympathy for neoliberal politics, a commitment to structural racism masquerading as ideological neutrality, and the incompatibility of rights- and autonomy-based theories with the calls for justice from marginalized communities.

The first kind of charge—that liberalism struggles or fails to reign in its neoliberal leanings and market-centrism—is seen as privileging private, economic interests over those of communities on the ground.⁸⁰ We can define neoliberalism as “a set of recurring claims made by policymakers, advocates, and scholars in the ongoing contest between the imperatives of market economies and nonmarket values grounded in the requirements of democratic legitimacy.”⁸¹ Broadly, this charge challenges the extent to which *economic efficiency* should be privileged as a determining value in public decision making. The classic environmental justice cases of toxics citing, land use planning, and pesticide use bring this question to the fore.⁸² Recent scholarship posing urban gentrification as a question for environmental justice also challenges the assumption that government has an obligation to concede resources to the “highest and best use.”⁸³ The charge against Rawls, one might argue, is that the general liberal propensity for neoliberalism and potentially inequality-justifying consequences of the difference principle precludes his theory's usefulness to social movement actors.⁸⁴

We can begin to address these concerns in a straightforward way. The Rawls of *Political Liberalism* emphatically admonishes market-centrism as incompatible with the ideal of reasonable pluralism. Given that no comprehensive doctrine can have a monopoly over the “whole truth” of politics, nothing says that governance must abide by or make special accommodations for market forces. The later work's idea of public reason, as the means by which comprehensive doctrines can be challenged for the danger they pose to the civic health of a society, would indeed justify the very possibility of attacking neoliberal institutions on constitutional grounds for imposing one particular idea of the good on a democratic people. Furthermore, recent Rawls scholarship exhibits a growing appreciation for *Political Liberalism's* depiction of the principles of justice as agnostic to the importance of economic growth, one key assumption of

⁷⁸ Ibid., p. 451. This is a key change from Rawls's positions in *A Theory of Justice*, where “justice as fairness” was given a privileged position among what the later work came to call *political conceptions* of justice (as opposed specifically to utilitarianism, but also to more straightforward Kantian schemes).

⁷⁹ Rawls (2005b) p. 446.

⁸⁰ David Harvey, in “The Right to the City” (2008) notes that neoliberalism has “created new systems of governance that integrate state and corporate interests, and through the application of money power, it has ensured that the disbursement of [economic] surplus through the state apparatus favours corporate capital and the upper classes in shaping the urban process” (p. 38).

⁸¹ Britton-Purdy et al. (2020) “Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis” p. 1789n21.

⁸² See *supra* notes 24–26, and accompanying text.

⁸³ See Gould and Lewis (2017) *Green Gentrification: Urban Sustainability and the Struggle for Environmental Justice* p. 13

⁸⁴ See, for instance, the discussion in Britton-Purdy et al. (2020) p. 1814, describing the possible view of Rawls from *Theory* that markets might have the capacity to result in an equitable distribution of welfare according to the maximin criterion.

neoliberalism.⁸⁵ As Rawls emphasizes throughout the later work, the primary end of his theory of justice is the reasonable design of institutions that structure citizens' exercise of political and coercive power in democratic society—not wealth maximization or another utilitarian concern.⁸⁶ I will return shortly to the question of how environmental justice can use the power-checking component of Rawls's theory to their benefits.

A second prominent skepticism of Rawls's enterprise raises the concern that liberalism, and the social contract tradition in which it is embedded, serves to justify and obfuscate the structural inequalities that preserve the historical social order. Charles Mills argued that philosophers in the contractarian tradition—Rawls among them—have theorized a politically “neutral” state while ignoring Western polities' exploitation and subjugation of non-white races. This is “the central injustice on which the state rests.”⁸⁷ On his account, the idealization of political equality amongst white European agents masks how that conception actually preempts others from “forming or fully entering into a body politic”⁸⁸—where the political ideal for whites was, in fact, the already established Racial Contract keeping nonwhites subordinate.⁸⁹ Mills indicts ideal contract theorists, including Rawls, for silence and complicity in crafting their systems during the 20th century. Failure to confront slavery and its legacy in works like *A Theory of Justice* indicate the lasting legacies of the Racial Contract and its capacity to maintain and further entrench white privilege by constructing the criteria determining whether agents are conferred the privileges of whiteness.⁹⁰ Mills's “Racial Contract,” on his account, more accurately describes the history and etiology of social inequality than ideal theory, removed from its regrettable past, could possibly aspire to.⁹¹ Elsewhere, Mills broadens his critique to make additional charges of deficiency in Rawls's theory, and those that might adopt it as a strategy for racial justice. Two specific points are relevant for our purposes here. On one count, ideal theory of the sort Rawls give us allegedly cannot prescribe the kinds of non-ideal interventions, like affirmative action or reparations for slavery, that would serve as means of rectificatory justice.⁹² Second, Mills claims further that public reason, as Rawls conceives it, is ill-equipped to handle questions of race because it bars controversial claims from the public arena.⁹³

While the general thrust of Mill's critique is well taken, there are problems with Mills's characterizations of Rawls's exercise in ideal theory, in general and in particular. Tommie Shelby and Brandon Terry have provided robust defenses of the kind of exercise for which Mills faults Rawls. Shelby, in response to Mills, stresses the important role of ideal theory in *justifying*, in principle, particular interventions in non-ideal programs of reparative justice. Reading and operating within a Rawlsian framework can be most helpful in understanding “how racial justice fits within an overall conception of social justice,” while still acknowledging the historical and present realities of injustice.⁹⁴ There is nothing inherently ideological in liberal ideal theory, at least in the way Mills supposes, and we have little reason to believe that it “necessarily obscures or misrepresents racial injustice, conceals the need for rectificatory justice, or perpetuates the

⁸⁵ Stefan Eich's recent paper “The Theodicy of Growth: John Rawls, Political Economy, and Reasonable Faith” (2021) is informative on this point throughout, especially p. 20.

⁸⁶ See Rawls (2005a) p. 214.

⁸⁷ Mills (1997) *The Racial Contract* p. 39.

⁸⁸ *Ibid.* p. 53.

⁸⁹ Mills (1997) p. 56.

⁹⁰ *Ibid.*, pp. 77-78.

⁹¹ *Ibid.*, pp. 120-121.

⁹² Mills (2013) “Retrieving Rawls for Racial Justice?: A Critique of Tommie Shelby” pp. 10-11.

⁹³ *Ibid.*, pp. 17-19. Here, Mills suggests that “left-wing social-scientific materials,” including causal explanations of data on housing, employment, incarceration, showing extreme disparities in racial outcomes, would be off limits in public reason deliberation. To ground this claim, Mills cites passages from *Justice as Fairness: A Restatement* (2001), describing the knowledge of parties in the original position as limited by “the presently accepted facts of social theory” (p. 87) and those setting up a “companion agreement” outlining standards of reasoning by which whether citizens determine whether the principles of justice apply (pp. 89-90). For reasons outlined below, I believe the account of public reason Mills relies on from the *Restatement* is too abbreviated to fully encompass the view elaborated in “The Idea of Public Reason Revisited,” in particular, some of the active, practical implications of public reasoning.

⁹⁴ Shelby (2013) “Racial Realities and Corrective Justice: A Reply to Charles Mills” p. 151.

status quo.”⁹⁵ Rather, ideal theory and non-ideal theory should be conceived as complementary, in so far as the former’s principles can serve as referential guideposts in determining an injustice’s deviation from our ideal. And Brandon Terry’s recent research presents evidence that, even if its specifics were not explicitly engaged in his ideal theory, Rawls was profoundly affected by struggles for racial justice in America.⁹⁶ Both critics and apologists for Rawls fallaciously infer that Rawls’s “silence” on questions of racial justice reflects their *absence* in his thought and work.⁹⁷ We may fault Rawls for letting his own hope for *reconciliation* in the American political community stifle his capacity for self-reckoning with that community’s history with settler colonialism, but Terry argues this should not sink Rawls’s project.⁹⁸ I will say more about what I believe (and what I think Rawls believes) public reason is capable of below, but I hope these remarks assuage some concerns about the general utility of ideal theory. As both Shelby and Terry suggest, given that society will perennially fall short of “perfect justice,” belief in an ideal to work toward may be all the more vital.⁹⁹

The third kind of critique I want to confront claims that the rights-based foundations of liberal contract theory are incompatible with the kinds of community-based claims of environmental justice activists, indigenous groups, and other social justice movements. David Schlosberg, channeling the critiques of theorists like Nancy Fraser and Iris Marion Young, argues that liberal theories fall short of a complete account of the forms of injustice faced by marginalized groups and communities. One reason for this is empirical and methodological—as a starting point, Fraser and Young, along with others, start with movement demands rather than ideal theory to develop an understanding of what justice could require for society.¹⁰⁰ A second consideration is substantive. Liberal theories like Rawls’s, which allegedly approach questions of justice from a fundamentally distributive standpoint, cannot as easily accommodate what is often demanded by communities and movements for social justice, namely, recognition of group difference and participation in the political process. Meeting these demands further requires extending analysis beyond the scope of the individual and their rights into conceptual space that can accommodate the capabilities and functioning of whole communities, echoing the kind of approach developed by Martha Nussbaum and Amartya Sen.¹⁰¹ Similarly, Devon Peña questions the liberal theorist’s focus on *autonomy* as basically misguided, in a way that echoes Charles Mills’s arguments for the Racial Contract. Political liberalism “misconstrues the narrowly constructed utilitarian interests of a historically situated, socially constructed, and singularly egoistic class of social actors to be the universal norm for the free association of individuals in society.”¹⁰² Privileging atomistic, anthropocentric notions of personal self-interest and property rights as the basis of our legal order and political relationships, Peña argues, neglects the alternative epistemologies endorsed by indigenous ways of life that stress mutual reliance interests, communities’ basis in common pool resources, and other forms of self-determination peripheral to the liberal state.

It seems to me, however, that these theorists overlook key aspects of Rawls’s later work—especially its concern with creating space within political society for the precise kinds of cultural and epistemological diversity they describe. Rawls tries to allay these worries in “The Idea of Public Reason Revisited,” saying it “is a mistake to say that political liberalism is an individualist political conception, since its aim is the protection of the various interests in liberty, both associational and individual.”¹⁰³ The goal of Rawls’s political turn, again, was to displace the foundationalism that he recognized stymied previous theories of justice—his own among them—from fully accommodating the fact of reasonable pluralism

⁹⁵ Ibid., p 153, going on to say: “What ideal theory does, among other things, is give us a way to specify and defend racial justice principles that private individuals and state officials can use to evaluate institutional arrangements.”

⁹⁶ Terry (2021) “Conscription and the Color Line: Rawls, Race, and Vietnam”, especially pp. 7-13.

⁹⁷ Ibid., p. 16.

⁹⁸ Ibid., pp. 22-23.

⁹⁹ Terry (2021) pp. 20-21, Shelby (2013) p. 157.

¹⁰⁰ Schlosberg (2007) p. 38.

¹⁰¹ Ibid., pp. 38-39.

¹⁰² Peña (2004) pp. 135-136.

¹⁰³ Rawls (2005b) p. 476.

in democratic society. In order to preserve the possibility of coexistence and social cooperation among irreconcilable comprehensive doctrines, political liberalism eschews *any* fundamental or metaphysical grounding in one community's system of belief (apart from the public political culture of a given society, and its own practical ideals). Moreover, the later theory lays the very groundwork upon which those irreconcilable comprehensive doctrines and the groups who believe in them can claim authority in a political community. Basic rights—not merely those to property, but also to liberty of conscience and the means to make use of the political liberties—are going to be the cornerstone of any group's success in challenging structures of power within the legal order, regardless of the political conception of justice from which they stake their claim.¹⁰⁴ The consensus society might possibly reach regarding the structuring of its political institutions relies on the reasonable democratic values different groups bring from their own comprehensive doctrines.

This last feature of public reason in political liberalism, for Rawls, emphasizes that the kind of autonomy his account prescribes is precisely that which marginalized groups should hope to find in a conception of social justice. It is not an autonomy considered in isolation—or a kind that would suggest an individual or group can simply be left alone. Rather, it asserts the possible ideal that individuals and groups might freely and willingly endorse an idea of justice the public gives unto itself through collective deliberation. Citizens and groups will not always reach consensus, or agree on the particulars of institutional design, but they are obliged by public reason to extend reciprocal space in public life for other reasonable perspectives.¹⁰⁵ Embedded in this idea of reciprocity is the precondition that parties to deliberation are treated as free and equal, with access to the force citizens are to exercise over government—“and not as dominated or manipulated, or under pressure of an inferior or social position.”¹⁰⁶ The very possibility of justice, according to Rawls, rests in society's collective acknowledgement of this mutual investment in the political process. The ideas of autonomy in effect go far beyond mere self-interest, as some might charge. Individual liberal conceptions of justice (i.e., those also committed to the ideal of reasonable democracy) bring their own substantive principles to the public political forum.¹⁰⁷

Indeed, one of the main uses of public reason, for Rawls, is as a bulwark for the establishment or preservation of groups' stake in society, and their shared authorship in its direction. It explicitly empowers reasonable comprehensive doctrines to make claims to power within the political process based on group identity. This calls to mind those desires of grassroots leaders described by Bullard above—for a shared role in participatory democracy, and the decisions shaping institutions that affect their communities. Public reason, Rawls argues, needs the capacity to respond to novel social conditions and movements. Our idea of public reason must be continually reimagined, “otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice.”¹⁰⁸ It is my contention here that public reason in fact *depends on* the provocation and claims to recognition of social movement actors, as we see in the claims of environmental justice, and as Rawls occasionally notes in reference to the Civil Rights Movement.¹⁰⁹ If it is to serve as a resource against repression, and provide a means by which the marginalized can assert their autonomy within society, then it must.

¹⁰⁴ Rawls (2005b) p. 450. Any political conception of justice—whether justice as fairness, utilitarianism, Kantianism, a capabilities approach, or some other system—will necessarily have three main features: a list of rights, liberties, and opportunities; some assignment of special priority to those rights; and measures ensuring for all citizens the adequate means to make effective use of freedoms.

¹⁰⁵ See (2005b) pp. 447, 479. Rawls defines “reasonable” as such: “Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms.” (2005b p. 446).

¹⁰⁶ *Ibid.*, p. 446.

¹⁰⁷ *Ibid.*, p. 451.

¹⁰⁸ *Ibid.*, p. 452.

¹⁰⁹ *Ibid.*, p. 464, discussing the “wide view” of political culture.

That environmental justice has been called “the civil rights issue of the 21st century”¹¹⁰ and also “a third wave of the human rights movement”¹¹¹ suggests its impact and intentions extend well beyond struggles over the design or shape of the physical environment we construct for ourselves. While unquestionably concerned with public space, environmental justice also makes critiques about the various public spheres that shape that space—associations, organizations, public fora, etc—as well as the the public realm in which that space and set of spheres is situated. Fundamentally, as we saw above, movement actors make claims about the structure of political power in their communities. These are, I think, very much the same kind of appeals to public reason Rawls saw as necessary for the advancement of justice in liberal democracies. Though Rawls waffles in his accounts regarding whether matters of the environment present us with the kinds of questions within the scope of public reason,¹¹² the struggles of the environmental justice movement suggest otherwise. When the matters at hand are waste facility sitings or toxics exposure that can compromise the life prospects of entire generations in a community, or the possibility that a changing climate may make a peoples’ homeland forever uninhabitable, determining whether an individual or group has the means to protect their way of life is an obviously political question. To the extent that political institutions and social infrastructures control these outcomes, as well as the content of our sense of justice, Rawlsian ideas of public reason should serve as guides as we determine their design.

Rawls describes public reason in a number of ways throughout the later work. In once sense, the idea of public reason serves as a set of conditions for what can and cannot be offered as good reasons within the public political forum—these are the substantive and procedural principles of justice given by various liberalisms in society, and values endorsed by political conceptions.¹¹³ The prospect that society might abide by the conditions set forth by the idea, and that government acts from and justifies its actions to the public in terms of a reasonable conception of justice, constitutes the *ideal* of public reason.¹¹⁴ In this first sense, public reason serves as the normative standard for institutions in democratic society.

There is also an active, practical element of public reason, suggested in the ideal above. Part of that, as suggested, is the government’s acting from the idea of public reason, and the actual execution of the political will. Just as important are the citizens’ actions towards and relations to one another in a way that makes good on the commitment to reciprocity. This dual character of public reasoning is distilled in the notion that it is the actual *reasoning* of citizens that shapes the idea and ideal of public reason, including the process of contestation and deliberation in the public arena. Rawls emphasizes this fact that public reason is something we *do*—“to engage in public reason is to appeal to one of [the liberal] political conceptions—when debating fundamental political questions.”¹¹⁵ To the extent that we can think of our ideas and how we reason as expressive of our various ways of life, this may seem obvious. But it is also illuminates Rawls’s assertion that the values of public reason are derivative of the various reasonable comprehensive doctrines within society.¹¹⁶ Public reason is grounded in culture, tradition and ordinary living. Precisely how clearly we can delineate those activities from our beliefs about the world and conceptual systems for making sense of it—our comprehensive doctrines—is of course a perennial metaphilosophical question. What Rawls shows us, nonetheless, is the role and limitations of our politics in making space for those ways of life and comprehensive doctrines, as well as our normative responsibility in that enterprise.

Importantly, public reason provides us with an interpretive schematic with which to understand how environmental justice, and social movements generally, take on the work of stewarding and achieving its ideal. Rawls clearly thinks that

¹¹⁰ Lee (2021b) p. 10220

¹¹¹ Inger Anderson, quoted in Ahmed (2021) “The Father of Environmental Justice isn’t Done Yet” *The Nation*

¹¹² See, e.g., Rawls (2005a) pp. 244-246, as well as the discussion in (2001) p. 91.

¹¹³ Rawls (2005b) pp. 451, 454-455. See also (2005a) pp. 223-224, and (2001) pp. 91-92: “In sum, public reason is the form of reasoning appropriate to equal citizens who as a corporate body impose rules on one another backed by sanctions of state power.”

¹¹⁴ Rawls (2005b) p. 444.

¹¹⁵ *Ibid.*, p. 453.

¹¹⁶ *Ibid.*, p. 462.

public reason can be an important tool against repression. It is a, if not *the*, mechanism by which we might advance and justify the conditions necessary for political equality and the restructuring of power in communities. Though Rawls exhausts considerable effort in the later work to describe the form and groundings of public reason, and the instances in which actions, institutions, or comprehensive doctrines might be rejected as “unreasonable,” he spends little time exploring what actual public reason claims could look like, or how to interpret public reasoning in public debate. To help better illustrate the ways in which public reason serves to defend and empower individuals and groups, and how the groups making public reason claims advance us towards its ideal, we can distill three key *functions* of public reason from Rawls’s account, and examine how they manifest in the assertions of environmental justice actors.

One function of public reason is its *protective* role. As already described, public reason sets the parameters by which reasonable comprehensive doctrines and ways of life are guaranteed space in society and entitled to say in the shaping of institutions. This is clear in Rawls’s appeal to the principle of reciprocity, and the way *Political Liberalism* demands respect for the fact of reasonable pluralism. Should one particular comprehensive doctrine obtain a disproportionate amount of power in society—here an unquestioned faith in economic capitalism or ideals of efficiency might be equally likely as a religious fundamentalism—others should have the authority to contest that power and its threat to their way of life.¹¹⁷ Whenever basic liberties are denied, that criterion of reciprocity is violated: “reasonable persons think it unreasonable to use political power, should they possess it, to repress other doctrines that are reasonable yet different from their own.”¹¹⁸

What do protective public reason claims look like in the environmental justice movement? Without going into too much detail, we can call to mind the archetypical challenges of waste and facility siting. The kind of structural racism in play that led to the concentration of hazardous waste facilities in poor minority communities nationwide was contested by movement actors on what can be understood grounds within public reason. Besides depriving people of years and quality of life, these kinds of environmental hazards reveal the inequities in the political systems that typically disempower minority and poor communities. When government has failed to enforce the institutional measures in place—whether voting rights or environmental review processes—meant to protect peoples’ livelihoods, the environmental justice movement has shown us how those failures are part and parcel with other failures of representation in the political process. Similarly, specific infrastructure interventions may be opposed on public reason grounds. If a specific project or extractive activity compromises the integrity or very viability of a native peoples’ way of life, the protests of those people and their allies express can be conceived of as a public reason claim. If a native group’s reasonable comprehensive doctrine and religion relies on connection to a river, or some other feature of a landscape, such that degradation of that landscape would constitute the cultural eradication of that people, then public reason should protect against that injustice.

A second function of public reason is *corrective*. Rawls emphasizes the importance of a democratic peoples’ checking of government and its institutions against their political conceptions of justice in realizing the ideal of public reason. This is a correlate of reciprocity, and as Rawls describes, an intrinsic *moral duty* of citizens.¹¹⁹ Public reason’s corrective function can be thought of as the means by which it aids in the design and redesign of fundamental institutions in society. The process of deliberative democracy Rawls outlines, where citizens reason freely about how to realize the rights, liberties, and opportunities, can be impeded by any variety of institutional failings—in “The Idea of Public Reason Revisited,” Rawls describes election finance in the United States as a particularly malicious cancer on the political process.¹²⁰ Corrective public reason claims are those which propose or demand reforms and reimaginings of the institutions ensuring citizens’ voice in public deliberation.

¹¹⁷ Though the protective function I explore here very much has citizens in mind, it is worth comparing to the role Rawls’s outlined for the courts as protecting “[higher] law from being eroded by the legislation of transient majorities...” (2005a) p. 233. See also the discussion in Freeman (2004) “Public Reason and Political Justifications” p. 2066.

¹¹⁸ *Ibid.*, p. 486n93

¹¹⁹ Rawls (2005b) p. 445.

¹²⁰ *Ibid.*, p. 450.

Looking to cities, we can think of decisions around land use planning as examples of arenas in which corrective public reason claims might be made. Community-based planning movements have long critiqued centralized government authority over changes to the built environment in cities. The crusade Jane Jacobs waged against New York City master builder Robert Moses's slum clearance efforts in the middle of the last century is perhaps the most well-rehearsed example of the dynamic.¹²¹ Considerable efforts took off in the 1970s to overhaul the City's land use planning process, resulting in creation of the Universal Land Use Review Procedure (ULURP) for zoning actions and "Fair Share" regulations that stipulate "equitable balancing considerations" in the citing for city facilities like jails and waste treatment plants.¹²² Additionally, though the 1989 revisions to the city charter provided for community-based "197A plans" to be developed in consultation with neighborhoods to guide local development, such plans were often ignored in official land use decisions. Ultimately, all three tools were limited because they lacked legal power.¹²³ Julie Sze shows how environmental justice organizations in New York, were early voices calling out the failure of these interventions to live up to the city's espoused ideals, and their own sense of justice. She observes that groups part of the Campaign for Community-Based Planning advanced a community-based vision for the process that ensured 197A plans took into account citywide distributions and burdens of impacts like facilities and traffic. Whereas the city's Fair Share regulations only applied to public facilities, the Campaign's principles demanded that *private* facilities also be considered as part of the cumulative impact of development to communities. Sze points out that the "distinction between private and public facilities is seen as functionally meaningless for local communities in terms of their health effects and lived meanings."¹²⁴

We can see a *corrective* public reason claim in Sze's examples in the extent to which communities challenge the assumptions of justice implied in these public processes. A public process that only regulates municipal injuries against the health of communities betrays an assumption that government lacks the authority or mandate to preempt infractions placed by "market forces" or other private actors. The environmental groups Sze highlights as examples—in Sunset Park, Brooklyn and West Harlem, Manhattan—pushed back against plans for their communities structured by authorities and politicians that would have further burdened neighborhoods with highway infrastructures and waterfront developments set aside for corporate interests.¹²⁵ The community-based plans they advanced instead asserted that local, participatory processes brought to the fore presented the best opportunities at just neighborhood development. The specific question of the "justice" of local autonomy will be revisited below. But it is worth observing the way in which these communities' challenge to municipal planning orthodoxy both critiqued the limitations of the idea of justice conveyed in public sector-centric enforcement, and created room for questions of distributional equity within the 197A process by appealing to the city's own (albeit limited) notion of fairness. To this day, community-based planning lacks the force of law in New York City, despite ever-growing urgency for methods that might advance legitimacy in the city's decision making around the futures of neighborhoods and those who live in them.¹²⁶

¹²¹ See Jacobs' (1991) *The Death and Life of Great American Cities* for her seminal diatribes against modernist planning efforts, especially Ch. 15, "Slumming and Unslumming" p. 271 where she writes "Conventional planning approaches to slums and slum dwellers are thoroughly paternalistic. The trouble with paternalists is that they want to make impossibly profound changes, and the choose impossibly superficial means for doing so. To overcome slums, we must regard slum dwellers as people capable of understanding and acting upon their own self-interests, which they certainly are. We need to discern, respect and build upon the forces for regeneration that exist in slums themselves, and that demonstrably work in real cities."

¹²² Sze, Julie (2006) *Noxious New York: The Racial Politics of Urban Health and Environmental Justice* Cambridge: MIT Press. p. 192.

¹²³ Ibid. p. 193.

¹²⁴ Ibid. p. 194.

¹²⁵ Ibid. p. 195-202.

¹²⁶ See Municipal Art Society (2021) "Testimony from the Municipal Arts Society of New York to the City Council Committee on Governmental Operations on Int. 2186-2020" p. 2 on the need to require municipal responsibility for community-based planning efforts in potential changes to the City's charter and land use laws. <https://www.mas.org/wp-content/uploads/2021/02/testimony-2021-02-23-gov-operations.pdf>.

A third, and critically vital function of public reason can be thought of as its *adaptive* capacity. This is implied in the claim above that public reason is not “fixed.”¹²⁷ As Rawls describes it, public reason is open to the possibility that its content, and our sense of justice, is responsive to change and challenge from outside the political culture. According to the proviso, reasons from comprehensive doctrines can be given in public reason so long as they are consistent with or advance the ideals of a political culture.¹²⁸ I will explore below some of the ways I believe this capacity for change relates more clearly with other structural features of Rawls’s thought, but for now, we can acknowledge the *incompleteness* or *imperfection* presumed of public reason at any moment in time. The upshot here is that the inclusion of claims from outside of the current public political culture or its norms can actually advance public reason towards an ideal of justice. Though Rawls does not draw any conclusions of *necessity* regarding that advance, we might presume it highly likely that provocation from the periphery of public norms plays a critical role in this process. By staking justice claims that relate *internally* to public reason, marginal comprehensive doctrines can provoke reform of institutions in the basic structure that mainstream politics is loathe to address. It is in this way that we can understand the wide view of public political culture Rawls theorizes as ripe with unrealized potential for political change, and his theory of justice as far more amenable to the claims of contrarian or marginalized groups than others commonly expect.

There are, presumably, any number of ways public reason can adapt to accommodate the terms and insights of alternative conceptions of justice. The easiest instances to consider are those involving norms or conceptions of justice more fully distinct from the “norm” or “mainline” political conception. Take as an example recent arguments for the “rights of nature,” or “legal personality” for entities like rivers around the world. In the United States, the cities of Pittsburgh and Santa Monica have passed ordinances enumerating rights for rivers, atmospheric systems, plant and animal species, and natural communities more broadly.¹²⁹ Elsewhere in the world, stronger protections have been given for rivers in Ecuador, New Zealand, and India based more in indigenous communities’ spiritual reverence for the landscapes. The assertion of these rivers’ value within the communities’ respective comprehensive doctrine formed the basis for profound change in legal regimes and administration of the rivers. In each instance, colonial legal regimes were adjusted to accommodate rights (Ecuador) or guardianship (India and New Zealand) for parts of the world and human relationships to them that “reorder[ed] the priority between humans and the environment” through reenvisioning of democratic mandates.¹³⁰ Through courts and parliaments, the claims and ways of life of indigenous peoples expanded the bounds of legal consideration, and created a place for different notions of reciprocity and obligation in public political culture.

We might be tempted, at first, to suppose that the adaptive function comes from *without* the political culture. This would imply that what is new, or constructive in the claim exists apart from a given political conception of justice before the claim is worked into public culture. That possibility should be regarded as a half truth. It is correct to assume a dialectical character of adaptive public reason claims, but the specific valence is slightly modified from the first two functions of public reason. Where the first two aim to reconcile parts of public reason *inside* the public political culture, public reason’s adaptive capacity leans on an *outsider’s* vantage point. It looks to difference in hopes of constructing a

¹²⁷ *Supra* note 107, and accompanying text. The full text from (2005b), p. 452, including the preceding sentences, is: “Even if relatively few conceptions come to dominate over time, and one conception even appear to have a special central place, the forms of permissible public reason are always several. Moreover, new variations may be proposed from time to time and older ones may cease to be represented. It is important that this be so; otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice.”

¹²⁸ *Ibid.* (2005b) p. 462, saying “... reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.”

¹²⁹ Iorns Magallanes, Catherine (2019) “From Rights to Responsibilities using Legal Personhood and Guardianship for Rivers” in *ResponsAbility: Law and Governance for Living Well with the Earth* (Martin, Te Aho, Humphries-Kil eds.) p. 3, accessed on SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3270391. Iorns Magallanes points out that these ordinances fall short of full legal personhood for natural entities, but enable responsibility to be exercised on their behalf by human actors within the rights system.

¹³⁰ *Ibid.*, pp. 18-21.

broader, more inclusive public reason. The adaptive function admits power and value in other ways of life into the structure of a community's current idea of public reason, and in turn transforms it. The adaptive function of public reason brings various claims of community into new kinds of reflective equilibrium, to use Rawls's famous term.¹³¹ Though Rawls often reassures us that public reason is not *static*, he far less frequently details the process by which it can express its potential dynamism. This new mode of reflective equilibrium presumes that public reason advances when the political community comes to incorporate not-yet-welcomed reflections of itself into the process of construction.

With these three functions of public reason outlined, we can begin to better see the way that political liberalism lays the theoretical foundation for the kinds of *transformative* politics that environmental justice and other social movements have pioneered. It is indeed a vision of justice that relies both on procedural and substantive stakes of movement actors, and explains the importance of institutional change aimed at guaranteeing the participation and power of people in political processes.¹³² In its ideal, citizens act upon their moral duty to hold government accountable to shared values across difference. This is, I think, the best we might hope of government in our non-ideal world, as well. The next section will start to build upon these insights, and further explore the ways that a public reason frame can accommodate the plurality of justice claims made by movement groups, and how it can help build a society more amenable to their diversity.

III. Public Reason, Plurality, and Environmental Justice

To better understand how environmental justice and other movements help advance society towards an ideal of democracy, we can more clearly specify the relation of their claims to Rawls's place for public reason in democratic life. This illustrates how the diversity of claims made by movement actors in fact rely on an idea of public reason. I will argue here that in addition to the *functions* of public reason outlined above, we can further delineate three *kinds* of public reason claims that help bridge the conceptual gap between those functions and an understanding of the dimensions of political power in society. This takes us further afield of the structure outlined by Rawls in the later work, specifically regarding the location of public reason claims. Yet, as we will see, the account helps make clear precisely how the process of public reasoning both supports and relies on the development of citizens' moral powers—especially the sense of justice. It also helps illustrate how the very process of public reasoning might be understood as more emphatically democratic, and aligned with the ideal of deliberative democracy Rawls advanced.

Throughout "The Idea of Public Reason Revisited," Rawls describes public reason as a view about the kinds of considerations that can be brought to deliberative politics. More often than not, he has institutional actors within the political system at the center of these deliberations—judges, officials, and candidates for office. In describing five "aspects" of public reason, only one implies significant responsibility for normal citizens: checking that principles derived from their conceptions of justice satisfy the criterion of reciprocity.¹³³ It is hard to say precisely why Rawls gives such a minor formal role to average citizens in this scheme. It could be that, because his work is contained within the

¹³¹ Rawls (2005a) p. 8, on the possibility that political conceptions can be combined into a single conception, "a political conception of justice, to be acceptable, must accord with our considered convictions, at all levels of generality, on due reflection, or what I have elsewhere called "reflective equilibrium." See also p. 8n8 on the ideas roots in *Theory*, and the illuminating discussion at pp. 96-97, within the context of political constructivism contrasted with intuitionism: "The constructivist will say that the procedure of construction now correctly models the principles of practical reason in union with the appropriate conceptions of society and person. In so doing it represents the order of values most suited to a democratic regime. As to how we find the correct procedure, the constructivist says: by reflection, using our powers of reason. But since we are using our reason to describe itself and reason is not transparent to itself, we can misdescribe our reason as we can anything else. The struggle for reflective equilibrium continues indefinitely, in this case as in all others."

¹³² See generally Cole (1994)

¹³³ The five aspects are, in full, "(1) the fundamental political questions to which [the idea of public reason] applies; (2) the persons to whom it applies (government officials and candidates for public office); (3) its content as given by a family of reasonable political conceptions of justice; (4) the application of these conceptions in discussion of coercive norms to be enacted in the form of legitimate law for a democratic people; and (5) citizens' checking that the principles derived from their conceptions of justice satisfy the criterion of reciprocity. Rawls (2005b) p. 442.

bounds of ideal theory, Rawls assumes the requisite infrastructure necessary to translate citizens' political will into policy. But apart from his remarks on election campaign finance, little space is given to the question of how to ensure the actions of public officials conform to public reason. It is, he describes, part of citizens' "duty of civility"—an intrinsically moral (and not legal) duty to do "what they can to hold government officials to [the idea of public reason]."¹³⁴ Government officials also share this duty, in that they must publicly justify to other citizens their actions regarding fundamental political matters on terms that others could reasonably accept.¹³⁵ Their doing so helps realize the ideal of public reason. And students of Rawls have, more recently, asked whether and when citizens are held to public reason—concluding that there is a standard of public reason to which ordinary individuals are held in public discourse.¹³⁶

We might however wonder whether Rawls's view of public reason does in fact accommodate a more expansive role for citizens in working towards its ideal. If public reason, for Rawls, articulates an ideal of the political conduct of "dominant and controlling" citizens,¹³⁷ then there is necessarily injustice to resolve where society falls short of that mark. There may well be some warranted, reasonable faith in democratically-elected government to advance progressive agendas, or work towards justice. But as the struggles of the environmental justice movement show, the powerless cannot passively rely on that progress. Lani Guinier and Gerald Torres have made the case that the organizing and antagonism of movement actors is a prerequisite for truly transformational social change. Revisions to our interpretation of law and policy should rely on a "demosprudence" attuned to social movements' potential to "change the wind" of politics. Movement actors, in turn, must focus not merely on convincing courts of the merit of arguments, but building the kind of popular support for political visions that can only come from "culture shifting."¹³⁸ We can, I think, apply the sense and importance of this concept to our consideration of Rawls's theory. As suggested, Rawls seems to assume that in a well-ordered democratic society, citizens' deliberation around fundamental political questions *just will* translate into changes to or actions on the part of the institutions in society's basic structure.¹³⁹ This is entailed via government's duty of civility. It is also central to Rawls's notion of a deliberative democracy—which Rawls understands a well-ordered society to be.¹⁴⁰ The extent to which the duty of civility is met or not, and to which democracy in society functions as fully deliberative, would imply the distance between a society's current state and its ideal. Unfortunately, in the later work, Rawls says relatively little regarding what is to advance government towards that ideal in absence of adherence. But attending to the ways that public reason and the sense of justice function in *ordinary society*¹⁴¹ can teach us much about how wind-changing citizens and social movements advance us towards political ideals.

¹³⁴ Ibid. p. 445. Rawls emphasizes that the duty of civility cannot be a *legal* duty, as such a duty would violate the freedom of speech.

¹³⁵ Ibid. p. 444, and also p. 465 on the character of political justification as distinct from merely valid reasoning.

¹³⁶ See Paul Weithman (2016) "Citizenship and Public Reason," p. 122, saying, "What matters for present purposes is this. If discourse by citizens who are not public officials can exhibit those features of discourse in the political forum in virtue of which public reason applies to it, then public reason applies to discourse by ordinary citizens as well." Samuel Freeman seems to hold a similar view, see generally (2020) "Democracy, Religion, and Public Reason," esp. pp. 52-53.

¹³⁷ Ibid., p. 441n3. Towards the end of the essay, Rawls restates more clearly that the ideal of public reason *Political Liberalism* outlines is fully realized in the "well-ordered constitutional democratic society... in which the dominant and controlling citizens affirm and act from irreconcilable yet reasonable comprehensive doctrines." p. 490.

¹³⁸ Guinier and Torres (2014) pp. 2796-2798

¹³⁹ Or, presumably, that citizens thinking of themselves as if they were "ideal legislators," and repudiating government officials who deviate from what public reason might prescribe, is necessary to fulfill that duty. Rawls (2005b) pp. 444-445. See also pp. 463-464, where Rawls discusses the importance of public reason's roots in citizens' comprehensive doctrines, and how appeals to those doctrines can support citizens' willingness to meet their duty of civility.

¹⁴⁰ Ibid., p. 448.

¹⁴¹ From here on, I shall use "ordinary society" specifically to denote the non-ideal society that has obtained in our times, as opposed to the ideal "well-ordered society" that serves as the object of Rawls's theory. Where regular old "society" is used, I mean to refer to the concept in general without any indication of its ordering.

An important preliminary step requires expanding our idea of what counts as deliberation. Rawls suggests throughout *Political Liberalism* that deliberation, in its ideal, is an exchange of views and reasons.¹⁴² It has three aspects: (1) an idea of public reason; (2) a framework of constitutional institutions; and (3) “knowledge and desire on the part of citizens generally to follow public reason and realize its ideal in their political conduct.”¹⁴³ One might easily suppose that in a well-ordered society, where all are treated fully as free and equal citizens, this process takes the form of something like conversation, or debate. Such an image is at least minimally entailed by an everyday sense of “civility.” But just as Rawls’s understanding of the duty of civility goes well beyond the requirement of decorum or conversational niceties, we should also expect that in ordinary society, citizens may have to go to extraordinary lengths to have their public reasons heard. Guinier and Torres share stories of individuals’ literally spectacular actions intended to call attention to injustice and the ways in which normal political discourse failed them in matters unquestionably pertinent to public reason. African Americans in Mississippi, including Fannie Lou Hamer, Victoria Jackson Gray, and Annie Devine went to the Democratic National Convention in August 1964 as their own insurgent Freedom Democratic Party to assert “that white man is not going to give up his power to us.”¹⁴⁴ Is such “political theater in service of a profound challenge to both the national and local party’s understandings of democracy”¹⁴⁵ not itself a form of deliberation or public reasoning? Later, they describe the National Farm Workers Association’s unionization and organizing. That vital work gave a multi-ethnic coalition of workers “the power to engage in full-throated exploration of the politics of economic justice.”¹⁴⁶ The “politicized aesthetics” of Luis Valdez’s *Teatro Campesino* built collective mobilization amongst unionizing farmworkers against the abuses of agribusiness—pesticide poisoning, exploitative wages, lack of child care, and deprivation of benefits—by presenting an image of rights the theater performances convinced workers they deserved, and communicating stories about fairness and justice.¹⁴⁷ Like we may think of environmental justice demonstrations from the Warren County protests to present-day climate marches mobilizing communities and hundreds of thousands of individuals,¹⁴⁸ to world-wide climate “die-ins” staged in prominent governmental places,¹⁴⁹ these social movement demonstrations are, in themselves, kinds of public reason claims. These actions, as Guinier and Torres put it, “... restructured the politics of the possible. They gave their actions a plausible explanation, one that formed the basis for shared understanding. That understanding initially grew from an internal explanation that allowed a sense of community to exist. But it ultimately had to persuade external actors, as well.”¹⁵⁰

Considered so broadly, discerning the instances of deliberation and varieties of public reasoning in social life might seem a Herculean task. If we take the position, as some do, that reasoning *just is* an activity we are already continually engaged in, as something like a form of identity construction, then perhaps that task appears less insuperable.¹⁵¹ There is

¹⁴² Ibid., p. 448. “When citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions. They suppose that their political opinions may be revised by discussion with other citizens; and therefore these opinions are not simply a fixed outcome of their existing private or nonpolitical interests. It is at this point that public reason is crucial, for it characterizes such citizens’ reasoning concerning constitutional essentials and matters of basic justice.” On the connection between public reason and deliberative democracy, Rawls adds at 448n21 “Deliberative democracy limits the reasons citizens may give in supporting their political opinions to reasons consistent with their seeing other citizens as equals.”

¹⁴³ Ibid.

¹⁴⁴ Hamer, *To Praise our Bridges: An Autobiography* quoted in Guinier and Torres (2014) pp. 2762-2763.

¹⁴⁵ Ibid., p. 2768.

¹⁴⁶ Ibid., p. 2785.

¹⁴⁷ Ibid., pp. 2786-2788.

¹⁴⁸ See Foderaro (2014) “Taking a Call for Climate Change to the Streets” *New York Times* and Fandos (2017) “Climate March Draws Thousands of Protestors Alarmed by Trump’s Environmental Agenda” *New York Times*

¹⁴⁹ See Busby (2019) “Extinction Rebellion activists stage die-in protests across globe” *The Guardian* (2019)

¹⁵⁰ Guinier and Torres (2014) pp. 2797-2798.

¹⁵¹ Christine Korsgaard, for instance, articulates this fundamentally Kantian position in “The Activity of Reason” her 2009 Presidential Address to the Eastern Division of the American Philosophical Association, pp. 36-37. See also her *Sources of Normativity* (1996).

not space here to fully develop that notion, but the suggestion builds on the active dimension of public reason I earlier suggested Rawls advances.¹⁵² Public reasoning is, in a critical sense, something people do, and do unavoidably. While we very likely cannot identify *every* instantiation of it in public life, we can become increasingly aware of telltale signs of such appeals and statements addressed to us. Rawls's texts are notoriously ambiguous about precisely where the boundaries of public and private life are drawn.¹⁵³ Thinking about social movements and environmental justice here offers at least two vital insights. The first, in keeping with the preceding discussion, is that public reason claims arise more often than we think, and predominantly outside the courtrooms that Rawls occasionally suggests as the exemplary home of public reasoning.¹⁵⁴ The second is that those claims work to alert us to the limitations and failings of the bounds we draw around our very conception of public life, and the institutions of what I have called the public realm, in ordinary society. The remainder of this section will explore both points, and their implications for government and our understanding of public reason's utility to environmental justice.

Essentially, public reason deals with fundamental political questions—what Rawls argues deal with constitutional essentials and matters of basic justice.¹⁵⁵ Claims made from public reason can be drawn from various parts of the public political culture about how power in society is to be allocated by institutions.¹⁵⁶ And the proviso permits individuals to utilize reasons from their private, comprehensive doctrines so long as they support the values of the public political ideal.¹⁵⁷ There are, however, all sorts of claims that can be made *about* the structuring of power in society, and *from* the innumerable reasonable comprehensive doctrines in society. Apart from a few concrete examples of questions in society that might be answered by it, Rawls's theorizing about public reason takes place at a high level of abstraction, and nowhere in the later work does Rawls offer a general taxonomy or form of public reason claims. But Rawls's assertions that public reason deals primarily with the justification of public power can help us pick out public reason in the crowd of claims continually made in the ordinary societies of democratic constitutional democracies. To more clearly illustrate the ways that environmental justice actors do in fact engage in public reasoning, I propose we think of three distinct kinds of claims: *procedural*, *substantive*, and *constitutive*. The first two concern kinds of considerations that Rawls believes justice as fairness, and any other political liberalism, should address. The third is not explicitly considered by Rawls in any of the later works, but is, I believe, implied in the structure and purpose of public reason as he describes it. Fully appreciating these three kinds works to operationalize the idea of public reason towards realization of its ideal and adds additional theoretical depth to thinking about the workings of power in Rawlsian conceptions of deliberative democracy.

Procedural public reason claims should be understood as critiques regarding the specific workings of an institutional process and an individual or group's participatory role in that process. Rawls provides examples of kinds of problems that might be addressed by such claims. His discussion on elections suggests that one can advocate for public financing of elections on the grounds that doing so improves translation of the popular will into political power, and that fairer election processes advance us towards the idea of public reason by ensuring candidates accountable to constituents are elected to office. Looking at another case, individuals can make procedural public reason claims against others who vote their comprehensive doctrines, rather than properly political values. The person who casts a vote in favor of a candidate willing to overturn women's right to an abortion commits a procedural violation of public reason because the principle

¹⁵² *Supra* note 114, and accompanying text.

¹⁵³ Weithman (2010) p. 289.

¹⁵⁴ Rawls (2005a) p. 254. Though Rawls asks us to check whether we are following public reason by asking ourselves whether arguments would seem reasonable as supreme court opinions, he importantly qualifies in (an uncharacteristically funny) note 43 on that page that "some doubt that an actual supreme court can normally be expected to write reasonable decisions."

¹⁵⁵ *Supra* note 132.

¹⁵⁶ It is important to note here a qualification Rawls offers late in *IPIRR*, that "the idea of public reason is not a view about specific political institutions or policies. Rather, it is a view about the kinds of reasons on which citizens are to rest their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions." (2005b) p. 476.

¹⁵⁷ *Supra* note 120.

of reciprocity is violated—voting from a comprehensive doctrine that other citizens could not reasonably endorse “runs afoul of public reason.”¹⁵⁸ And the procedural claim here runs deeper than the citizen’s unreasonable vote—the critique from public reason could well extend to a reassessment of the schools, civic groups, and other public institutions that may have encouraged their belief in the acceptability of voting their comprehensive doctrine. Though Rawls is emphatic in his assertion that “public reason is not a view about specific political institutions or policies,”¹⁵⁹ arguments from public reason will invariably inform and often require the reimagining of our institutions. Thinking about procedural public reason claims makes this explicit.

Of course, as discussed above, procedural public reason claims have been fundamental to the work of the environmental justice movement since its inception. The early struggles leading up to the signing of EO 12898—and the order itself—are illustrative of the movement’s unyielding commitment to the very ideals Rawls argues ground the principle of reciprocity and duty of civility. Communities demanded a role in government decision making processes affecting their communities because they believed *any* community could reasonably hope for the same authority in local facility siting, or land use, or similar questions that could so gravely affect life prospects in a place. Though some have faulted government and the environmental justice movement for failing to ever move past procedural justice,¹⁶⁰ it is clearly the case that there is still work to be done towards actually building policy processes and other institutions that move beyond engagement as a matter “box checking” and more perfectly address the procedural public reason claims of movements and communities.¹⁶¹ The specifics of form and process will serve as perennial questions for any society committed to collaborative governance. That they should is, of course, a concern for any society as well, ordinary or well-ordered.

The second kind of public reason claim we should attend to can be thought of as *substantive* in nature. Throughout the later work, Rawls is clear that any liberalism or political conception of justice includes substantive principles; the political conceptions will differ “in how they order, or balance, political principles and values even when they specify the same ones.”¹⁶² Recall that any political conception will, according to Rawls, include three main features: a list of basic rights and liberties, some assignment of priority to those rights, and measures ensuring citizens’ means to make use of those freedoms.¹⁶³ Substantive claims, then, make claims about the specific content of justice, whether as a particular political conception or within a given conception. So, for example, while justice as fairness and a capabilities approach, say, may both value the cultivation of specific individual virtues, or capacities, that cultivation might hold a higher place in a society ordered by the latter. Advancing one or the other in deliberation amounts to a substantive public reason

¹⁵⁸ Rawls (2005b) pp. 478-479. Detailing the reasoning for the violation at p.479n80, Rawls says: “Suppose now for purposes of illustration, that there is a reasonable argument in public reason for the right to abortion, but there is no equally reasonable balance, or ordering, of the political values in reason that argues for the denial of that right. Then in this kind of case, but inly in this kind of case, does a comprehensive doctrine denying the right to abortion run afoul of public reason. However, if it can satisfy the proviso of the wide public reason better, or at least as well as other views, it has made its case in public reason. Of course, a comprehensive doctrine can be unreasonable on one or several issues without being simply unreasonable.”

¹⁵⁹ *Supra* note 147.

¹⁶⁰ Lee (2021a) and (2021b)

¹⁶¹ Here, see Bratspies (2020) and Foster (2002) “Environmental Justice in an Era of Devolved Collaboration” for examples of how environmental justice communities are reimagining the very nature of decision-making processes affecting their community. Foster writes, p. 498, “The identification of a core set of normative goals—including procedural and distributional justice—for environmental and natural resource decision-making can be useful in both increasing meaningful participation by local actors and communities and strengthening the hands of central authorities to ensure these goals are met. These normative goals can guide political institutions and their constituents in determining the best use of an array of decision-making tools at their disposal in particular contexts. At the same time, a contextual-based approach preserves accountability to centralized decision-makers responsible for the achievement of these principles or goals.” Foster and Iaione (2016) “The City as a Commons” pp. 347-355 describe an initiative in Bologna promoting increased collaboration between government and inhabitants designing and governing the city’s “urban commons” through a “collaboration agreement”—this “co-city” may offer a promising new form of urban governance.

¹⁶² Rawls (2005b) p. 451, as well as *supra* note 117.

¹⁶³ Rawls (2005b) p. 450, and *supra* note 104.

claim. And within, say, justice as fairness, we may argue about the degree to which freedom of speech is to be protected in light of some group's desire to be protected from hate speech. These are, in effect, claims about what institutions in the public realm must do to realize the principles of justice.

Again, these kinds of claims inhabit territory the environmental justice movement knows well. The Principles of Environmental Justice offer an obvious example of political values advanced by the movement challenging the dominant political conception that did and almost certainly still reigns today. That environmental justice “demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias,” “affirms the fundamental right to political, economic, cultural, and environmental self-determination of all peoples” and “demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation”¹⁶⁴ unquestionably reinforces the notion that environmental justice advances political values that should feel at home in any Rawlsian idea of public reason. Often in their own way, they clearly reinforce aspects of the liberal democratic tradition, and give expression both to ideas of reciprocity and civility. Other principles, affirming “the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction,” and “the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all communities, and provided fair access for all to the full range of resources” might seem more difficult to justify on Rawlsian grounds, in so far as they invoke ideas of sacredness and naturalness.¹⁶⁵ These values from comprehensive doctrines may initially appear to be politically contentious, and unfit for inclusion in the public political culture as part of public reason. What is more critical, I think, is to reflect on whether they could eventually be endorsed as reasonable within the political conception, and via the proviso, amend or reinforce the ideals to which as a community we ultimately aspire.¹⁶⁶ If other reasonable comprehensive doctrines see that these principles are worth supporting, and they are not incompatible with our ideas about deliberative constitutional democracy, public reason must be open to them if it is to live up to its own ideal.

The third kind of public reason claim we should recognize is what I will call *constitutive*. These claims prompt us to reflect on the nature of public reason at an altogether deeper level than either procedural or substantive claims, because they force us to ask questions about *whose* reason is so expressed in public. They ask questions about our self-concept of the political community in ordinary society—that is, our very idea of *the public*. Rawls argues that the idea of public reason “arises from a conception of democratic citizenship in a constitutional democracy.”¹⁶⁷ That Rawls suggests public reason arises from a “conception” is fundamental to his very project, and fills important theoretical gaps in justice as fairness that became apparent following the political turn.¹⁶⁸ I will offer further thoughts on conceptions and the role of identity in public reason below. For now, it is worth examining Rawls's elaboration on what his conception of citizenship entails: “it is a relation of citizens within the basic structure of society, a structure we enter only by birth and leave only by death; and second, it is a relation of free and equal citizens who exercise ultimate political power as a collective

¹⁶⁴ People of Color Environmental Leadership Summit (1991), Principles 2, 5, and 7.

¹⁶⁵ *Ibid.*, Principles 1 and 12.

¹⁶⁶ *Supra* note 121, and accompanying text.

¹⁶⁷ Rawls (2005b) p. 445.

¹⁶⁸ Weithman, stressing this point, places it at the very core of Rawls's thought. “[Rawls's] was never a rights-based view, contrary to what is supposed by some of those who would attribute the Pivotal Argument to him. Rather, as I shall explain later, Rawls's is what he calls a ‘conception-based view.’ By this he means that members of the [well-ordered society] can live up to a certain conception of themselves—a conception of themselves as free and equal—only if they regulate their lives by mutually acceptable principles.” (2010) p. 27. While Rawls does not use the term “conception-based” in either *Political Liberalism* or “The Idea of Public Reason Revisited,” (Weithman points to the earlier essay “Political Not Metaphysical” for the quotation), it is obvious from the acknowledgement in the paperback preface to *Political Liberalism* that Rawls conceives of justice as fairness offered in *Political Liberalism* as a conception, not doctrine (2005a) p. xli.

body.”¹⁶⁹ We should remember that this conception is characteristic of justice as fairness in a well-ordered society. The first point of entailment involves certain abstractions about a closed society to isolate pertinent details of the political relationship from “distractions.”¹⁷⁰ The second almost certainly has never obtained in ordinary society. Constitutive public reason claims, by asserting a claim to a place in “the public,” challenge the reality and content of our ordinary conceptions of citizenship by asserting membership in the political community and stake in its coercive authority.

The struggles of the environmental justice movement, the civil rights movement before it, and countless other social movements, reveal the real, embodied, institutionalized ways in which ordinary society fails to treat members of society as free, much less equal citizens. One need not reflect awfully long on their claims to understand that so much of what movement actors demand is the mere recognition of their identities in and as members of the political community. Whether we consider questions of unequal environmental protection, climate-driven displacement, or who is welcomed into public spaces, environmental justice fundamentally challenges our basic conceptions of *who can claim public power*. If, as Rawls suggests, the very possibility of justice relies on the capacity for a political community to reaffirm its own self-conception, then environmental justice and other social movements have offered relentless reminders of precisely how distant ordinary society’s conception of itself can feel from its ideal. When movement groups make claims on government and institutions, their very doing so often betrays their sense of exclusion from the public and the exercise of power to which they are entitled. Where voting rights are concerned, we might easily parse public reason claims from argument and deliberation; where citizens are denied the franchise, they are denied one of the basic powers to which they are entitled. Constitutive public reason claims made in the name of environmental justice can be harder to see, but fit the definition just as well. Certain kinds of infrastructural provision are easily thought as prerequisites to citizenship, or inclusion in “the public.” In New York, for instance, the capacity for the city to provide clean water to its citizens has historically been as politically contentious a question as whether its governmental institutions were serving the interests of the public or the structures of patronage embodied in entities like Tammany Hall. Delivering the most basic utility to a city of islands was a litmus test for greater New York’s ability to govern a compendium of previously independent municipalities.¹⁷¹ The same thought can motivate our asking how precisely we might understand water crises in places like Flint, Michigan and other cities across the United States as failures of democracy.¹⁷² If questions about how we build our environment are central to the project of constitutional democracy, public reason must provide guidance on how to overcome these challenges. By raising critical questions of how the infrastructures of the public realm express—often in terms of iron, lead, concrete, water and earth—the limits of our public regard for one another, environmental justice advocates challenge the very constitution of our reason.

We can join the analysis of the kinds of claims that can be made from public reason together with the preceding description of the *functions* of public reason and the three dimensions of *power*¹⁷³ to show how the three groups of concepts intersect. Doing so can help articulate the ways that public reasoning is itself an expression of political power—and as such, how power itself permeates the structure and process of public reason in ways that Rawls himself did

¹⁶⁹ Rawls (2005b) p. 445.

¹⁷⁰ Rawls (2005b) p. 445n18, on the qualified assumption of a closed society, as well as (2005a) pp. 12 and 136n4.

¹⁷¹ See Ted Steinberg (2014) in *Gotham Unbound*, pp. 156-160 on the expansion of New York’s water supply via Croton Aqueduct development, overlapping with the 1890s consolidation of the five boroughs into Greater New York, and subsequent development of the Catskill water system once nineteenth century infrastructure reached its limits. On p. 160, “The Catskills further liberated New York from the constraints imposed by island life and cleared the way for urbanization to flourish on an archipelago that could never—with its local water supply—have supported such multitudes.” Steinberg later ties the general motive of ecological control to the political and economic realities asserted by city government, p. 351: “... those who have run the city have tended to indulge too often in the maximizing strategies at the heart of the growth imperative and have thus taken an arrogant stance toward land and sea.”

¹⁷² See Rahman, Sabeel K. (2018) “Infrastructural Exclusion and the Fight for the City: Power, Democracy, and the Case of America’s Water Crisis” pp. 536-541.

¹⁷³ Per *The Public Realm and Public Reason* Chapter 2, adapting the model described in Guinier and Torres (2004) *The Miner’s Canary: Enlisting Race, Resisting Power, Transforming Democracy*, Chapter 4, pp. 108-114.

not describe. In their book, *The Miner's Canary*, Lani Guinier and Gerald Torres explore the ways that a threefold understanding of power can overcome conventional ideas that suggest “it invariably involves control, domination, or force.”¹⁷⁴ Power in its first dimension, what we can call its *exercise*, is the typical expression of power as something used, or used over someone. Their analysis implores us to go beyond the first dimension, and details the ways that rules for power’s use (second dimension, here *conventions*) and ideas of who should be able to access to power (third dimension, here *conceptions*) can quietly shut out already disempowered minority from the political process. Guinier and Torres do not frame their argument in terms of public reason, but the insight helps articulate how the conception-based theory Rawls puts forward, and the structuring of power it supposes, in fact relies on notions of political identity. Samuel Freeman reminds us that a crucial aspect of Rawls’s public reason, “its proper subject,” is “the good of the public.”¹⁷⁵ As this section has argued, our understanding of *who* constitutes that public, and *whose* good it concerns, grounds the process of public reasoning. Thinking of public reason *in terms of power* rather than simply as *a means by which the use of power is justified* better reinforces the importance of the conception-based elements in Rawls’s thought.

The chart below shows how the other claims and functions of public reason map onto the three dimensions of power. Procedural public reason claims, as the basic exercise of public reasoning, protect groups, and the role of public reason itself, in public planning and action. A rudimentary way of thinking about this is the way courts are intended to function—one justification for judicial review is the judges’ position to make determinations from public reason and the public political culture.¹⁷⁶ But the basic instance of citizens’ acting from their duty of civility shows this just as well. Substantive public reason claims, by appealing to particular ideas from the political culture or reasonable comprehensive doctrines, can be understood as determining the content of public reason. Notions like freedom of speech or religion, social minimums for decent living and adequate participation in civic life, and other constitutional essentials and matters of basic justice are the kinds of subjects relevant here. In effect, these substantive notions of public reason serve as the *conventions* and rules governing the order of public reason in society. A group’s claim that, say, a certain level of environmental pollution or lack of access to infrastructure violates their basic liberties has a twofold consequence. It prompts reflection on what public reason asks of us, and how we conceive of its idea. It likely also demands some change to the institutions in public realm that are meant to deliver on the promises of that idea. In these ways, substantive claims affect the structure of public reasoning we navigate in self-government, real and theoretical.

¹⁷⁴ Guinier and Torres (2002) p. 109. The three dimensional understanding of power they explore is borrowed from John Gaventa, Steven Lukes, and others.

¹⁷⁵ Freeman (2004) p. 2030.

¹⁷⁶ Though clear eyed about their limitations, Rawls clearly thinks that judicial review is an important feature of a constitutional democracy, and plays an important role in protecting and advancing public reason. See (2005a) p. 233-234. “A supreme court fits into this idea of dualist constitutional democracy as one of the institutional devices to protect the higher law. By applying public reason the court is to prevent that law from being eroded by the legislation of transient majorities, or more likely, by organized and well-situated narrow interests skilled at getting their way. If the court assumes this role and effectively carries it out, it is incorrect to say that it is straightforwardly antidemocratic.” With regard to ordinary law, Rawls accepts that a supreme court is in principle anti-majoritarian to the extent that it can invalidate those laws. See also note 117 above and accompanying text.

	Power Dimensions	Public Reason Functions	Public Reason Claims
<i>1st</i>	<i>Exercise</i>	<i>Protective</i>	<i>Procedural</i>
<i>2nd</i>	<i>Convention</i>	<i>Corrective</i>	<i>Substantive</i>
<i>3rd</i>	<i>Conception</i>	<i>Adaptive</i>	<i>Constitutive</i>

Constitutive public reason claims, I want to argue, are key to understanding the way in which Rawls suggests that public reason may change over time. Remember that, for Rawls, our capacity to continually reimagine public reason is a necessary bridge between social change and our politics.¹⁷⁷ One way this is possible is through the proviso—which, recall, permits citizens to bring values and other considerations from their comprehensive doctrines into public reasoning. Another way of thinking of this provision Rawls grants is as an opening for one’s *self* to enter into public reasoning. The tenants of comprehensive doctrines—though they need not be, but religious ones especially—can be foundational parts of one’s identity, practically and spiritually.¹⁷⁸ When we permit new ideas about constitutional essentials and basic justice into political deliberation, a broadening of the public circle occurs that welcomes others into the community of our reason. Of course, these broadenings can happen voluntarily, of the good will of the polity. But history teaches time and time again how frequently these allowances must be fought for, and demanded, in the same way Frederick Douglass had to implore the United States to understand its Constitution as a “GLORIOUS LIBERTY DOCUMENT.”¹⁷⁹ These claims about the constitution of public reason *just are* about our ideas of political power in society. It is our conception of our political ideal that, for Rawls, compels citizens towards justice. Bringing a power approach to that idea teases out, in ways unstated by Rawls but which I believe he would be amenable towards, how changing our conception of *who* is entitled to the power of the public allows public reason to adapt to our social world. Guinier and Torres remind us: “Power constructs the self; and in a hierarchical capitalist society that is not shaped by democratic pressures, it will eventually construct selves in the shapes of winners and losers.”¹⁸⁰ Thinking about constitutive public reason claims should also reassure us that the converse is also true—the self, in constitutional

¹⁷⁷ See *supra* notes 108 and 109, and accompanying text.

¹⁷⁸ On this point, John Cottingham, in *Philosophy of Religion: Towards a More Humane Approach* (2014) stresses the “*psycho-ethical dynamics of [religious] praxis*,” p. 165. He goes on further to say: “In brief, having one’s life held up to the presence of God, precisely the phenomenological core of the conversion experience, becomes part of the psycho-ethical framework for what every human being, if they are honest, must acknowledge that they aspire to: the continued growth of the of the morally maturing individual in his or her identity.” p. 167.

¹⁷⁹ Douglass, Frederick. “What to the Slave is the Fourth of July” (1852).

¹⁸⁰ Guinier and Torres (2002) p. 253.

democracy, constructs power. Rawls's constructivism explains how this is so, and how the possibility of justice in society relies on our realization of that fact.¹⁸¹

Outlining these different ways people and movements can appeal to public reason, I hope, illuminates two main respects in which these claims should be seen as central to the Rawlsian project. The first is the fact that movement action works to shape our sense of justice and transform the institutions that cultivate it. The second is that a focus on movement justice claims underlines Rawls's emphasis on the need for liberalism to accommodate a *family* of political conceptions of justice.

The sense of justice, for Rawls, is a citizen's very capacity to be reasonable. As described in *Theory*, various stages in an individual's life help cultivate their sense of justice—family life, social life, and the self-reflective political life of adult citizens.¹⁸² Where institutions in society's basic structure are just, Rawls posits that citizens *just will* develop a "natural" interest in political morality.¹⁸³ Now Rawls could mean here that this takes place in a society with *perfectly just* institutions—i.e., a well-ordered society. But what about *ordinary societies*, where specific institutions are not publicly known by the citizens to be just, and might regularly permit or commit all kinds of structural injustices? And what are we to think of instances where those institutions commit injustices against others excluded from the public, be they resident aliens, indigenous communities, or any person who might not enjoy the full suite of rights and basic liberties of citizens? Does Rawls have anything to say here?

I think there is good reason to believe that we should understand the sense of justice as obtaining even in ordinary society, and that Rawls would want this to be the case. Though often discussed only within the bounds of ideal theory, *something* must motivate the turn towards the just society where life is imperfectly ordered. Rawls's description of the sense of justice and citizens' moral powers as general facts about our (philosophical, not psychological) moral psychology would suggest that so long as we can conceive of a normative scheme around a political ideal, citizens' developing a sense of justice is possible.¹⁸⁴ And even a cursory glance at the record of democratic movement politics teaches that movements rely on aspects of conceptions of justice experienced or believed in to make their moral claims. Environmental justice advocates have consistently couched their justice claims in the language of equal protection, and built a movement on the hopes that the particular way of framing the challenges facing communities could lead to lasting policy change. Guinier and Torres describe how the National Farm Workers Association and the organizers who built it drew inspiration both from the constitutional restructuring of individual-government relations through statutes and court decisions as well as the cultural transformation already occurring during the "Freedom Summer" in the 1960s.¹⁸⁵ They emphasize just how the struggle for Mexican American justice was tied to broader movements for justice in American political life, and how farm workers' fights helped internally unite elements in the Chicano movement (*La Causa*) and forged ties to leadership in the black community. The performative spectacle of the farmworker *actos* were intentionally crafted to inspire audiences to social action, and communicate specific aspects of the vision for justice the movement advanced.¹⁸⁶ Maggie Blackhawk's recent work has stressed how Native Nations have historically and continually relied on the mechanisms within U.S. federal Indian law, like the petition, to exercise their power as

¹⁸¹ See *Public Realm and Public Reason* Chapter 2.

¹⁸² Rawls (1971) pp. 490-491. See also discussion in Bates (1974) pp. 11-12.

¹⁸³ Bates (1974) p. 12, explaining that by "natural" Rawls here intends a broadly Aristotelian sense, of "adaptation by nature to receive the moral values."

¹⁸⁴ Rawls (2005a) p. 87, saying, "Human nature and its natural psychology are permissive: they may limit the viable conceptions of persons and ideals of citizenship, and the moral psychologies that may support them, but do not dictate the ones we must adopt." And also pp. 86-88 generally on the autonomy of the political philosophy in a constitutional regime from empirical psychology and "the science of human nature."

¹⁸⁵ Guinier and Torres (2014) pp. 2784-2785.

¹⁸⁶ *Ibid.*, p. 2790.

sovereigns.¹⁸⁷ Even amidst the historical injustices in relations between tribal governments and the United States, however, Blackhawk argues that the provisions in Indian law protecting native communities' sovereignty have advanced the goals of the American Indian Movement as a "power movement" better than rights-based approaches could have.¹⁸⁸ If the executive and legislative branches of a foreign sovereign serve as any kind of "sanctuary" for Native Nations and Native peoples,¹⁸⁹ we may more reasonably attribute that assessment to the fact that they provided space for those peoples to express their own, local ideas of justice through them than to the justice or general character of the American Constitution.

One could take the above tension between the ideas of justice internal to social movements and that which structures the public political culture at a given moment to present a considerable challenge for public reason. I believe, however, that we should take it as a virtue of the Rawlsian account that it presents public reason as capable of *learning from* ascendant social movements. When movements challenge our current notions of what seems reasonable, a kind of social learning takes place that advances what we might understand as the *language* of justice. Rawls's very notion of a family of political conceptions of justice suggests that we should assume that groups come to the public political forum with their own understandings of what is reasonable, and what counts as injustice. It is through the exercise of our moral powers—especially articulations of our sense of justice—that we affirm the family of liberal conceptions of justice, and what in society we already take to be reasonable. The example above from federal Indian law points to one instance in which movements have relied on existing institutions to advance their claims. Within those structures and the laws that shape them, entitlements to power are well-defined, albeit imperfectly realized. We can look to fights for racial and environmental justice for examples of movements as creating *new* arenas for democratic conflict in what may previously have been uncontested areas of the public realm. Movements for racial justice have reimaged race as a "*political space*." In that space, what was traditionally conceived as an immutable category became both a symbol for communicating a diagnostic report on the marginalized groups' relation to power and a place where oppositional consciousness and solidarity could take form.¹⁹⁰ Functionally, we should see this as aligned with Rawls's political turn, and the understanding that our political institutions are just only to the extent that we can affirm our shared sense they are, and provide the means for us to do so.¹⁹¹ Their success to this end is determined not by any individual person or group, but rather our collective endorsement. The selection of arenas in which claims to political power can be made should equally be a matter left up to the public, precisely because of all the ways that power has been limited in what we typically conceive of as the public political forum.

Those fighting for environmental justice teach us all the ways that the parts of our world that shape their daily lives both affirm and affront their sense of justice. The landscapes Native peoples' have historically called home can serve as wellsprings of inspiration and understandings of what justice looks like, both in their spiritual significance and as sites

¹⁸⁷ See (2019) "Federal Indian Law as Paradigm Within Public Law" *Harvard Law Review* p. 1874-1875.

¹⁸⁸ *Ibid.*, pp. 1861, 1868.

¹⁸⁹ *Ibid.*, p. 1874.

¹⁹⁰ Guinier and Torres (2002) p. 106, and Chapter 3 generally. Describing their project of "political race," Guinier and Torres go on to explain: "There is no essential morphological or biological basis to the construction of racial groups, but the existence of such groupings continues to have roots in both the empirical history of white supremacy and in the discursive structure that supports it. The project of political race is a direct challenge to that discursive structure. It does not depend on the substitution of another discursive framework, such as class-based inequality, but looks instead to the places where race, politics, culture, and economics intersect. Political race is not something you are; it's something you do. It's a decision you make." p. 107.

¹⁹¹ See Cohen (2009) "Truth and Public Reason" in his *Philosophy, Politics, Democracy*. "Political liberalism aims to free the formulation of liberalism as a political outlook, so far as possible, from that wider set of philosophical and religious commitments, and thus to 'put no unnecessary obstacles in the way of... affirming the political conception.' Moreover, it would honor the value of tolerance and the ideal of the political arena as a space of public reasoning open to equal citizens." p. 353.

for collaborative management that reinforces the connection to the land.¹⁹² The proclamation establishing Bears Ears National Monument created the “Bears Ears Commission,” made up of representatives of the Hopi, Navajo, Ute Mountain Ute, Ute, and Zuni tribes “to provide guidance and and recommendations on the development and implementation of the management plans and on management of the monument.” Though the Secretaries of Agriculture and Interior are not required to abide by the Commissions recommendations, they are obliged to consider the traditional and historical knowledge and expertise of the tribes. They must also provide written justification of management decisions that diverge from that knowledge.¹⁹³ These provisions, hopefully, might serve to reaffirm tribes’ “meaningful involvement” in governance of the Monument, and government’s efforts to make good on promises of a kind too often broken. Public housing residents in cities might equally scorn the toxic, cancerous living conditions crippling children in buildings all throughout America while also acknowledging the justice in civic provision of a place to live.¹⁹⁴ Members of these groups and others make claims from their own sense of justice, informed both by beliefs and lived experiences, demanding the rectification of past wrongs and decision-making authority in future forms of collaborative governance. They make claims from public reason in so far as their charges reveal the ways our political community fails to live up to the standards set out for ourselves, and disempowers them from having meaningful say in the politics determining their quality of life and prospects therein.¹⁹⁵ Heeding their “arguments addressed to others,” as Rawls would put it, is what actually advances the language of justice and idea of public reason in ordinary society, and draws us into ever closer conversation with our ideal. It can, on occasion, force us to reimagine the kinds of spaces in which, and through which, their claims to political autonomy can be made. A sharper, more attentive sense of justice would be one that hears the resonance of those claims with the good of our political conception in the space opened up by their claims. That they need only harmonize, and not make claims to truth, is what the right reading of Rawls should bring to the conversation.

Second, an encounter with environmental justice should reassure the Rawlsian paradigm of its value as a pluralist, *synthetic justice frame*. Scholars have argued that one of the promises of environmental justice, as well as a possible precondition for it, is its ability to speak to a number of different varieties of justice.¹⁹⁶ Sometimes, this could mean accommodating various claims for indigenous justice or empowerment, which a capabilities approach in the vein of Martha Nussbaum and Amartya Sen may accomplish.¹⁹⁷ In other instances, this is conceptualized as the ability to answer several kinds of justice claims—Charles Lee notes six kinds that environmental justice practice should encompass,

¹⁹² Wilkinson, Charles (2018) *supra* note 60. Wilkinson describes how the process leading to the establishment of Bears Ears, a place of profound significance for the Hopi, Navajo, Ute Mountain Ute, Uintah, Ouray Ute, and Zuni tribes that petitioned President Obama, became itself profoundly Indian in character, intended to “honor the land; the tribes, past and present; and the tribes’ relationship to the land.” p. 329.

¹⁹³ Proclamation No. 9558 *supra* note 58.

¹⁹⁴ See Krakoff, Sarah (2019) “Environmental Justice and the Possibilities for Environmental Law” *Environmental Law* 49 pp. 240-245.

¹⁹⁵ It is worth pointing out that the case of US-Native Nations relations presents an interesting challenge for the public reason frame. For some scholars have argued that disputes between sovereign nations are better addressed within Rawls’s Law of Peoples, rather than public reason, because the latter is intended to operate within a given society’s basic structure, singularly construed as the nation-state. See, e.g., Olúfemi O. Táíwò (2019) “States are Not Basic Structures: Against State-Centric Political Theory” *Philosophical Papers* 48(1). Táíwò raises an important question regarding Rawls’s commitment to the idea that nation states are in fact the fundamental political unit when justice is concerned is the constitutional nation state. I cannot take up the question of whether this actually was Rawls’s view here. However, I *would* argue that it is truer to Rawls’s thought to conceive of *the public* as the proper dimension of analysis when questions of justice are concerned. This way, the important question when dealing with questions of justice between Native Nations and the United States would be whether some idea of public reason obtains for whatever “public” calls the American continent home.

¹⁹⁶ Schlosberg (2007) p. 76, on the possibility to address different conceptions of justice *simultaneously*, and “bringing numerous notions of justice into a singular political project.”

¹⁹⁷ Schlosberg and Collins (2014) p. 9, on the need to add procedural justice frames to more typical distributive justice orientations, and the likelihood that “a capabilities approach may offer a way to encompass the full rang of concerns and concepts of justice in a more pluralistic or holistic conception of climate change.”

including distributive, procedural, corrective, social, recognitional, and structural justice.¹⁹⁸ Doing so conceivably helps accomplish dual agency goals of “fair treatment” and “meaningful involvement.” There is good reason to believe that public reason (including, but certainly not limited to justice as fairness) can meet these requirements.

Though Rawls is forthcoming about his fondness and preference for justice as fairness, he explicitly appeals to the necessity that political liberalism admits a plurality of liberal political conceptions of justice.¹⁹⁹ A liberal conception of justice—whether Kantian, utilitarian, capabilities-oriented, or otherwise—need only meet the criterion of reciprocity and recognize the burdens of judgment to serve as a candidate conception in liberal democratic polities.²⁰⁰ Having access to a “family” of reasonable political conceptions of justice, Rawls says, is critical to the just ordering of social institutions. That society’s basic structure is regulated by one or “a mix thereof” of liberal political conceptions serves as the basis of social unity. Rawls clearly believes that justice as fairness, with its two principles, is the most reasonable political conception. But recognizing a fact of reasonable pluralism, he is clear eyed about the possibility that particular conceptions of justice may come to irreconcilable differences in opinion about the ordering of particular values in their respective visions for society. Rawls came to see public reason as a natural answer to this fact. By foregoing the privileging of any one liberal political conception in questions of social justice, we ensure the possibility that our shared idea of public reason might be shaped by any of them—in a way the claim and function schema above describes.

From this, we can come to a more robust theoretical understanding as to *why* a synthetic justice frame for environmental justice should be necessary. If actors and groups from a plurality of backgrounds and comprehensive doctrines are to come together around the shared project of working towards environmental justice, then our public realm institutions should be able to accommodate public reason claims from the full diversity of stakeholders in the public. There is not space here to show how precisely public reason actually *would* answer claims from those many stakeholders, apart from the general, formal process described above. But we can, at least, point to how that schema should be able to internally accommodate the kinds of justice observers like Lee have outlined. Per the discussion above, Rawls clearly thinks public reason involves aspects of both distributive justice (via the second principle of justice) and procedural justice, and via the family of reasonable liberal conceptions, can provide answers for both. Corrective justice, if thought not merely to be the political conception’s capacity to administer justice, but something like “reparative justice,” should be demanded by the two principles taken together. Rawls suggests that in addition to the (“purely formal”) guaranteed liberties, material institutions are required for citizens to make use of those freedoms—five he thinks necessary (but not sufficient) to satisfy the principles of justice as fairness include publicly financed elections, fair equality of opportunity in education and training, “a decent distribution of income and wealth” offering citizens the means necessary for citizens to make good use of the basic liberties, society as employer of last resort through government, and basic health care.²⁰¹ Given historical deviation or distance from that baseline, some correction in distribution of goods in society will obviously be required to satisfy public reason.

¹⁹⁸ Lee (2021a) and (2021b) described in notes 51, 65 above, and accompanying text. On structural justice, see Baptista (2008) “Just Policies?: A Multiple Case Study of State Environmental Justice Policies”, pp. 16-18, and Kuehn (2000) “A Taxonomy of Environmental Justice,” generally.

¹⁹⁹ Rawls (2005a) pp. xlvi-xlvii,

²⁰⁰ By the “burdens of judgment,” Rawls means the sources or causes of disagreement between reasonable persons—“the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life. The examples given are (1) matters of scientific evidence; (2) the weight of relevant considerations; (3) general indeterminacy of moral concepts; (4) how lived experience shapes our assessment of information and evidence, rooted in social, ethnic and class difference; (5) the different kinds of normative considerations on different sides of an issue; and (6) the “limited social space” of any system of institutions, and the difficulties in choosing moral and political values to admit that that might be realized. See (2005a) pp. 55-57.

²⁰¹ Rawls (2005a) pp. lvi-lvii, on “essential prerequisites for a basic structure within which the ideal of public reason, when conscientiously followed by citizens, may protect the basic liberties and prevent social and economic inequalities from being excessive.”

On social, structural, and recognitional justice, it should also be clear at this point how a public reason frame might make amends. If structural justice is concern for the ways institutions in society privilege certain groups or actors over others, or how broader inequalities and forces like environmental racism influence policy, then public reason is obviously concerned with these affronts. It would deem the offenses unreasonable, and require institutions be restructured such that they better serve the sense of justice supported by those reasonable liberal conceptions. For recognitional justice, public reason tells us that citizens are to be respected as free and equal—and that our politics must facilitate this relationship. That they be empowered to “speak for themselves” is the whole upshot of Rawls’s doctrine of reasonable pluralism, and creating space within the public political culture for a plurality of comprehensive doctrines.²⁰² Social justice, “far-reaching” and “nebulous” a goal for a movement for environmental justice as it may be,²⁰³ just is the enterprise Rawls hopes his theory helps advance. Creating a public realm in which irreconcilable comprehensive doctrines can themselves build a shared ideal of justice in society is precisely what public reason demands of us. Rawls’s idea of public reason overcomes the challenges and limitations of government action precisely by building a vital role for people and minority interests in the project of justice. It stresses the importance of *empowering* the whole public, and all its reasonable comprehensive doctrines by giving them a voice in the construction of a more perfect society. It is synthetic in the truest, Kantian sense of the term, as that which *amplifies* and *combines* ideas into an intelligible whole.²⁰⁴

Meeting the challenges of environmental justice and climate change may well require radical changes to our governance structures, including laws and other institutions. Both point out the grave inequities in social orders at the local and global levels, and how structural racism and the political economic ordering of institutions perpetuate those inequities.²⁰⁵ In our cities, and between our nations, the effects of these injustices will disproportionately fall on the poorer side of the racialized abyssal line, impacting the people and communities who currently wield the least power to affect their position and protect their ways of life.²⁰⁶ Regime change may already be underway.²⁰⁷ Invoking Rawlsian themes, Maxine Burkett has suggested that we actually live in something of an original position regarding global climate and environmental change, and find ourselves “behind an actual veil of ignorance” in our attempts to assess how the most damaging effects of ecological shifts by different individuals.²⁰⁸ Though critics tend to dismiss deeper engagement with Rawls’s work for several of the reasons detailed above, reflecting on public reason and the later thought can help us start to see how political liberalism, in fact, can answer many of the concerns of activists and scholars.

Some argue that the most important priority of the displaced and marginalized should be seeking self-determination —“a collective right of subordinated peoples to determine their own fate rather than having it imposed on them by foreign powers.”²⁰⁹ As the need to adapt our world to the new realities of a changing climate materializes, questions of how individual societies will secure their own fate are, of course, pressing. But the ecological calamity ensuing before us increasingly reveals how difficult it is to fully isolate any particular group from another’s actions. Self-determination, and a community’s right to persist on its own terms, are of course the ends we should hope to secure for all; equally, if not more conceptually and theoretically challenging are the questions regarding how we might *collectively* adapt our social and political systems to the approaching future, perhaps in spite of the fact that a richer, whiter few, more than others, made

²⁰² Lee (2021b) pp. 10209, 10216 referencing Schlosberg (2007) on recognitional justice as that which “speaks to the social norms, language, and mores that mediate our relations with those who are denigrated or less well-off.”

²⁰³ Kuehn (2000) p. 10698.

²⁰⁴ Immanuel Kant (1998) *Critique of Pure Reason* p. A7/B11

²⁰⁵ Gonzalez (2020) p. 111.

²⁰⁶ Gonzalez *ibid.*, p. 114 quoted in nite 39 above, and accompanying text, as well as p. 118: “This history [of international law and human rights] raises serious questions about the ability of legal regimes that govern climate change to deliver justice for racialized communities who are displaced by climate change.”

²⁰⁷ Burkett (2018) p. 475, defining a regime shift as “a change that affects the identity of the system” applied to either political or ecological systems.

²⁰⁸ Burkett *ibid.*, p. 480.

²⁰⁹ Gonzalez (2020) p. 128.

it so. Rights are all well and good, but as Blackhawk illustrates, realizing the promise of sovereignty may rely more often on *power*, rather than the *rights* of parties in any situation.²¹⁰ The idea of public reason, as Rawls describes it, tells us something vital about how power is to be used for common ends, and how claims to that power can help upend existing institutional structures. Capitalism, in laissez-faire or welfare state iterations, is incompatible with these ends, and the ideals of justice as fairness. The new regimes Rawls found acceptable by that idea were two—property-owning democracy, and liberal socialism.²¹¹ We should keep in mind that Rawls thought these arrangements most appropriate for the constitutional democracies of the United States or Europe, and not necessarily a world filled with climate refugees, oppressed indigenous peoples, and other countless instances of global environmental injustices. What we should take from public reason is the notion that however broadly we draw the bounds of our public, its ordering of political power should be *self-constituted* in the fullest sense possible.²¹² So long as we can conceive of those publics on varying social and spatial scales, public reason should give authorship, voice, and power over the shape that political conception takes. That is the self-determination the Rawlsian scheme promises, dictating that whatever regime we chose should be one that any individual or group who constitutes it has sufficient reason and power to affirm.

IV. Strengthening Democracy in New York’s Public Realm

The preceding sections, at a high level of abstraction, detailed the mechanics and dialectic of public reasoning we might glean from Rawls. Turning back to ground level, I want to look to examples from current struggles for environmental and climate justice in New York City to illustrate the ways that dialectic can take form in the work of advocates and community groups. In none of these examples do groups make appeals to Rawlsian notions of justice, much less an idea of public reason. But through the appeals they make in the public political forum exposing injustices and the ways their communities have been excluded or harmed by the public realm—and the visions they offer reimagining more just futures for it—we can clearly see appeals to notions Rawls thought critical for justice, especially reciprocity and civility. The struggle for the future of the urban environment is every bit a matter for public reason as the other episodes from movement politics explored above.

Looking to these cases from non-ideal, ordinary society can provide important direction and instruction in our thinking about how to actually advance the idea of public reason through environmental justice. They are instances of people driving the creation of political space within the urban environment. They bear all the hallmarks Guinier and Torres suggest signal the creation of such space—communities develop political leadership, build coalitions, and by doing so, advance social justice and democratic transformation. After looking at the essentials of each case, I will summarize reflections that should inform our sense of their importance to Rawlsian thought. It should be unsurprising that, of all places, cities show us critical examples of how struggles for justice create neighbors “joined at the stoop.”²¹³ Environmental justice forces us to reflect on the importance of including the very stoops joining those neighbors in our conception of justice, and the place of those connecting points in public reason.

A. Harlem and Williamsburg: Shaping City and State Policy, and Defining Environmental Justice

The northern parts of Manhattan and Brooklyn have long been hotbeds for the New York City’s environmental justice movement. Several dimensions of historical and social contingency have led to the conditions that have spurred some of the most important environmental organizing in the city. Both neighborhoods serve as longstanding homes to

²¹⁰ Blackhawk (2019) at p. 1870 emphasizes this point: “Because the distribution of power is justified by the fact that individuals will be provided equal liberty, in allowing them participation in the making of laws that govern them and their community, the distribution is not in tension with liberalism’s values of freedom and equality. Rather, facilitation of the goal of self-governance, including the ability of individual members to define their governing institutions and rights is the very essence of liberalism in a plural society.”

²¹¹ Rawls (2001) p. 138.

²¹² *Supra* note 175. and accompanying text.

²¹³ Guinier and Torres (2002) p. 83, and p. 83n30, borrowing the title of a 1999 *New York Times* headline.

communities of color—Harlem as the cultural heart of New York’s African American community, and Williamsburg as a historically multicultural, but increasingly Latino majority-minority neighborhood. The communities of northern Manhattan have long suffered a suite of overlapping vulnerabilities, including high concentrations of “environmental bads” (bus depots, transportation arteries, waste facilities, local contamination), health problems (asthma and other respiratory illnesses, worse overall health outcomes), neighborhood instability (“ethnic churning,” displacement pressures, job insecurity), inadequate infrastructure (lack of air conditioning, poor access to urban green space, poor housing conditions), and flood risk (heightened storm surge vulnerability, exposure to contaminated flows).²¹⁴ Many of the same problems are faced by residents of “Southside” Williamsburg. While “power broker” Robert Moses is most famous for taking a “meat axe” to the Bronx,²¹⁵ Williamsburg was similarly eviscerated by his Brooklyn-Queens Expressway, an interstate highway with elevated and sunken segments partitioning the neighborhood and spewing pollution into local communities. The intersecting injustices of environmental racism and infrastructural burdens concentrated in these neighborhoods are faced by disempowered people and places all across American Cities. They are also home to groups and initiatives modeling leadership in urban environmental and climate justice.

Organizations like West Harlem Environmental Action (WE ACT) in Manhattan, along with Brooklyn-based New York City Environmental Justice Alliance (NYC-EJA), El Puente, and the North Brooklyn Parks Alliance, have for decades now fought for the health and empowerment of the communities they serve. Core to their work is an understanding of environmental justice that puts vulnerable, marginalized communities at the center of their mission, and partnerships that aim to affect several of the disparate infractions and institutions that impact neighborhoods. WE ACT’s collaboration with the Harlem Health Promotion Center and Columbia University led to early achievements including local air monitoring studies, trainings for community leaders on environmental health topics, educational forums for residents on environmental justice, and policy decisions addressing diesel exhaust exposure in Northern Manhattan.²¹⁶ Cross-borough collaborations were critical to WE ACT’s work exposing what were then implicitly racialized determining factors in city land use and waste facility operations. Leaders “challenged the disjuncture between the invisibility of crucial municipal service operations—garbage, energy, sewage, and sludge—and the visibility of the public perception that these neighborhoods were racially marked sites of blight, pollution, and decay.”²¹⁷ The network of environmental justice organizations in the City were similarly responsible for victories halting New York Power Authority plans to construct new power generation facilities in these neighborhoods. Coalitions in Communities United for Responsible Energy (CURE) and the Organization of Waterfront Neighborhoods organizing demonstrations to show then-Governor Pataki their opposition, and show fellow New Yorkers who would suffer the toxic effects of power generation if the plan advanced.²¹⁸ The achievement won CURE and environmental justice advocates key advisory positions in Mayor Michael Bloomberg’s administration to help shape the city’s energy policy.²¹⁹ Hard fought as these victories were, environmental justice leaders in New York are aware that the community benefits extend far beyond any particular battle. Like Guinier and Torres, Julie Sze notes that “for communities long disempowered from the political process, some argue that the act of coming together and envisioning their future is an important and a profoundly political and proactive act.”²²⁰ She also emphasizes the awareness of local New York leaders that educating the next

²¹⁴ Shiela Foster et. al (2019) “Chapter 6: Community-Based Assessments of Adaptation and Equity” in *Annals of the New York Academy of Sciences* 1439.

²¹⁵ See Caro, Robert (1975) *The Power Broker*. New York: Vintage

²¹⁶ Shepard et al. (2002) “Preface: Addressing Environmental Justice Through Community-Based Participatory Research” *Environmental Health Perspectives* 110(2)

²¹⁷ Sze, Julie (2007) *Noxious New York: The Racial Politics of Urban Health and Environmental Justice* Cambridge: MIT Press, p. 51.

²¹⁸ Sze, *ibid.*, Chapter 5, generally.

²¹⁹ Sze, *ibid.*, p. 174.

²²⁰ Sze (2007) p. 204.

generation on environmental racism and cultivating individual leadership skills in youth are critical parts of sustaining the movement's victories to date.²²¹

The growing strength of these community organizations is only increasingly vital. A warming climate, exacerbating the urban heat island effect, continues to drive heat risk and mortality in the poorest, densest areas of the city, like Harlem and Williamsburg.²²² The New York City Housing Authority has come under serious scrutiny for neglect of hazardous conditions in the city's public housing stock—especially heat vulnerability in communities²²³ and lead paint contamination.²²⁴ And, as asthma rates remain stubbornly high in places like Williamsburg, advocates are placing increased political pressure on government to reimagine highway infrastructure. A proposal called BQGreen promises to cap segments of the Brooklyn-Queens Expressway, delivering health-supporting park space and air quality mitigation in a community that has long suffered.²²⁵ Advocates for the intervention assert that it will help deliver environmental justice in the community by serving longtime residents, promoting health for the future, and set an example for what transformative collaboration between communities, government, and other private stakeholders can look like. Former Deputy Brooklyn Borough President and neighborhood native Diana Reyna said of the project: “Once you start getting used to what you have you think that's all you can have. We need community coalitions to amplify intentions and goodwill. We need foundations and donors. And we need cross community collaborations (i.e. Brooklyn Heights and Los Sures).”²²⁶ As the need for environmental justice in these communities becomes starker and starker, so have the calls for a common vision of what justice looks like and what stakeholders are accountable to it.

Indeed, some of the most significant environmental justice achievements in New York have drawn increasingly larger circles around environmental justice's scope of work, and who must work on it. Organizing by groups like WE ACT and the NYC-EJA helped pass landmark environmental justice legislation at the state and city levels. New York City's Local Laws 60 and 64 mandated completion of a citywide study of environmental justice²²⁷ and the establishment of an Advisory Board of environmental justice advocates, public health experts, and academics to work with City agencies on newly-required plans to address environmental injustices.²²⁸ They were followed up in 2019 by Local Law 97—part of New York City's “Green New Deal”—which set enhanced sustainability parameters for buildings in the city aimed at cutting energy use and emissions.²²⁹

At the State level, an ascendent Democratic majority in the legislature helped to ensure the passage of two landmark environmental justice bills. The Climate Leadership and Community Protection Act (CLCPA) set far-reaching targets for emissions reductions and the decarbonization of the New York State economy. It also requires that 40% of benefits of spending on infrastructure and other sustainability initiatives on disadvantaged communities.²³⁰ The CLCPA required passage of a companion bill amending state environmental conservation law to establish a permanent environmental

²²¹ Ibid., quoting Peggy Shepard of WE ACT p. 185.

²²² Shiela Foster et. al (2019) “Chapter 6: Community-Based Assessments of Adaptation and Equity” in *Annals of the New York Academy of Sciences* 1439, Figure 6.6

²²³ Abraham, Roshan (2019) “Climate Control is a Year-Round Issue at NYCHA, Especially for Seniors” *City Limits* accessed: <https://citylimits.org/2019/10/23/climate-control-is-a-year-round-issue-at-nycha-especially-for-seniors/>

²²⁴ Smith, Greg B. “NYCHA's Lead Paint Crisis Explodes s Known Number of Apartments where Kids Risk Exposure Triples” *The City* accessed via <https://www.thecity.nyc/housing/2020/10/22/21528781/nycha-lead-paint-more-apartments-identified>

²²⁵ Go Green Brooklyn. “15 Years Later: BQGreen is More than a Dream” accessed via <https://gogreenbk.org/15-years-later-bqgreen-is-more-than-a-dream/>

²²⁶ Ibid.

²²⁷ (2017) NYC Local Law No. 60

²²⁸ (2017) NYC Local Law No. 64.

²²⁹ (2019) NYC Local Law No. 97.

²³⁰ 2019 NY Senate-Assembly Bill S. 6599, A. 8429.

justice advisory group and an environmental justice interagency coordinating council. When signed by former Governor Andrew Cuomo late in 2019, the companion bill made environmental justice the official policy of New York State.²³¹

This precedent-setting example of a whole-of-government pivot in justice and infrastructure policy would have been impossible were it not for the decades of advocacy led by groups in New York City, and the community-level movements coordinated throughout New York State. The initiative's success was partially rooted in the grassroots electoral initiative that delivered control of New York's Assembly and Senate to state Democrats for the first time in years. Until 2018, a power sharing agreement between Republicans and moderate Independent Democratic Caucus had stonewalled significant state action on climate.²³² Electoral upheaval in the 2018 primary elections, fueled by support from the Working Families' Party and Sunrise Movement radically changed the CLCPA's prospects.²³³ Second, well before passage became a legislative reality, the vision at the heart of the CLCPA was relentlessly championed by a coalition of local environmental justice groups led by New York Renews, founded after the People's Climate March in 2014. New York Renews helped design the bill's environmental justice provisions, and its Climate Justice Working Group, and its members exerted political pressure on lawmakers necessary to help keep its earlier iteration, the Climate and Community Protection Act, alive in the legislature.²³⁴ Over the course of a three year campaign, constituent groups like WE ACT brought buses of members from New York City up to Albany for rallies and visits with elected officials.²³⁵ Though implementation of the CLCPA has been slow-going, New York's law has served for the inspirational basis of climate and environmental justice initiatives for other states and the Federal Government.²³⁶

B. Gowanus: Land Use Change and Power Building in Communities

The industrial neighborhood along Brooklyn's Gowanus Canal has been the center of a hotly-debated development battle. Within walking distance of several transit lines and some of Brooklyn's most sought-after neighborhoods, its blocks of warehouses and manufacturing sites have long been the target of New York's real estate industry. For years, the neighborhood served as something of a refuge for working-class New Yorkers of varying ethnicities—though in recent decades, the neighborhood's complexion has become definitively whiter and richer, leaving the NYCHA Gowanus and Wyckoff houses at the north end of the canal some of the only truly affordable residences in the area. The canal, running through the heart of the neighborhood into New York Harbor, is considered to be one of the most polluted waterways in the country. While a federal Superfund cleanup of the canal is underway, it remains a toxic environmental and health hazard. When the low-lying neighborhood at the bottom of one of Brooklyn's major watersheds was hit by Hurricane Sandy in 2012, combined sewer overflows and high water levels in the canal enveloped nearby streets and homes with a mix of "black sludge" from the canal and raw sewage ejected from the city's antiquated waste infrastructure. Meanwhile, residents of the Gowanus Houses and Wyckoff Gardens were left in their residences for days

²³¹ 2019 NY Senate Bill S. 2385.

²³² Storrow, Benjamin. "An author of N.Y. climate bill on its success and pitfalls" *Climatewire* August 7, 2019. (<https://subscriber.politicopro.com/article/eenews/2019/08/07/an-author-of-ny-climate-bill-on-its-success-and-pitfalls-025830/>).

²³³ On the electoral upsets that ousted members of the moderate Independent Democratic Caucus, see Khurshid, Samar "How Insurgent Forces Activated, Educated, and Brought the IDC Down" *Gotham Gazette* September 18, 2018 (<https://www.gothamgazette.com/state/7939-how-insurgent-forces-activated-educated-and-brought-the-idc-down>). On role of the Working Families Party and Sunrise Movement, see Aronoff, Kate "Democrats Control New York But Can't Even Pass Climate Legislation" *The New Republic* June 9, 2021 (<https://newrepublic.com/article/162676/democrats-control-new-york-cant-even-pass-climate-legislation>)

²³⁴ See Aronoff, Kate "New York is On the Verge of Major Climate Action: But Centrist Democrats Stand in the Way" *In These Times* June 17, 2017 (<https://inthesetimes.com/article/new-york-democrats-climate-community-protection-act-ny-renews-ide>)

²³⁵ "Harlem-Based WE ACT Celebrates Passage of Historic NY State Climate Legislation" *Harlem World Magazine* June 21, 2019 (<https://www.harlemworldmagazine.com/harlem-based-we-act-celebrates-passage-of-historic-ny-state-climate-legislation/>)

²³⁶ Storrow, Benjamin "1 year later, N.Y. struggles to act on landmark climate law" *Climatewire* June 11, 2020 (<https://subscriber.politicopro.com/article/eenews/2020/06/11/1-year-later-ny-struggles-to-act-on-landmark-climate-law-014473>) and Kaufman, Alexander C. "The Model for Joe Biden's Climate Pledge is Already Facing Problems" *Huffington Post* July 22, 2020 and Aronoff (2021) *supra* note 224.

without power and other services, relying on one another to support the community as the city emerged from the crisis. Local environmental and social justice organizations, like the Gowanus Canal Conservancy and Fifth Avenue Committee, have helped to advance sustainability and resilience in the neighborhood, leading natural infrastructure construction, economic development initiatives, and community visioning around the future of the watershed.

Despite the damage wrought during Sandy, and a yet-to-be-completed remediation of the canal, Gowanus was chosen by the de Blasio administration as a candidate for a significant rezoning. The proposal would bring 8,000 housing units, parks, and shops to the neighborhood, one of the most ambitious development proposals of the Mayor's time in office.²³⁷ In all, some 3,000 units would be designated “affordable” by the various metrics the city uses to determine eligibility—typically some percentage of area median income. The plan would likely drastically alter the neighborhood's current character, erasing much of the industrial urban fabric that has for decades been its hallmark. Some advocates and local elected officials—including the Fifth Avenue Committee, Gowanus Canal Conservancy, and Councilman (soon to be Comptroller) Brad Lander—argue that the plan could help to preserve some semblance of affordability and diversity in the neighborhood.²³⁸ Opponents to the rezoning, including the outspoken neighborhood advocacy group Voice of Gowanus, argue that the plan is a handout to the city's moneyed real estate industry, and that the environmental hazards to be faced by future developments built on the site of a retired manufactured gas plant are underplayed in the Mayor's assurances.²³⁹

The rezoning may not be decided for some time, pending continued legal challenges, but overcame a first hurdle in 2021 when Brooklyn Community Board 6 voted to approve the city's proposal, with conditions.²⁴⁰ Some of those conditions, included at the request of the Gowanus Neighborhood Coalition for Justice (GNCJ), included significant capital funding commitments—\$274 Million in outstanding repairs and improvements—at the Gowanus Houses and Wyckoff Gardens, monitoring and delivery of the City's commitments to combined sewer overflow reduction, and EPA review of those commitments, workforce retention and development programs, and accountability measures to ensure commitments are met, including an official liaison to the NYCHA community.²⁴¹ Much but not all of the Board's conditions cover the priorities outlined in the Coalition's principles, and do include the top three demands on CSOs, funding commitments for public housing, and accountability.²⁴² Especially noteworthy is the diversity of groups represented by GNCJ—in addition to those mentioned above, it counts arts organizations, tenants rights organizations, an industrial development corporation, a church, and the NYCHA developments' residents association.²⁴³ The main opposition group, Voice of Gowanus, is a predominantly white, middle- or upper-class organization, but boasts environmental advocacy bona fides as one of the lead groups petitioning for the EPA Superfund remediation, as well as connections to other advocacy organizations opposing rezonings throughout the city.

²³⁷ Zaveri, Mihir, B. Hamilton, and J. Corona (2021) “Why this Toxic Canal is a Litmus Test for N.Y.C. Development” *New York Times* April 9, 2021. Accessed via: <https://www.nytimes.com/2021/04/09/nyregion/gowanus-canal-brooklyn-development.html>

²³⁸ See Zaveri, Hamilton, and Corona, *ibid.*, as well as Michelle de la Uz, Brad Lander, and Barika Williams (2020) “How the Gowanus Rezoning Could Push NYC Forward on Racial Equity” *City Limits* September 21, 2020, accessed via: <https://citylimits.org/2020/09/21/opinion-how-the-gowanus-rezoning-could-push-nyc-forward-on-racial-equity/>

²³⁹ Zaveri, Hamilton, and Corona (2021), as well as VOICE OF GOWANUS (2021) “Welcome to Gowanus Green—Brooklyn's Own Love Canal” *Bklyner* March 9, 2021, accessed via: <https://bklyner.com/opinion-welcome-to-gowanus-green-brooklyns-own-love-canal/> as well as Nora Almeida, Linda LaViolette, and Miranda Sielaff (2021) “Poison Land and Poison Rhetoric: Gowanus Rezone Proponent Uses Personal Attacks to Sidestep Public Health Concerns” *Bklyner* March 23, 2021, accessed via: <https://bklyner.com/opinion-poison-land-and-poison-rhetoric-gowanus-rezone-proponent-uses-personal-attacks-to-sidestep-public-health-concerns/>

²⁴⁰ Brachfield, Ben. “Gowanus Rezoning Gets Go-Ahead from Local Community Board” *Brooklyn Paper* June 24, 2021. accessed via: <https://www.brooklynpaper.com/gowanus-rezoning-gets-go-ahead-from-local-community-board/>

²⁴¹ Brooklyn Community Board 6 (2021) “Gowanus Rezoning Resolution – 6/17/21” accessed via: https://drive.google.com/file/d/1zZMu_JBxD_fZowgq0zZT2gtj5qdRvXF1/view

²⁴² Gowanus Neighborhood Coalition for Justice (2021) “Our Demands” accessed via: <https://www.gncj.org/new-our-advocacy>

²⁴³ Gowanus Neighborhood Coalition for Justice (2021) “Who We Are” accessed via: <https://www.gncj.org/aboutus>

All told, though the rezoning's fate is far from certain, pending likely approval from Council Member Lander, the rezoning may well move ahead. Advocates like Voice of Gowanus, who cite the City's earlier rezoning of Greenpoint and Williamsburg as an example of municipal failure to deliver benefits promised in large development plans, will almost certainly continue their opposition to the plan through final Mayoral approval. Should the plan go through, time will tell whether the City is willing and able to abide by the conditions put forward by the Community Board—whose recommendations are non-binding. With a new administration entering City Hall in 2022, advocates are, however, already preparing to hold the likely future Mayor accountable.²⁴⁴

C. Far Rockaway: Vulnerability, Agency, and Adaptation

Finally, we can look to the Rockaway Peninsula in Queens to illustrate some of the profound, nearly existential challenges facing the coastal parts of New York. Far on the periphery of the city, the group of waterfront neighborhoods on the southern end of Jamaica Bay face some of the starkest climate challenges in the city. According to current flood maps, nearly all of the peninsula lies in the 100-year floodplain, vulnerable to high water in extreme storm events.²⁴⁵ Hurricane Sandy exposed the profound risk faced by most Rockaway residents—catastrophic flooding severely damaged homes and critical infrastructure, forced widespread evacuation of the barrier beach community, and resulted in millions of dollars in damages.²⁴⁶ Entire sections of the Breezy Point neighborhood on the peninsula's western end were decimated by fires when fallen power lines started a blaze after the storm had passed. As climate change continues to drive sea level rise, flooding during storm events will only intensify, and regular, “sunny day” flooding, inundating communities during regular tidal cycles, will likely become the norm.²⁴⁷ The eastern sections of the Rockaways, home to a far greater number of working class New Yorkers of color, exhibits some of the highest overall social vulnerability to flooding in the City.²⁴⁸

In the aftermath of Sandy, Rockaway residents and communities have had to endure decisions of how to rebuild their communities in the face of future risk and uncertainty. Though a multi-billion dollar recovery effort was launched by the federal government, barely half of the apportioned funds for the five boroughs have been spent nearly a decade after the storm.²⁴⁹ And while steps have been made to develop comprehensive plans to protect the City's coast in places like the Rockaways, little progress has been made and major political or civic leadership advocating a broadly-applicable solution to regional vulnerability is mostly lacking.²⁵⁰ Meanwhile, local community groups, like the Rockaway Initiative for Sustainability and Equity (RISE Rockaway), and the multi-state Waterfront Alliance are beginning to mobilize local action for climate justice. A neighborhood-based nonprofit closely allied with other local organizations working to serve residents, RISE has recently expanded its mission to center equity in their work, along with a focus on local empowerment for social and environmental change.²⁵¹ Their work with local schools has focused on youth development

²⁴⁴ Gowanus Neighborhood Coalition for Justice (2021) “Letter: To Borough President Eric Adams” accessed via <https://static1.squarespace.com/static/5c6d8675348cd920dcfbda27/t/60fee1dd8bd0e84a13be806c/1627316701350/GNCJ+Letter+to+Borough+President.pdf>

²⁴⁵ Patrick, L. et al (2019) “Chapter 5: Mapping Climate Risk” *Annals of the New York Academy of Sciences* 1439

²⁴⁶ Erdos, Emily. (2018) “Hurricane Sandy and the Inequities of Resilience in New York” *The American Prospect* October 5, 2018. Accessed via <https://prospect.org/infrastructure/hurricane-sandy-inequalities-resilience-new-york/>

²⁴⁷ Orton, P. et al. (2019) “Chapter 3: Sea Level Rise” *Annals of the New York Academy of Sciences* 1439

²⁴⁸ Foster et. al (2019) “Chapter 6: Community-Based Assessments of Adaptation and Equity” in *Annals of the New York Academy of Sciences* 1439, Figure 6.2

²⁴⁹ NYC Comptroller (2019) “Safeguarding Our Shores: Protecting New York City's Coastal Communities from Climate Change” accessed via: <https://comptroller.nyc.gov/reports/safeguarding-our-shores-protecting-new-york-citys-coastal-communities-from-climate-change/>

²⁵⁰ Murphy, Jarrett. “To Face Flooding, New York Region Needs Big Bucks and Bold Moves: Report” *City Limits* July 10, 2020. accessed via: <https://citylimits.org/2020/07/10/to-face-flooding-new-york-region-needs-big-bucks-and-bold-moves-report/>

²⁵¹ Per Judah Asimov, RISE Senior Manager, in conversation with the author.

and leadership in environment, planning, advocacy, and civic engagement. Staff see this work as critical to building capacity for change and adaptation in the community. They have noticed a stark difference in the way young people and seniors in the neighborhood value climate justice, with young people increasingly pushing their elders to recognize the threat of climate vulnerability and need for adaptive planning and visioning.²⁵² RISE has also focused on developing networks for local advocates and organizers, and pushing to connect ecological resilience and adaptation to economic opportunity for residents. Though socioeconomic disparities across the peninsula are stark, and only increasing over time, the organization is optimistic that there is a strong case to be made for common cause and collective empowerment as neighborhoods encounter the realities of their environmental situation.

The struggle for climate justice in the Rockaways is, admittedly, as close to an uphill battle as one can wage on coastal lowlands. Structural and racial segregation of the political communities that make up the Rockaways is deeply embedded. Current demographic patterns of wealthier, whiter communities on the western and southern edges and poorer, brown and black communities on the north and eastern sides find roots in the historic reservation of the Atlantic waterfront for whites.²⁵³ And within the broader political landscape of the five boroughs, communities on the periphery, like the Rockaways, often struggle to receive the financial support that wealthier places with more valuable real estate command. The City itself largely neglects planning, restoration, and resilience work in the outer boroughs while investing heavily and disproportionately in Lower Manhattan, drawing critique from environmental justice advocates.²⁵⁴ Local residents in the Rockaways attribute government inaction in their communities in part because of difficulty holding local agency and elected officials accountable to change—“buck passing,” overly complex accountability and funding processes, and planning fatigue have all frustrated local advocates attempting to advance climate justice initiatives on the ground.²⁵⁵ And though more and more residents are beginning to adopt a future-forward attitude towards the shape of life to come in the Rockaways, the question of “managed retreat,” or planned inland migration of communities, continues to be a political third rail. Adaptation efforts to date typically focus on individual buildings, rather than the community on the whole. In a place so politically diverse and complex, finding strategic unity is perhaps predictably difficult; in that respect, the Rockaways face the same standard for success as the City writ large. Our capacity to empower neighbors to exercise agency over the direction and future of their communities may well determine the viability of life in those places for generations to come.

D. Finding a Place for Public Reason in New York’s Public Realm

In the cases above, environmental justice advocates do not explicitly make claims to public reason. But I believe that if we look at the broader intentions of their advocacy, the proposals they advance, and the kind of power they fight for, we can find clear markings of the kind of commitments Rawls believed sustain the idea of public reason. In one way, the exercise is empirical, and asks to what extent the process of public reasoning in city living conforms with the Rawlsian model discussed above. In another, it is normative, and aims to reflect on how public reason can learn from movement actors. If public reason is to be adaptive in the way that Rawls suggests we should think it is, then heeding calls and actions on the ground is an undeniably important learning opportunity in our thinking about the nature of justice.

Across all of the examples, we can discern clear instances in which the demands of advocates served as protective and procedural public reason claims. The early advocacy of groups fighting toxic infrastructure and environmental racism in the City contested the premises that their living conditions were those which an individual who thought

²⁵² Asimov interview, *ibid.*

²⁵³ Erdos (2018) *ibid.*

²⁵⁴ NYC-EJA (2020) “New York City Climate Justice Agenda,” p. 50, accessed via: <https://www.nyc-eja.org/wp-content/uploads/2020/04/CJA-2020-FINAL-042020-for-web.pdf>

²⁵⁵ Asimov interview, *supra* note 237.

themselves as a “free and equal citizen” could endure. Where NYPA’s power plant expansion was concerned, advocates argued not merely that there was no real need for the enhanced generation capacity in New York, but the further point that the state’s plans to advance the plan would be at the expense of residents’ health and well being. As with so many other canonical environmental justice cases, it was another clear example of government privileging private interests and the profits of corporations or utilities over public good. Organizations like WE ACT and the communities they represent were, in effect, demanding that government respect the criterion of reciprocity—others could not reasonably be expected to be continually subjected to the overburdening of harmful infrastructures, simply because of the community’s already marginalized political and social position.²⁵⁶

In Gowanus, the GNCJ and NYCHA residents made similar claims to those in Harlem and Williamsburg. Contesting the intolerable neglect of living conditions in public housing, and considerable vulnerability of the existing communities in the neighborhood, advocates reasoned, needed to take place before they could consent to public investment in homes and amenities for more privileged newcomers. Further, that any interventions part of the neighborhood rezoning needed to be accompanied by accountability measures would seem to be a clear expression of residents appealing to something like Rawls’s duty of civility—neighbors wanted the procedural guarantee that the rezoning would not fall to the same, lax standard of responsibility for promised community benefits that plagued earlier rezonings. No such provisions are yet in place—New York lacks the necessary checks on its strong Mayoral government to provide for citizen oversight of rezoning allowances apart from electoral politics. And in the Rockaways, the actions of groups like RISE and calls from residents for basic guards against flooding and more acute disasters, is, in a way, a request that government take measures to protect the very viability of their way of life on the peninsula. That rising waters and damaged infrastructures interfere with residents’ daily life is, at one level, perhaps an equal protection matter all its own. Access to transportation that brings residents to jobs, healthcare, or other social services helps sustain the livelihoods of Rockaway residents—interrupting access to those services will likely only further aggravate community social vulnerability. Similarly, across all these cases, we might understand residents as making calls on government to help preserve their very ways of life. When the viability of a community’s existence, much less its well-being, is threatened due to forces ultimately shaped by social and political inequality, public reason should dictate protection and empowerment for our neighbors at risk, and call into question the political processes at the root of that risk. It should endorse claims that would call out injustices in institutional procedure preventing individuals and communities from exercising their political power in holding government to its duty of civility.

The examples also show how environmental justice conflicts served as a means by which advocates could advance *substantive* justice claims that would engage our idea of public reason, and offer correctives for the institutional structures disempowering communities. The fight for the adoption of environmental justice principles as official state and city law, while far from a full corrective measure in and of themselves, at least lays the groundwork upon which agencies and processes in New York can be reimagined to amplify the voices of those fighting for improvements in environmental quality and climate resilience. The CLCPA, as well as the City’s local environmental justice laws, assert both government’s duty to protect community integrity, and offer a means of reparative justice in the investment mandates towards disadvantaged communities. The advisory bodies they establish also exemplify the principle that advocates have a role in the authorship of the laws protecting communities, and the design of institutions that will enforce them. In the Gowanus rezoning battle, advocates put forward a suite of substantive principles defining the ideal, fair outcomes they thought the process should achieve.²⁵⁷ Their specific environmental justice claims called for the promotion of climate justice and social resilience, investment and access for new green spaces, and infrastructure that mitigates hazards like

²⁵⁶ On reciprocity, see Rawls (2005b) p. 446, and also notes 79, 105, and 106 above, and accompanying text.

²⁵⁷ See note 229, above. Those principles include: (1) “Advance racial and economic justice”; (2) “Respect, protect, and connect public housing and its residents”; (3) “Create real affordable housing and protect tenants from displacement”; (4) “Promote environmental justice”; (5) “Recognize and celebrate the culture and community of longtime residents”; and (6) “Protect local businesses and industry where we shop and work.”

combined sewer overflows and the urban heat island. While not outwardly political in nature, these points assert that these particular aspects of environmental justice might be conceived of *prerequisites* to achievement of the broader conception of justice in the neighborhood. They position the environment as a vital, necessary part of just community life, and collective planning. And in the Rockaways, groups' claims that planning agencies and administrative processes be more accessible to residents interested in helping craft a vision for the future of their community's environmental and economic life certainly serves as a statement about the way that institutions address the kinds of questions of basic justice Rawls describes. When residents ask that government structure economic development policy around the kinds of natural infrastructure initiatives and community stewardship models organizations like RISE advances, they present a particular idea of how that community feels it can best support itself, and cultivate a sense of justice.

Most importantly, perhaps, the work and claims of these advocates challenge fundamental conceptions of who should wield political power in their communities, and broaden our constitutive ideas of the public. Asserting that air quality and other living conditions in places like Harlem and Williamsburg place intolerable burdens on local communities critically questions how those places and the neighbors who call them home are valued within the polity. Advocates for environmental justice from these communities don't merely challenge us to think about how they have been and continue to be excluded from political processes. By demanding agency for the disempowered in environmental decision making, they challenge us to imagine what power sharing in the public realm could look like, and invite collective, *truly public* reasoning about the work and responsibilities of government.

The CLCPA makes important steps towards building a role for citizens into governance, inviting community leaders themselves into the policymaking process to set the very definition of "disadvantaged communities," in effect determining who receives the funds associated with the law's 40% provisions.²⁵⁸ In Gowanus, we see a twofold constitutive claim on the public. First, the coalition that came together in the GNCJ in effect forms something of its *own* public at the neighborhood level. By bringing stakeholders from different sectors, sides of the public-private divide, and socioeconomic worlds together around a common conception of *what the neighborhood should be to whom*, the coalition strengthens the combined front with which they can approach policy makers. On the other side of the coin, the group asserts its place at the bargaining table deciding what the rezoning should mean for the city *writ large*. They position themselves in a way that places an unavoidable local presence in front of the citywide governing bodies determining how the environment at the neighborhood level should serve the goals of the City as a unified policy—in so far as the rezoning would play a key role in achieving the mayor's overall goals for housing development, and longer-term visions for neighborhood development pathways. The groups' combined voice makes the claim to leaders of the City that its constituents—their constituents—will not allow themselves to go unheard, or be overpowered by the smaller, technocratic development community of real estate interests and the politicians and agencies with whom they most closely collaborate, and who tend to represent *de facto* the public interest in these kinds of conflicts.

Similarly, the neighbors and organizations fighting for recovery and resilience in the Rockaways are attempting to reclaim their power over the city's attention and action. Faced with a harrowing threat to their community, residents of the peninsula could not simply stand by and wait for the city to protect the most valuable real estate in the City, while they bear the brunt of vulnerability and insecurity in daily life. The City of New York, as a corporate entity, makes constant decisions about how it will expend public resources and direct growth within the boroughs to whatever extent it realistically can. By choosing to dedicate resources to parts of the City that may be more economically productive, government makes a non-neutral political decision on behalf of the "public interest" it understands itself to represent. The fight for their homes in the Rockaways shows how residents can work to shift the City's conception of that public interest, and reasonably assert their own interest in that self-understanding.

These examples show how conflicts over environmental and climate justice engage precisely the kinds of institutional mechanisms that actually affect the regular, day-to-day aspects of economic and social life that Rawls presumed internal

²⁵⁸ *Supra* note 221.

to his (albeit limited) understanding of the basic structure. By looking to the street-level conflicts over governance of the urban public realm, we can see more precisely how the process of public reasoning goes well beyond an understanding of it as a mere set of guidelines for public debate, as it is occasionally construed. We can understand it as a lived, tangible aspect of life in a political community, frequently fought tooth and nail for an individual or groups place in the spaces they call home. It also elevates, importantly, the *power-building* that should be seen as part and parcel of public reasoning. Just like Guinier and Torres argue, the transformative value of organizing and contestation in politics cannot be overstated. In addition to the technical learning and personal growth that tireless, toilsome local community mobilization requires, critical bonds of trust and solidarity are forged in communities that can inspire the confidence needed to participate in public life and stand up to power.²⁵⁹ When groups like GNCJ come together around a common project like a rezoning battle, neighbors come into closer contact with one another—they not only combine and amplify one another’s strengths and skills, but actually serve to form a common identity, or “weak we” relationship that begins to blur the lines between “independent and interdependent notions of the self.”²⁶⁰ Once that shared identity starts to form, and builds proficiency working with and against power, only then can actors realize their first nature as citizens.²⁶¹

Rawls believed that, in the well-ordered society or something close to it, that reasonable, free and equal citizens *just would* be convinced by the reasonable claims of others, so that public deliberation would help them come to understand the basis of the public political conception as rooted in their own comprehensive doctrines. A fact of life in ordinary society Rawls does not often acknowledge is individuals’ attachment the more unreasonable of their commitments, and how the reasonable among us may rely on the strength of others to help them overcome those commitments. This is, perhaps, tied to the power Rawls attributes to the notion of *civic friendship* as the ideal of our political relationship.²⁶² In ordinary society, the politics of public reason may look much more like the world Guinier and Torres describe: “It is a politics that fosters interdependence between people and between persons and their community, the ability to work through conflict rather than avoid it, and a willingness to share power as a force for innovation, not just control.”²⁶³

Legislation like New York’s CLCPA represents a small step in the right direction for democratic governance. It is still limited in its conception of truly participatory public democracy—though the Climate Justice Working Group created by the CLCPA makes space for environmental justice leaders from all over New York State, its powers are limited, apart from defining the “disadvantaged communities” that will receive a portion of the benefits of climate action.²⁶⁴ The Climate Action Council, the larger, 22 member body charged with developing and implementing the State’s climate strategy, is predominantly New York State Commissioners and other gubernatorial appointees. Only two environmental groups hold seats on the Council (Environmental Advocates NY and NY Renews) despite the presence of several energy and industry actors.²⁶⁵ Further, there is no mention of “democracy” or “politics” anywhere in the Act’s text.²⁶⁶ These observations may ground a more general assessment of the conception of justice advanced in the CLCPA. While the Act itself was an important victory of the State’s environmental and climate justice movements—and the Climate Justice Working Group helps expand the *conception* of power determining how justice gets defined—writ large, the CLCPA aspires to a somewhat less transformative ideal than might be presumed from its supporters. Though

²⁵⁹ Guinier and Torres (2002) p. 81.

²⁶⁰ *Ibid.*, p. 91.

²⁶¹ *Ibid.*, p. 299. Guinier and Torres also describe a political process and relationship of institutions to citizens that strongly evokes Rawls’s notion of the duty of civility: “That process is inconsistent with a bureaucracy that protects the powerless as clients; it is a process, rather, that respects and indeed learns from their participation. It tries to create a politics, with values that permit collective decision-making that is more than simple an aggregation of individual interests.”

²⁶² Rawls (2005b) p. 447

²⁶³ Guinier and Torres (2002) p. 299, and note 247, above.

²⁶⁴ 2019 NY Senate Bill S. 6599

²⁶⁵ Climate Action Council members listed here: <https://climate.ny.gov/Climate-Action-Council>

²⁶⁶ 2019 NY Senate Bill S. 6599

disadvantaged communities have won a seat at the table, and claim to a portion of the economic benefits of a “just transition,” their role in the process is still advisory. The Climate Action Council is obligated neither to accept all of the Climate Justice and Just Transition Working Groups’ recommendation, nor provide justification where its decision making diverges.²⁶⁷ Real authority over the path of action chosen—or, at least, a requirement requiring written justification of alternative determinations, like the provisions of the Bears Ears Proclamation²⁶⁸—would have better advanced the conversation and conversation of political justice in New York as it charts its path to a greener future.

All this prompts important realizations about the *adaptive* function of public reason. The process of identity formation in society, the kind that might bring about a “public” or *res publica* in the fullest sense of the term, might only be possible if the members of that public feel they have sufficient reason to see one another as free and equal, and treated as such by government. This brings us back, naturally, to the notion of the sense of justice upon which Rawls relied. Democracy relies on citizens’ moral power to be reasonable—which, ultimately, serves to translate claims made from others’ comprehensive doctrines into a shared language of justice and its ideal. Citizens need not be *perfectly* reasonable, such that all subscribe to the same conception of a just society, or in the case of New York, a just city. That this could ever be the case is likely something of an unattainable ideal, and why Rawls eventually settled on the aim of political liberalism as convergence around a *family* of liberal conceptions of justice. Such a convergence, however, would rely on the notion that the circles around our political conceptions might possibly expand to the point of overlapping. Like liberalism generally, our sense of justice would either have to be sufficiently capacious so as to accommodate that convergence *a priori*, or boast the kind of elasticity that would allow for learning and reconsideration of how others’ ideals can share space with one’s own. Looking at urban environments, and struggles for justice within them, I have argued, points us toward that latter elasticity as something of an empirical fact. By bringing fellow New Yorkers together around a more profound understanding of one another as such, conflict over parts of the City’s public space helps to hone the sense of justice driving government action and the citizens who share in power over that action, and advances us towards the common understanding that could well widen the circle of civic friendship around our islands.

Conclusion: The Nature of Our Politics and Public Life

I have here argued that the aims of environmental justice, as well as climate justice, are well-supported by a Rawlsian political liberalism. Though Rawls did not acknowledge it, environmental justice offers an expansive space in which an idea of public reason can be examined and its ideal advanced. There are several reasons why that could be the case, and I will only reflect on a few of them here. First, as discussed, Rawls saw his main enterprise situated squarely within the realm of ideal theory. It was his hunch that if the fundamentals and structure of the theory were sufficient, particularly following the changes that came with his political turn, then it could likely accommodate the full diversity of challenges encountered on society’s journey towards justice. I have tried to show here how this holds in at least the environmental space—others might take up other subjects in “non-ideal” theory left untouched by Rawls. The second fact I want to point out is historical, and not often recognized in the literature. The Dewey Lectures and other articles that were eventually reworked and compiled into *Political Liberalism* all took shape during the late 1970s and 1980s, before the book’s original publication in 1993.²⁶⁹ The environmental justice movement was very much still crystallizing towards the later end of that span, and much of the canonical early scholarly work from individuals like Dorceta Taylor and David Pellow would not be published until after Rawls wrote “The Idea of Public Reason Revisited” in 1997. The overlap of Rawls’s working life with the environmental justice movement, then, was especially short—barely a decade depending on where one draws their marks, given his death in 2001. It should, then, be unsurprising that his understanding of the environment was peripheral to his core subject of political justice. And when *Theory* was published in the heady days of

²⁶⁷ 2019 NY Senate Bill S. 6599,

²⁶⁸ *Supra* note 190.

²⁶⁹ Rawls (2005a) pp. xiii-xiv.

the 1970s, the mainstream environmental movement was just taking shape. One could make the case that Rawls should, perhaps, not be faulted for a limited understanding of the environment as a matter of justice, then, since the contemporary understanding of environmental questions at the time saw them primarily as problems of management, or externalities of capitalism. Throughout the later work, Rawls more frequently finds inspiration in the American Civil Rights Movement than was evident in *Theory*.²⁷⁰ One would like to hope that, had he had the time, Rawls might have found similar value in the movement for environmental justice that grew out of it. That we have, and that we societally have found the space in our shared sense of justice to accommodate their claims, I believe should show the value in Rawls's political liberalism.

In closing, then, I want to reflect on more general Rawlsian themes within which environmental justice might inform our thinking, and vice versa. One might ask whether environmental justice, or “justice,” generally, can be achieved without or outside the state. Here, individuals or communities would be left to their own devices, without government intervention, the presumption being that local autonomy might result in healthier ecological and social communities. On theoretical grounds, Rawls would think this scenario unlikely to lead to anything like the “justice” he describes. Rawls emphatically tried to show us how living in political communities, or something like the modern state, could possibly be good given differences in ways of life. Paul Weithman tells us that we should understand this part of Rawls's project as showing us that “a just society suits our nature.”²⁷¹ As political philosophy since the Greeks has argued, shaping our common lives through government *just is* something people do. We are, more or less, Aristotle's *zoon politikon*, and Rawls tries to show us how there is something worth believing in and realizing our being so. Another question, then, is whether environmental justice might possibly be understood apart from our politics, or whether that politics can sustain all the questions environmental justice poses. Here, we might analogize to Rawls's understanding of the proviso, and the acceptability of values from comprehensive doctrines. Values derived from, say, our ecological understanding of the world—modern, indigenous, or otherwise—and our situation in it might have a place in the public political forum so long as they can teach us about our political conception or how to imagine its realization. To the extent that our public realm includes public space and all its parts, any idea of justice should be able to inform the construction for that realm and the space in which it finds itself.

Second, on autonomy and agency, some scholars have rightly pointed to its importance for communities as a condition for environmental justice.²⁷² David Pellow's articulation of a “critical environmental justice studies” suggests that advocates for racial and environmental justice might be best off pursuing strategies “*beyond the state*.”²⁷³ Given the abysmal record of state based regulation of justice policies in communities of color, the implication seems to be that full community control, free from coercion or state violence, might be better suited to the ends of justice. The work of others stressing the history of injustices associated with state-sanctioned means of “social control” might lead us to the same conclusion.²⁷⁴ However, a Rawlsian orientation gives us reason to believe that this conception of agency is properly understood as a half-truth.

The aim of social justice should be the legitimate, reasonable, exercise of state power properly expressive of a community's sense of justice. We should remember that *autonomy* means something like *law given unto oneself*. In our ordinary society, law is inextricably intertwined with government and the state. This is not to say that communities cannot assert their own sovereignty where it is rightly theirs. But for smaller communities within a polity to announce

²⁷⁰ Rawls (2005b) p. 464, and n54.

²⁷¹ Weithman (2010) p. 363.

²⁷² Pellow (2016) p. 7: “... the role of *agency* is key to the first pillar of [Critical Environmental Justice], since African Americans and other marginalized populations are not just the targets of oppression but also regularly resist their subjugation... it is also the case that the urban built environment, information technology, and other forms of more-than-human objects and natures are also integral to that agency and therefore central to making this vision and practice of social change possible.”

²⁷³ Pellow (2016) p. 10.

²⁷⁴ See generally, Peña (2004) and Taylor (2009)

their wholesale freedom from the sovereign would signal a relinquishing or giving up on the idea that there is some larger social union of which they constitute a part. Taking local control to an extreme might win temporary gains for a community, but may not necessarily result in achieving true *political* power. Here I think the Gowanus case is worth revisiting. Residents could have, like those in Northern Manhattan had, asserted some right to be the lone arbiters of whether the imposition of some burden was acceptable to them. Instead, the GNCJ decided to take up the work of *attempting to transform* the institutions brokering power in the urban public realm, with the hopes of winning advances for communities on the ground and the city as a whole. This is not to say that the claims of earlier struggles, aimed at community protection, were not vital to the later success of the Gowanus movement. But by making the kinds of constitutive claims we should understand as fundamental to the process of public reasoning, neighbors work to make a truer kind of autonomy possible. That autonomy is one that believes the state and our conception of political life might be capable of adapting in order to better serve the law we give to them.

By looking at contests over the urban public realm, we can see how, at a fundamental level, our substantive ideas and hopes for public life do in fact come from within our political communities. Movements at the grassroots, and our neighbors who drive them, inspire innovation in political ordering and power sharing by sharing visions of a public they might wish to be a part of with us. The more prophetic, provocative visions for justice among them will do the most to push us forward towards the kind of realistic Utopia ideal theory implores us to believe in.²⁷⁵ How we resolve to make a home for their voices in our cities *just is* the role and function of the public realm, and the process of public reasoning.

In all, this examination of environmental justice and its relation to public reason has hoped to illustrate in more urbane, worldly terms how communities can and do work towards the kind of justice Rawls thought possible in liberal democracy. We should understand that the claims of movement groups, made from public reason, work in fact to help construct and realize the ideal of civic friendship that might one day make ordinary society a bit more well-ordered—as distasteful a notion like “orderly” can be to places as beautifully chaotic as New York. At the end of the paperback introduction to *Political Liberalism*, Rawls offers something of a rebuttal to those who misunderstand or resent his attempt to articulate, in theory, how faith in such an ideal might be possible: “*Theory* and [*Political Liberalism*] try to sketch what the more reasonable conceptions of justice for a democratic regime are and to present a candidate for the most reasonable... and what their [citizens’] moral psychology has to be to support a reasonably just political society over time. The focus on these questions no doubt explains in part what seems to many readers the abstract and otherworldly character of these texts. I do not apologize for that.”²⁷⁶ A late teacher of mine, himself a student of Rawls’s, noted in an early article on the moral psychology in *A Theory of Justice* that Rawls, “by providing this framework for the consideration of problems of morality, has laid the ground for those who wish to criticize his own theory of justice... The most interesting criticism of Rawls will come from those who accept many of his methodological assumptions and argue from within the framework he has provided.”²⁷⁷ Here, I have tried to show how life on the ground in cities, and our political communities generally—to whatever extent insights from urban places might be generalized—can affirm and sustain the system Rawls built to justify belief in the goodness of our nature. By describing how public reason is in fact far more lively than Rawls would have ever described it, I hope to have made his ideas about justice less abstract or accessible to those who might think his theory otherworldly. Doing so may betray something like a naive but hopefully not unreasonable faith in both the ideal Rawls articulated and the political good in cities like New York, and tying those projects somewhat too closely to my person. I certainly do not apologize for that.²⁷⁸

²⁷⁵ On the importance of movement-originated “prophesy” and “provocation,” see Terry (2015) “After Ferguson” *The Point* 10.

²⁷⁶ Rawls (2005a) p. lx.

²⁷⁷ Bates (1974) p. 17.

²⁷⁸ This paper owes a great debt to the Hixon Center for Urban Ecology for funding its development, as well as several leaders in New York City’s environmental space who offered their insight during my research work. I am continually grateful to Professor Gerald Torres for his inspiration, reassurance, and incisively helpful insight and direction along every step of the way.

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