Ontic Injustice

By

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Contents

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Thesis Summary

This thesis argues that a particular sort of injustice, *ontic injustice*, can be enacted through the construction of individuals as members of human social kinds. I argue that the nature of some human social kinds is such that anyone who is socially constructed as a member of that kind thereby suffers a wrong; this wrong is ontic injustice.

In Chapter 1, I introduce and defend institutionalist realism, an account of the ontology of human social kinds according to which human social kinds are roles or positions within institutions. In Chapters 2 and 3, I apply institutionalist realism to race and to gender. I argue that race and gender categories are the products of institutionalized hierarchies in which those constructed as people of colour and those constructed as women are placed below those constructed as White and those constructed as men. I develop a version of institutionalist realism that enables me to argue that race and gender categories are aptly understood as the products of institutionalized hierarchy even though formal structures of oppression have for the most part been abolished. I then set out four desiderata for an account of the ontology of race and gender, and show how my institutionalist realist account meets each of them.

In Chapter 4, I use the institutionalist realist account of the ontology of race and gender developed in the first three chapters to give a detailed account of ontic injustice. I argue that the wrong of ontic injustice consists of a failure of recognition respect, which is a recognition of the morally relevant properties of individuals together with a disposition to respond appropriately to them. In Chapter 5, I demonstrate the usefulness of the concept of ontic injustice by applying it to two cases, namely pornography, and the Black Lives Matter movement.

Introduction

This thesis is an investigation into the relationship between social ontology and injustice. More precisely, it is in an investigation into the way in which injustice can be enacted through the construction of individuals as members of human social kinds. Human kinds in general are categories or types of person, and human social kinds are categories of person that exist as products of human social arrangements. I argue that the nature of some human social kinds is such that anyone who is socially constructed as a member of that kind thereby suffers a distinctive form of injustice. I term this form of injustice 'ontic injustice', because it concerns the ontology of the social world.

There are some parallels between the idea of ontic injustice and the concept of 'epistemic injustice' developed by Miranda Fricker (2007). Fricker's account of epistemic injustice is concerned with wrongs that occur as part of our social practices concerning knowledge. Fricker describes two forms that epistemic injustice can take, which she terms 'testimonial injustice' and 'hermeneutical injustice'. Testimonial injustice occurs when an individual is considered an untrustworthy informant due to a prejudice, possibly subconscious, which is based on their social identity. For instance, if sexist attitudes lead a person to dismiss a woman's well-founded suspicions out of hand as 'feminine intuition', or racist attitudes lead a jury to decide that a Black person is lying even though all the evidence indicates the contrary, this constitutes testimonial injustice (Fricker 2007, ch. 1). Hermeneutical injustice, on the other hand, occurs when someone's experiences are obscured from collective understanding due to a gap in our collective hermeneutic resources that stems from a structural prejudice against a group of which that person is a member. For instance, prior to the creation of the term 'sexual harassment', women who were subjected to persistent and unwanted sexual advances in the workplace had difficulty describing this experience in a way that adequately communicated the seriousness of what they had gone through. This difficulty is due to what Fricker describes as women's 'hermeneutical marginalization', which is the fact of women being prevented from participating equally in the process of shaping the shared social understandings in relation to

which personal experiences are rendered intelligible to others, and even to oneself (Fricker 2007, ch. 7). Individuals who suffer epistemic injustice, of either sort, have their status as epistemic subjects undermined; they are subject to 'prejudicial exclusion from participation in the spread of knowledge' (Fricker 2007, 162).

Fricker's account of epistemic injustice focuses attention on a particular dimension of social relations, the epistemic dimension, and examines ways in which it can operate so as to wrongfully harm some individuals. Although epistemic injustice is bound up with a wide variety of more familiar forms of injustice, the thought is that, in cases of epistemic injustice, the epistemic interaction constitutes a wrong in and of itself regardless of whether it leads to further wrongs. For example, if racist prejudices lead jury members to decide that a Black person who is on trial is lying, this may well lead to that person suffering a miscarriage of justice; but even if it does not, the person on trial has still suffered a testimonial injustice. Thus, although manifestations of epistemic injustice are often bound up with various other forms of injustice, epistemic injustice can nevertheless be picked out conceptually and identified as a distinctive sort of wrong. In developing an account of ontic injustice, I perform a similar move with regard to what we can think of as the *ontic* dimension of social relations. I argue that aspects of social relations that have implications for the ontology of the social world, and in particular for the existence of human social kinds, can operate so as to wrongfully harm some individuals. I further argue that although manifestations of ontic injustice are typically bound up with other forms of injustice that may be more familiar, ontic injustice can nevertheless be picked out conceptually as a distinctive sort of wrong.

Although I believe that ontic injustice occurs in relation to a variety of different human social kinds, in this thesis I restrict my attention to two varieties or clusters of human social kinds: categories of race and categories of gender. My choice of these categories is motivated partly by their salience in social arrangements, and partly by the fact that the philosophical literature concerning the ontology of these categories is more extensive than that concerning the ontology of, for example, disability, or sexual orientation. Terminology for race and gender categories is a complex issue that warrants some preliminary explanation. In this thesis, I use capitalized terms for the names of racial categories, for example, 'White', 'Black', 'Asian'. In doing so, I intend to signal that I am using these terms as names for

socially constructed categories, rather than as descriptions of biological properties. I use the term 'people of colour' to refer collectively to members of all racial categories other than White. With regard to gender, I describe the categories of 'man' and 'woman' as 'gender categories', rather than as 'sex categories', in order to signal that I am interested in socially constructed categories and not in biological properties. The view of gender I develop in this thesis does not rely on the claim that there are also biological categories that correspond to gender, which means that I do not use the term 'sex' except where quoting others. Any discussion of race and gender must be sensitive to the overlap of these categories, and to the ways in which women of colour can be erased in conversations about race and gender (hooks 1981). At times, I use the phrase 'people of colour and women'; by this, I intend to refer specifically to all people of colour qua people of colour and all women qua women, recognizing that this counts women of colour twice over. When I am simply referring to the extensions of the groups, I use phrases such as 'people of colour and White women', in order to avoid giving the impression that 'people of colour' refers only to men.

The main task of this thesis is to set out and defend a detailed account of ontic injustice. In order to do this, however, I first need to set out an account of the ontology of human social kinds that can serve as a foundation for my exploration of ontic injustice. This is the task of the first three chapters; in the fourth chapter I set out the account of ontic injustice, and in the fifth chapter I discusses some applications of that account.

In Chapter 1, I introduce my preferred account of the ontology of human social kinds, which is termed 'institutionalist realism'. Institutionalist realism is a type of constructionist realism, a family of views according to which human social kinds are both socially constructed and real. According to institutionalist realism, human social kinds are roles or positions within institutions, or rule-governed social structures. I first situate institutionalist realism in relation to the two main rival views about human social kinds outside of constructionist realism, which are nominalism and scepticism. I then use John Searle's account of institutional reality (1996, 2010) to give a detailed statement of institutionalist realism. Finally, I defend institutionalist realism from two direct objections, one from Ron Mallon (2004) and one from Ásta Sveinsdóttir (2013).

In Chapter 2, I begin to apply institutionalist realism to race and to gender. Specifically, I argue that race and gender categories are the products of institutionalized hierarchies in which those constructed as people of colour and those constructed as women are placed below those constructed as White and those constructed as men. Accounts of this kind have been put forward by Charles Mills and by Carole Pateman under the labels 'the Racial Contract' and 'the Sexual Contract', respectively (Mills 1997; Pateman 1988), and I draw upon these accounts to elaborate my view. A version of institutionalist realism based on Searle's account of institutional reality can accommodate some portion of the history of race and gender categories, but is not well-suited to describing their current realities. I therefore modify Searle's account in ways that enable it to capture the current realities of race and gender as forms of institutional reality.

In Chapter 3, I apply this revised form of institutionalist realism to the current realities of race and gender in detail. I argue that despite significant changes in legal regimes, race and gender categories are still aptly understood as the products of institutionalized hierarchy. Next, I set out four desiderata for an account of the ontology of race and gender. These are: (1) to describe reality accurately in a way that facilitates emancipatory change; (2) to be sensitive to intersectionality; (3) to respect the gender identifications of trans people; and (4) to take seriously lived experiences of race and gender, including embodied and epistemic dimensions of experience. I then argue that the institutionalist realist account of race and gender at which I have arrived meets all four of these desiderata.

In Chapter 4, I use the institutionalist realist account of the ontology of race and gender developed in the first three chapters to give a detailed account of ontic injustice. In general terms, ontic injustice occurs when an individual is wronged by being socially constructed as a member of a certain social kind. I also offer a more detailed definition that makes use of the apparatus of institutionalist realism. I argue that the wrong of ontic injustice consists of a failure of what Stephen Darwall (1977) terms 'recognition respect', which is a recognition of the morally relevant properties of individuals together with a disposition to respond appropriately to them. I then discuss the question of how different forms of ontic injustice are to be distinguished from one another, and the relationship between ontic injustice and the institutionalist realist account of social kinds.

In Chapter 5, I apply the concept of ontic injustice to two cases, namely pornography, and the Black Lives Matter movement. I argue that ontic injustice can shed light on academic debates about the harm of pornography, and that this exercise also reveals some important facts about the role of representations in perpetuating ontic injustice. I then identify several points of congruence between my account of ontic injustice and the efforts of the Black Lives Matter movement, which protests against racial injustice in the US. Drawing on this case, I argue that the concept of ontic injustice can help with the project of unmasking and challenging oppressive social realities. My discussion of these two examples demonstrates that the concept of ontic injustice has a range of applications, both within philosophical discussions and in the broader context of anti-oppressive social movements.

In seeking to define the concept of ontic injustice, I do not claim to be identifying a phenomenon that has gone completely unremarked until now. I believe that indirect references to the phenomenon that I term ontic injustice can be discerned in philosophical writing about group-based injustice and oppression, particularly within feminist philosophy and the critical philosophy of race, and I discuss some of these points of contact at various stages of my argument. What I do claim is that the phenomenon of ontic injustice has not yet been the subject of a systematic investigation. This thesis represents an initial step in such an investigation.

1

Institutionalist Realism About Human Social Kinds

1. Introduction

Human kinds are categories of person: a human kind is a sort of person that someone can be. In subsequent chapters, I will be arguing that people can suffer a distinctive sort of wrong that consists of being made into a member of a certain human kind. I call this wrong 'ontic injustice'. Moreover, I will be arguing that race and gender are two important sites of ontic injustice. It is generally accepted that talk of injustice and justice is only applicable to human social arrangements. A hurricane, for example, may be catastrophic but it would be very odd to describe it as unjust (although one might easily describe the social *response* to it as unjust). Therefore, my account of ontic injustice will only be relevant to those human kinds that are products of human social arrangements, which I'll call 'human *social* kinds'. In order to articulate the idea of an ontic injustice, a detailed account of the ontological status of relevant human social kinds is required. Accordingly, in this chapter I will set out an ontology of human social kinds, which I term 'institutionalist realism'. I take this ontology to apply to those human social kinds that are potential sites of ontic injustice, though I do not claim that it applies to all human social kinds. In this chapter, I will introduce institutionalist realism, explain how it relates to some rival positions, and defend it from some objections.

Institutionalist realism, sometimes termed 'the institutional account' or 'institutionalism' belongs to a broader family of views known as 'constructionist realism'. Constructionist realism holds that human social kinds are real despite being socially constructed.

An oft-cited statement of constructionist realism is one made by Charles W. Mills with reference to race:

> So the task of those working on race is to put race in quotes, "race," while still insisting that nevertheless, it exists (and moves people). This is part of the significance of the "critical" in contemporary critical race theory: to make plausible a social ontology neither essentialist, innate, nor transhistorical, but real enough for all that. (Mills 1998, xiv, italics in the original)

Institutionalist realism is a particular form of constructionist realism according to which human social kinds are positions or roles within human institutions, or rule-governed structures. This account surfaces at various points in the literature on the ontology of race. On some occasions it is merely being mentioned rather than endorsed (Mallon 2004; Glasgow 2007; Sveinsdottir 2013). On others, it is approvingly described without use of the label; Mills, for example, appears to endorse a version of institutionalist realism with regard to race when he describes race as 'a pervasive social construction, *a set of positions in a global structure...* that influences, the socialization one receives, the life-world in which one moves, the experiences one has, the worldview one develops' (Mills 1998, xv, italics added). However, I am aware of only one explicit endorsement of institutionalist realism. This comes from Michael Root (2000). According to Root, racial categories are the product of a system of classification that consists of the way we think of ourselves and each other as raced individuals. This system operates through our talk and practices, including both official practices, such as the categories on the government census, and what he calls 'folk' practices that are more informal. The system of racial classification as manifested in these practices is the institution of race. Such an institution is temporally and spatially localized, with practices of classification varying across different times and places. This means that a particular institution is strongly influenced by the historical situation from which it arose. Crucially, institutions of this kind are normative: they incorporate ideas about how people of different kinds ought to act and be, and it is because of this normative force that they shape people's lives.

I am in agreement with Root's characterisation of institutionalist realism, but more detail is called for, especially regarding the ontological commitments of the account. Supplying such detail is my main task in this chapter. I'll begin by

situating institutionalist realism in relation to the accounts of the ontology of human social kinds that represent the two main alternatives to constructionist realism, namely nominalism and scepticism. Although I won't be able to offer a refutation of these views, I will identify the main points of disagreement between them and institutionalist realism. I will then set out a full account of institutionalist realism that draws on John Searle's work on institutional reality (1996, 2010). Finally, I will respond to two significant objections that have been made to institutionalist realism specifically. The first of these is made by Ron Mallon (2004) and the second by Ásta Sveinsdóttir (2013). I will show that the version of institutionalist realism that I have set out can overcome both objections.

2. Situating Institutionalist Realism

Institutionalist realism, as I have said, is a form of constructionist realism. In this section, I will show how institutionalist realism relates to the two accounts of human social kinds with which constructionist realism can be contrasted: *nominalism*, and *scepticism*. Nominalism about a human social kind is the view that the kind in question does exist, but that it fails to qualify as 'real'. What precisely this means is contested, but the rough idea is that the ontology of that kind is exhausted by the *labels* that are used to pick out its members. Once we have explained our practices of applying the label, we know all there is to know about that kind. Scepticism about a particular human social kind denies the existence of that kind. The racial sceptic, for example, holds that there is no such thing as race, and that race is merely a persistent illusion around which our practices and talk have been shaped. I will discuss scepticism and nominalism in turn.

Before I examine these views in more depth, it is worth briefly mentioning a third alternative, *non-constructionist realism*. Non-constructionist realism is the view that a certain human kind is not a *social* kind at all, but a real kind of some other variety. One version of non-constructionist realism claims that the kind in question is a biological kind. A biological realist about race, for example, holds that racial groups are picked out by a shared, explanatorily significant biological property or a cluster of biological properties. Although this may at first blush sound like a rather regressive view, nuanced forms of biological realism about race,

compatible with anti-racist commitments, have been defended by Robin Andreasen (2004, 2005) and by Philip Kitcher (2007). Another form of non-constructionist realism, recently defended by Joshua Glasgow and Jonathan Woodward (2015) in relation to race, claims that race kinds are basic kinds that are unified by physical properties. The members of a basic kind share a mind-independent property, but this property need not have any particular explanatory significance. I will not discuss non-constructionist realist views in any detail because they are not relevant to my project. Non-constructionist realism is not a thesis about human social kinds, but rather a claim that a particular human kind is not a social kind after all. Since, as mentioned above, my concern in this project is solely with human social kinds, I will not discuss non-constructionist realism in any detail. Even if biological realists or basic realists about race turned out to be correct (and I do not believe that they are), this would not identify a problem with institutionalist realism as an account of some human social kinds; it would just show that race is not a human social kind after all. Whilst this would render false my claim that race is a site of ontic injustice, it would not undermine my main project of identifying ontic injustice itself. Moreover, my main arguments against biological realism and basic realism about race rest on the strength of my specific institutionalist realist account of race, which is given in Chapter 3.

2.1. Nominalism

Much of the debate about the ontology of human kinds in general is focussed on the contrast between realism and nominalism. This contrast concerns whether or not a certain kind is a natural kind or not: a kind is real if it is a natural kind and nominal if it is not. Natural kinds are kinds that are, as the name suggests, 'found in nature', although precisely what this means is the topic of much debate. Nominalism about human social kinds stands in contrast to constructionist realism, since if a kind is nominal, ipso facto it is not real. I will begin by reviewing the most influential nominalist account of socially constructed human kinds, which is the dynamic nominalism of Ian Hacking (1990).

In developing his account, Hacking is particularly interested in human kinds that came to be conceptualized at a particular point in history. For example, he opens his essay 'Making Up People' by asking, 'Were there perverts before the latter part of the nineteenth century?' (1990, 69). Dynamic nominalism, he goes on to

explain, answers this question in the negative: 'The claim of dynamic nominalism is not that there was a kind of person who came increasingly to be recognized by bureaucrats or by students of human nature but rather that a kind of person came into being at the same time as the kind itself was being invented.' (78). For Hacking, the view is nominalist, as opposed to realist, because the existence of the kind depends on the use of a label to pick out that kind. However, the application of such labels to subjects is not, Hacking argues, a one-way process. Subjects do not simply accept passively those labels that are imposed on them, for example by the medical establishment; rather, they actively shape their identities in response to these labels. Labelled people have, as Hacking puts it, 'a life of their own, individually and collectively' (1990, 84). This life in turn shapes the label in a kind of feedback loop. For example, the label 'homosexual' was initially imposed as a medical term for a supposed pathology. Through people identifying with that label in ways that transcended its original intention, rejecting the negative and pathologized sense of 'homosexual' to create a more affirming identity, the meaning of the label changed dramatically. Thus, Hacking invites us to think about human kinds in terms of two 'vectors'. The first vector is the imposition of a label on a group of people as it were 'from above' – for example, by the medical establishment. The second is the vector 'from below', whereby the autonomous behaviour of the people so labelled shapes the label itself (1990, 84). It is the perpetual interaction of these two vectors to shape the meaning of labels that explains why Hacking's nominalism is aptly termed 'dynamic'.

Although Hacking's account of the dynamics of practices of labelling is attractive, the metaphysical picture he presents can be challenged. Ronald Sundstrom (2002) argues that Hacking is too quick to assert that, because socially constructed human kinds are not determined by physical reality, they cannot be real but must be nominal. Sundstrom is particularly focussed on the ontology of race; he contends that Hacking and other nominalists 'argue that because "race" is not physical, not mind-independent, and since only physical and mind-independent things are real, ergo "race" is not real – it is a nominal category.' (2002, 204). Sundstrom finds this position unsatisfactory on the grounds that it fails to do justice to the significance of race in our social arrangements and experiences. He bases his argument against nominalism on the premise that it is desirable to find a viable account of socially constructed human kinds (and of race in particular) that

establishes these kinds to be real rather than nominal: given the importance of these kinds in our lives, Sundstrom contends, it will be unsatisfying if they turn out to be anything but real. On this view, nominalism is something of a 'fall-back position' in the sense that we should only be prepared to accept a nominalist account of race if it turns out to be impossible to construct a viable realist account.

Sundstrom goes on to argue that it is indeed possible to construct just such an account. He argues that the pressure to adopt a nominalist account of socially constructed human kinds follows from the tacit adoption of a position that he calls *metaphysical monism*: the view that there is one single set of criteria for being a real kind that applies across all domains of science. If this set of criteria is defined so as to require mind-independent physical similarities between members of the kind, as is typically the case, then it will follow that human social kinds *must* all be nominal kinds. In order to create space for a viable alternative to dynamic nominalism about human social kinds, Sundstrom argues against metaphysical monism and for the contrasting position of *metaphysical pluralism*. According to metaphysical pluralism, the criteria for being a real kind are different for different domains of science: the criteria for being a real kind used by the physical sciences are different from the criteria for being a real kind used by the biological sciences, which in turn are different from the criteria for being a real kind used by the social sciences. Thus, we can speak of physical kinds, biological kinds, and social kinds as different varieties of real kinds. The metaphysical pluralist also holds that there is no hierarchy between these domains: the kinds used by the physical sciences are no more or less real than the kinds used by the social sciences. For the metaphysical pluralist, there is no reason to deny that social kinds can be real kinds. Even if intrinsic physical similarities are what define a real *physical* kind, there is no reason to suppose that real *social* kinds have the same criteria.

Accordingly, Sundstrom argues that what makes some kind a real kind used by the social sciences is its ability to feature in the construction of useful social scientific theories. The fact that a kind is unified by social similarities rather than by physical similarities is no barrier to this. This is because, as he puts it:

> The real kinds of the social sciences can be used to explain and predict social organization and behaviour, not because of a physical causal order, but because of a regulative order that is the result of the social

norms that are part and parcel of the creation and maintenance of socially constructed kinds. (2002, 205)

Institutionalist realism posits just such a 'regulative order', and indeed Sundstrom recognizes this connection, citing Root's statement of institutionalist realism in support of his claim here.

The tension between Hacking's dynamic nominalism and the pluralist form of institutionalist realism advocated by Sundstrom can now be seen more clearly. The dispute turns on the issue of how natural kinds are to be understood, specifically on whether metaphysical monism or metaphysical pluralism is to be adopted with regard to natural kinds. Interestingly, what is *not* at issue between the nominalist and the institutionalist realist is the way in which processes of social construction actually function. In both dynamic nominalism and institutionalist realism, socially constructed human kinds are taken to be products of normatively laden social practices of classification. Moreover, in both cases, these practices are understood to be dynamic, involving input from different agents. In the case of Hacking's work, as previously noted, the most salient distinction is between the 'vector from above' and the 'vector from below'. On the other hand, Sundstrom, drawing on Root (2000), prefers to emphasize the distinction between official practices of categorisation and folk practices of categorisation. Now, the above/below contrast outlined by Hacking does not map perfectly onto the official/folk contrast drawn by Root and Sundstrom. On the one hand, there could be some categorisation practices (both delineations of the categories and interpretations of their meanings) which originate in 'folk' rather than 'official' locations, but which stem from people who are not themselves members of the kind in question, and hence which would not qualify as being 'from below' in Hacking's sense. On the other hand, labelled groups may sometimes have the opportunity to have their own meanings enshrined in state policy, which would be a movement 'from below' that affected an 'official' location. However, both distinctions highlight forms of interplay that occur as the delineation and meaning of social categories are contested and negotiated. I suggest that both contrasts are useful for understanding different dynamics that we may encounter in studying socially constructed human kinds; we need not choose between them.

So far as the *processes* of social construction are concerned, then, dynamic nominalism and institutionalist realism are broadly in agreement. The disagreement between these two positions is restricted to the model of natural kinds that is to be adopted. Dynamic nominalists and institutionalist realists can be in agreement about everything except the proper application of the term 'real kind': dynamic nominalism tends towards metaphysical monism, whereas the institutionalist realist must espouse metaphysical pluralism. This is to say that the only part of the institutionalist realist account that is challenged by dynamic nominalism is the claim that the model of human social kinds depicted by institutionalist realism is one on which these kinds count as real. Thus, the debate between the two views concerns the definition of natural kinds rather than the ways in which human social kinds are created.

Exploring the contract between institutionalist realism and dynamic nominalism serves to highlight a basic presupposition of my project in this thesis, namely, that metaphysical pluralism is correct. Arguing for metaphysical pluralism would take me too far afield from the task of defining and analysing ontic injustice. It is, however, important to note the importance of this claim for the subsequent arguments in this thesis.

2.2. Scepticism

In general terms, scepticism about a human social kind is the claim that the social kind in question does not exist – that the terms associated with that kind fail to refer to anything. In order to explain scepticism more closely, I will focus on racial scepticism. A prominent argument for racial scepticism from Kwame Anthony Appiah begins with the claim that race terms presuppose a thesis he calls 'racialism'. Racialism is the belief that 'we could divide human beings into a small number of groups, called "races," in such a way that the members of these groups shared certain fundamental, heritable, physical, moral, intellectual, and cultural characteristics with one another that they did not share with members of any other race' (Appiah 1996, 54). In other words, racialism is a belief in what we might think of as 'racial essences'. According to Appiah, our current race talk is best understood as 'the pale reflection of a more full-blooded race-discourse that flourished in the last [i.e. 19th] century' (1996, 62) within which the truth of racialism was taken for granted.

Racialism is, of course, false. This point is not disputed by anyone in the debate about the metaphysics of race. The distinctive claim of the racial sceptic is that it follows from the falsity of racialism that our race terms fail to refer to anything. Appiah works through this claim in relation to two different theories of reference. According to the first, the 'ideational theory', in order for something to be the referent of a term that thing must satisfy all or most of the beliefs associated with that term. On the ideational theory, in order for something to be a race, racialism would have to be true of it, since race terms are tightly bound up with racialist beliefs. It follows that since there are no groups in the world that satisfy racialist beliefs, there are no races.

The second theory of reference, the 'causal theory', does not concern ideas, but rather causal chains in the world. As Appiah puts it, 'If you want to know what the name "New York" refers to, find the object in the world that is at the root of most of the causal chains leading to remarks containing the expression "New York"' (1996, 63). On this view, it is possible for a term to refer to something even if nothing satisfies the beliefs associated with that term. So even though racialism is false, if we can find something in the world to which most uses of race terms can be causally traced, then that thing is race. As Appiah explains, this points us towards the history of the use of race terms:

> On the causal theory, what it is for *X* to be the best candidate for the job of *Y*s referent in the speech of a community is for *X* to be the thing that best causally explains their talk about *Y*s. So what we need to do, on this view, is to explore the history of the way the word "race" has been used and see if we can identify through that history some objective phenomenon that people were responding to when they said what they said about "races." (1996, 64)

Appiah considers the possibility that races may turn out to be reproductively isolated populations, but dismisses it because it does too poor a job of explaining our race talk, since on this view, 'the Amish' would name a race, but 'Black people' would not. The causal link between reproductively isolated populations and our use of race terms is too weak. Thus, on either theory of reference, according to Appiah, race terms fail to refer.

The institutionalist realist can best resist this sceptical move by focussing on the causal theory of reference. An institutionalist realist account of race will claim to

identify an objective phenomenon in the world to which our use of race terms can be causally traced: namely, the phenomenon of institutional kinds (which, as we shall see in a moment, are objective). Appiah argues very convincingly that race terms are closely associated with racialist views, particularly in terms of their history. However, it does not follow from this that the categories to which race terms refer must be ones of which racialism is true. The causal theory of reference allows that an objective kind can be the referent of a term even if widely held beliefs about that term are not true of the kind in question, provided that the kind causally explains the use of the term. Appiah is too quick to dismiss the possibility that there are socially created kinds that can causally explain our race talk. In order for institutionalist realism to resist scepticism by way of the causal theory of reference, it will be necessary to establish two points. First, the institutionalist realist will need to show that institutional kinds are objective, since the causal theory of reference relies on there being an 'objective phenomenon' at the end of the causal chain. Second, the institutionalist realist will need to show that the claim that races are institutional kinds is not undermined by the fact that race terms carry connotations of racialism. Neither of these tasks present particular difficulties, and the account of institutionalist realism that I develop below establishes both claims.

What, though, of the ideational theory? If the ideational theory is correct then race terms cannot refer to institutional categories. However, this is not to say that those institutional categories could not exist. What we would have is a situation where our race terms tracked real (institutional) categories without referring to them. Now, it is my belief that something like the causal theory of reference is correct, and that our use of race concepts *does* refer to institutional categories. But even if the ideational account were to be upheld, the existence of institutional categories is enough for my account of ontic injustice; I do not need to also show that we are ordinarily referring to those categories when we use race terms.

It is not my intention here to vindicate the causal theory of reference over the ideational theory of reference, but simply to clarify the contrast between institutionalist realism and scepticism. The nature of the institutionalist realist's disagreement with the racial sceptic depends on whether the sceptic endorses the causal or the ideational theory of reference. If the sceptic agrees with me that the causal theory of reference is correct, then the institutionalist contends that there

are categories in the world that causally explain our use of race terms, namely institutional categories, which have been overlooked by the sceptic. If the sceptic endorses the ideational theory, the institutionalist must either show them to be mistaken about this, or else must adopt the less satisfying position of maintaining that there are institutional categories in the world that track our use of race terms without being the referents of those terms.

Note the contrast between the conclusion of my discussion of scepticism and the conclusion of my discussion of nominalism. Although I endorse the causal theory of reference, my project would not be undermined if this theory turned out to be false, although it would need to be re-phrased. By contrast, metaphysical pluralism is a basic assumption of this project; someone who rejects metaphysical pluralism, and therefore adopts nominalism, will find all of the subsequent arguments in this thesis unconvincing. Thus, oddly enough, the institutionalist realist is more strongly committed to disagreeing with the nominalist than with the sceptic, even though, as we have seen, nominalism is in many ways closer than scepticism to institutionalist realism.

3. Searle's Account of Institutional Reality

Thus far, I have introduced institutionalist realism by way of Root's institutional account of race, and I have situated it in relation to the two main alternatives to constructionist realism about human social kinds, namely nominalism and scepticism. In this section, I expand on the model of institutionalist realism given by Root by connecting it with John Searle's influential account of institutional reality. The result is a more detailed and nuanced picture of what institutionalist realism about a human social kind amounts to.

In *The Construction of Social Reality* (1996), John Searle offers an account of the ontology of social entities. Social entities, according to Searle, are entities that cannot be explained merely by referring to their intrinsic physical properties, which is to say, to properties that the object would possess in the absence of any intentionality on the part of conscious beings who interact with it. Examples of social entities include money, courts of law, and husbands. That a piece of paper is

money, or that a room full of people is a court of law, or that a person is a husband, are facts about these entities. However, unlike some facts, such as the fact that hydrogen atoms have one electron, or that Mount Everest has snow and ice at the top, these social facts do not obtain simply in virtue of the intrinsic physical features of the objects in question. Rather, they depend on the intentional states of conscious beings. Specifically, these examples– money, courts of law, and husbands – belong to a particular kind of social reality that Searle calls *institutional reality*. In what follows, I explain Searle's theory of social reality with reference to institutional reality in particular.

Searle's account begins with the observation that human beings, and some animals, can impose functions on objects. Searle takes pains to stress that 'functions are never intrinsic to the physics of any phenomenon but are assigned from outside by conscious observers and users' (1996, 14). Whenever we impose a function on an entity that refers to some use to which we wish to put it, we are assigning what Searle calls an 'agentive function': for instance, hammers are for hammering things with, screwdrivers are for screwing and unscrewing screws with, and bathtubs are for taking baths in. When we collectively impose agentive functions on objects through shared representational mental states, or intentional states, we construct social entities. This shared intentional state is termed 'collective intentionality'. In virtue of collective intentionality, lumps of metal joined to pieces of wood become hammers, other pieces of metal joined to pieces of wood or plastic become screwdrivers, and enamelled concavities become bathtubs. The existence of hammers, screwdrivers, and bathtubs is a matter of social reality.

Social reality is observer-relative: it is dependent on the mental states of conscious beings, though it is not itself a mental state. This makes it ontologically subjective, in Searle's terminology. Nevertheless, he claims that social reality is epistemically objective, meaning that claims about social reality are the sorts of things that are true or false regardless of the speaker's attitudes. If I assert that some object is a hammer, I may be right or wrong, and the fact of whether or not it really is a hammer will not be determined only by the attitudes of myself (or my listeners), but will be determined by the collective intentionality of all the other people in the relevant context. Thus, it is true both that (1) the existence of hammers depends

on the mental states of the conscious observers (i.e. it is ontologically subjective), and (2) given that those mental states are what they are, there are facts about which things are hammers and which things are not hammers that are independent of the attitudes of any particular observer (i.e. these facts are epistemically objective).

Turning to the specific type of social reality that Searle calls institutional reality, we can note that hammers, screwdrivers and bathtubs are suited for fulfilling their respective functions in virtue of their physical properties, such as their shape. There are, however, some other objects on which agentive functions are imposed that cannot fulfil their purpose simply in virtue of their physical properties. For instance, money is for paying for things with – it is a medium of exchange; but the physical constitution of money (whether paper bills or electromagnetic markings) is not sufficient to explain how it is able to perform this function. Rather, money is able to function as a medium of exchange only in virtue of our collectively recognizing it as such. If we all stopped thinking of money as a medium of exchange, it would no longer be possible for me to use a ten pound note to pay for my shopping, however hard I tried. Compare this to screwdrivers: if we all stopped thinking of screwdrivers as implements for screwing and unscrewing screws, it would still be possible for someone to pick up a screwdriver and successfully use it for that purpose, if the idea were to occur to them.

Searle terms the social entities that are constructed in the way money is constructed *institutional entities*, because it is only within the context of human *institutions* that they are able to perform their functions. He calls the special kind of function involved in constructing institutional entities a *status function*, because the entity fulfils its function in virtue of being understood to have a certain status. Both institutions and status functions are defined in terms of *constitutive rules*. Constitutive rules are rules that make some new activity possible. They are contrasted with regulative rules, which are rules that merely regulate a pre-existing activity. The rules of the game of chess are an example of constitutive rules, for without them there would be no possibility of playing chess. Traffic rules, on the other hand, are an example of regulative rules, for it is perfectly possible to drive in a place where there are no traffic rules (though it may be unpleasant or hazardous). An institution is a set of constitutive rules related by topic, and status

functions are particular constitutive rules within institutions that impose functions onto entities. For example, the law is an institution, and within that institution, there are status functions that define the role of *judge*. Someone who meets certain criteria (including having been appropriately sworn in) counts as a judge, and in virtue of this they are able to do things they otherwise could not have done, such as pass sentences. Moreover, a judge is *obliged* to do these things, on pain of being deprived of the status of judge. Thus, status functions are normative: they say how a certain entity *should* function, and in doing so, they make it possible for the entity in question *to* function in that way.

The status function of an institutional entity can typically (though not always) be articulated through a 'counts as' formula: 'Entities of type X count as Y in context C' (1996, 28; see also Searle 2010, 84-86).

This can be broken down as follows:

- The X-term names the entity on which the status function is imposed.
- The Y-term gives the content of that status function, i.e. states what the named entity is supposed to be for, according to the institution.
- The C-term, or context, defines the limits of the relevant institution.

According to Searle, institutional entities come into being when enough people participate in the collective intentionality that holds that 'entities of type X count as Y in context C'. This collective intentionality may take the form of a belief, or it may be more tacit and unconscious.

Status functions are crucial to Searle's account of institutional reality, so it is worth going into some detail about how they work. Let us take money as an example. Using the 'X counts as Y in C' formula, the status function of sterling money can be articulated:

> Pieces of metal or paper with certain special features and histories [these could be specified, given sufficient space] count as a medium of exchange in the United Kingdom.

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Here, the X, Y and C terms are as follows:

- X-term: 'pieces of metal or paper with [certain special features and histories]'.
- Y-term: 'medium of exchange'.
- C-term: 'the United Kingdom'.

The X-term typically names a physical object or event. Sometimes this object or event is difficult to identify; for instance, in the case of electronically stored money, the physical object is a series of electromagnetic markings in a computer somewhere. An example of a status function where the X-term is an event is marriage. The status function of the act of getting married is something like 'saying [certain words] in front of an authorized celebrant (X-term) counts as entering into a committed life-partnership (Y-term) in the UK (context)'. Here, the X-term is the saying of certain words under certain conditions. The object or event that is the X-term need not be a brute physical entity, but can be itself a social or institutional object. This is to say that status functions can be imposed on entities which are already institutional entities (Searle 1996, 125). For instance, in the case of marriage, part of the X-term is the 'authorized celebrant', but of course being an authorized celebrant will also be a matter of institutional reality: 'a person who has undergone [accreditation procedure P] (X-term) counts as an authorized marriage celebrant (Y-term) in the UK (context)'.

Initially, Searle held that layered status functions always ultimately bottom out in a brute physical entity: at some point, the X-term must be something that is not itself an institutional or social entity. However, he later (2003) revised this view to allow that there could be status functions in which there is no physical object onto which the Y-term is imposed. Barry Smith (2003) calls these 'free-standing Y terms' (see also Thomasson 2003, 273). To illustrate this shift, consider the case of money. Searle initially argued that in all cases where we have money, there must be some physical object, even if it is only 'a blip on a computer disk', onto which the status function is imposed. However, consider the fact that huge amounts of purely theoretical money, or capital, move around in our economies. International debt, for example, is in many cases purely notional: it is not realized in any particular physical object. There are 'blips on computer chips' that are relevant to international debt, but these do not constitute money; rather, they register or attest

to the fact of the debt – in other words, they are representations of the debt, not the debt (the money that is owed) itself. The debt itself is a free-standing Y-term, and cannot be captured by the 'X counts as Y' formula. This has lead Searle to set out a more basic account of status functions that does not presuppose an object onto which the status function is imposed (2010). That being said, it will often be the case that layered status functions bottom out in an X-term that is part of physical, rather than social, reality. In the case of human kinds, which is what concerns us here, these will be particular human beings, meaning that the 'X counts as Y' formula is relevant to our purposes, although I will discuss the more detailed status function formulation below.

The Y-term explains the function of the institutional entity. Note that this is not the same as the entity itself. The status function for money is *not* 'pieces of paper and metal with certain special features and histories count as *money* in the UK'. To spell out the status function of an institutional entity requires explicitly identifying the function it is supposed to fulfil.

The C-term is sometimes very apparent, as is the case with financial currencies and state borders, but sometimes it is hard to say precisely what the relevant context is, either because its borders are not clearly defined or because it is very pervasive and so appears to apply universally. In such a case, and pending further investigation, we can fill in C with a placeholder such as 'around here'.

In virtue of their status as constitutive rules, status functions create and/or modify the conventional deontic powers of human agents, either directly or indirectly. Having a conventional deontic power (henceforth a 'deontic power') to do X is a matter of being viewed as entitled to do X. Deontic powers pertain to (conventional) rights, responsibilities, duties, and so on. An example of the direct case of the creation of a deontic power is that someone is constructed as a judge via the imposition of a certain status function, and this means that they now have the power to hear cases and pass sentences – a power that they did not have before they became a judge. An example of an indirect case is that I acquire ten pounds, and I now have a power that I did not previously have – the power to acquire goods from sellers up to a certain value. To put it another way, part of what it means for something to be a ten pound note is for it to confer upon its owner the power of acquiring goods up to a certain value. As well as creating new powers, status

functions can remove deontic powers. For instance, when a river or other landmark is constructed as a border between two nation states, citizens of each territory lose the deontic power to cross the river without official state permission. This case highlights the difference between deontic powers and physical powers: the citizens are not conventionally entitled to cross the river according to the institution of statehood that is in operation, but they may well still be physically able to do so. Moreover, deontic powers are different from moral powers: the claim that citizens are morally entitled to move freely between the two countries is compatible with the claim that they lack the deontic power to do so. Sometimes, one status function can both grant new powers and remove pre-existing ones. For instance, if someone becomes a university lecturer they would acquire new deontic powers, including the power to set work for their students and to assign marks; but they would also acquire the duty to lecture at certain times, meaning that they would lose the deontic power to be elsewhere at those times.

Searle claims that, in many cases, status functions are initially enacted through a particular kind of speech act, a 'status function declaration'. In a status function declaration, some entity or kind of entity X is described as Y in such a way that a deontology is created. For example, someone with appropriate authority might say, 'I appoint you the chairperson', making it the case that someone now counts as the chairperson (Searle 1996, 54). Status function declarations, then, alter conventional deontological reality (by creating conventional deontic powers such as rights, prerogatives and obligations) and these deontological systems, in turn, are what define institutional reality.

In later work, Searle gave a more detailed formula for expressing status functions, which is as follows: 'We make it the case by Declaration that for any x that satisfies condition p, x has the status Y and performs the function F in C', where F is spelt out as a set of deontic powers (2010, 99). For sterling money, the new formulation would give us: 'We make it the case by Declaration that for any x that satisfies the condition 'x is a piece of paper or metal with [special history and features], x has the status 'money' and performs the function of a medium of exchange in the UK', where functioning as a medium of exchange is spelt out as a set of deontic powers on the part of those in possession of money.

This formula improves on the original one in four main ways. First, by spelling out a set of conditions and then stipulating that the status function applies to anything that meets those conditions, it avoids giving the impression that status functions can only be imposed on pre-existing types. Rather, the type is created through the specification of conditions and the imposition of the status function. It also allows more explicitly for cases where there is a token of an institutional type, but the token has never been the subject of collective intentional recognition. For example, suppose that a five pound note slips between the floorboards of the Royal Mint just after it is printed. The more detailed status function formula makes it clear that this five pound note is money because it satisfies the conditions for money (it is an x that satisfies conditions p), even though no-one ever directly treats or 'counts' that five pound note as money (cf. Thomasson 2003). Second, the more detailed formula separates out the status (money) from the function (medium of exchange). This is helpful, because it prevents confusion; confronted with the 'X counts as Y in C' formula, many people tend to think that the Y-term must be the name of the institutional type, for example 'money' rather than 'medium of exchange', which is not what Searle intended. Third, it makes reference to the role of status function declarations, thereby incorporating more information about how institutional reality is created. Fourth, it makes reference to about deontic powers, thereby incorporating more information about how institutional reality operates. In the rest of this thesis, I will make use of the more nuanced status function formula.

An institutional entity, then, is an entity that exists in dependence upon the imposition of a status function that modifies the deontic powers of some human agents. Like other social entities, institutional entities are epistemically objective, although ontologically subjective. For example, although there would be no such thing as money were it not for the intentional states of human beings, I cannot make it the case that something is money, or is not money, simply in virtue of my intentional states alone. If a British shopkeeper stops accepting ten pound notes in exchange for goods, she does not make it the case that ten pound notes are no longer money in the UK (she just shows herself to be a rather eccentric shopkeeper); but if *everyone* stopped accepting ten pound notes, then they would indeed cease to be money. The fact that institutional kinds are objective helps the institutionalist realist to resist scepticism via the causal theory of reference:

biological categories are not the only candidate for an objective phenomenon that could causally explain the use of race terms (see 2.2 above).

With this account in place, we can identify institutionalist realism more specifically. To be an institutionalist realist about a human social kind is to hold that the kind in question is an institutional kind, i.e. that the members of the kind are unified by being tokens of the same type of institutional entity, in the sense defined by Searle. Note that institutionalist realism is a view one can adopt about a particular kind, rather than a blanket claim about all human social kinds.

Let me sum up the more detailed account of institutionalist realism put forward in this section. According to Searle, institutional entities are created by the imposition of status functions through collective intentionality. Status functions are constitutive rules. The formula they follow can be expressed either as 'X counts as Y in C', or, more precisely, 'We make it the case by Declaration that for any x that satisfies condition p, x has the status Y and performs the function F in C', where F is spelt out as a set of deontic powers. Status functions can be layered on top of each other, can be imposed on events as well as on objects (as well as occasionally being free-floating), and function to create or modify the deontic powers of human agents. From now on, I will equate institutionalist realism about a human social kind K with the claim that K is an institutional kind in the sense set out by Searle.

4. Passing, Travelling and Reality

Having situated institutionalist realism in relation to its main rivals outside of constructionist realism and characterized it in more detail, the rest of this chapter will be devoted to defending institutionalist realism from two direct objections. Both of these objections are challenges to institutionalist realism specifically, not to constructionist realism in general. In this section I respond to criticisms advanced by Ron Mallon in his 2004 paper 'Passing, Traveling and Reality: Social Constructionism and the Metaphysics of Race'. I show that institutionalist realism can be defended against Mallon's objections, and that doing so highlights two important points about institutional reality.

4.1. Racial Passing

Mallon (2004) raises an important challenge to institutionalist realism which is part of a broader challenge for constructionist realism about race. He first identifies two important features of race which are the fact that *racial passing is possible,* and the fact that *race does not travel*. He then argues that the only version of realism that can account for these features is institutionalist realism, but that institutionalist realism, on closer inspection, turns out not to be a form of realism at all. Mallon characterizes institutionalist realism, which he terms 'institutionalism', as the claim that race is 'a kind of institutional fact created by collective understandings of who counts as what race here' (2004, 661). This statement is, of course, a fair summary of the institutionalist realist account I have set out above, meaning that Mallon's challenge is directly relevant to the position I am advancing here. Mallon's argument against institutionalist realism also introduces some key considerations in the debate about the metaphysics of race, namely 'passing' and 'travelling'. Accordingly, I'll go through Mallon's argument step by step, starting with the notion of racial passing.

Racial passing occurs when a person is believed by others to be a member of a race other than the race they actually belong to. Passing may happen with the knowledge and agency of the passing person, as when someone conceals their race in order to gain social advantage or escape social disadvantage. Alternatively, it may happen with someone's knowledge but without their agency, as when someone is presumed by others to be a member of a race to which they do not belong, based on their appearance, and is aware of this (Piper 1992). Finally, it may also happen with neither the agency nor the knowledge of the passing person, as when someone is brought up with a false belief about their own racial heritage. Following Mallon, I will call the need to account for the possibility of passing 'the Passing Constraint'.

The idea that race does not travel is the idea that someone who is a member of one race at one spatio-temporal location may be a member of a different race at a different spatio-temporal location. As Michael Root puts it, 'Race does not travel. Some men who are black in New Orleans now would have been octoroons there some years ago or would be white in Brazil today. Socrates had no race in ancient Athens, though he would be a white man in Minnesota.' (2000, S631-S632). This

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is to say more than just that someone's race might be *perceived* differently in different contexts; rather, it is to make the claim that their race might actually *be* different, in some sense or another (more on this in a moment). Of course, the idea is not that race *never* travels, but only that it *need not* – i.e. that a person's race is dependent on the culture in which they live in such a way that there are at least some cases where context makes a difference to someone's race. Again following Mallon, I will call the need to account for the possibility of race not traveling 'the No Travel Constraint'.

The institutionalist realist account is ideally placed to meet both the Passing Constraint and the No Travel Constraint. In order to account for passing, we need a model of racial membership that is objective. That is, a person's race cannot depend on subjective properties such as their felt affinity or their lived experience, because part of the phenomenon of passing is that people can pass without realising they are doing so. A person who has Black ancestry but believes that they have only White ancestry and therefore that they *are* White may well have an affinity with Whiteness as an identity, and will very likely have had experiences that are characteristic of White people. On a subjectivist view, this person would actually *be* White; but meeting the Passing Constraint requires us to say that the person is in fact only *passing* as White (at least in societies that privilege Black ancestry over White as a determiner of race). The constructionist realist therefore needs to adopt an objectivist view, according to which an individual's racial membership is fixed by social rules that apply independently of the beliefs, attitudes or experiences of that individual. Passing is then possible in two ways. First, it will be possible if the criteria enshrined in these social rules are not the same as the methods used to identify members of different races – for example, if biological ancestry is what determines racial membership according to the social rules, but bodily features such as skin colour and hair type are used to make working assumptions about racial membership. Second, it will be possible if the criteria enshrined in the social rules are things about which people can be mistaken, as is the case with ancestry (Glasgow 2007, 559).

Clearly, the institutionalist realist account is an objectivist account: as explained above, facts about institutional entities are epistemically objective, even though they depend on collective intentionality. To understand this more fully, let us look

in greater detail at how status functions work in cases of mistaken belief. Consider a case in which some entity is falsely believed to satisfy the X-term of a status function. Take, for example, a counterfeit ten pound-note. A counterfeit ten-pound note does not have the history that is specified by the status function that defines a ten-pound note. However, it looks as though it does and (if used) is presented as though it does. This means that the counterfeit note can actually be used to pay for things successfully, provided its true history is not discovered. An uncontroversial example involving a social identity would be a case where two people go through a marriage ceremony, but, unbeknownst to one of them, the official is not a real official, but a mischievous impostor (the occurrence or possibility of such an event as a threat to women's 'virtue' features as a plot device in several pre-20th century novels, most notably Samuel Richardson's *Pamela*). Intuitions seem clear in these cases: the counterfeit banknote is not money; the sham marriage ceremony does not constitute a marriage (and the person who undergoes it, even in good faith, does not become a wife or a husband). This is so despite the fact that counterfeit money can successfully be used to buy things, and that everyone the couple meets after the sham ceremony may believe them to be married and treat them as a married couple.

The possibility of these kinds of mistake suggests a distinction between the following two facts:

> (1) How an entity should be categorized according to the rules of the institution. Call this *assigned role*.
>
> (2) How an entity actually gets categorized by most people's application of the rules of the institution. Call this *functioning*.

The assigned role that an entity occupies is determined by whether it (or they) *in fact* satisfies the X-term of the status function. By contrast, the way that an entity functions is determined by whether other people around it (or them) *deem* it/them to satisfy the X-term of the status function. A counterfeit ten-pound note that is accepted in a transaction is functioning as a ten-pound note, but does not occupy the assigned role of a ten-pound note. Searle's account of institutional reality entails that in cases where assigned role comes apart from functioning, it is assigned role that determines institutional facts. This is to say that what counts for institutional reality is whether the entity in question *really does* satisfy the X-term,

and hence is something that is *supposed* to count as Y in context C according to the constitutive rules that are collectively recognized. The priority of assigned role in determining facts about institutional objects helps explain why the fact that many things exist in virtue of collective agreement does not entail that 'anything goes'. True, in a sense money is 'only' bits of paper with no intrinsic value, and a marriage ceremony is 'only' some words uttered in front of someone; but nevertheless one cannot take just any bit of paper and make it into money, nor say 'I do' in front of just any person and thereby come to be married. This is what is meant by the claim that facts about these matters are *epistemically objective*.

We are now in a position to see that racial passing is just one instance of a general phenomenon, namely the possibility of a mismatch occurring between assigned role and functioning. Someone who is passing as a member of a racial category to which they don't belong does not satisfy the X-term of the status function that defines that category, but is nevertheless functioning as a member of that category and experiencing the deontic powers associated with that status function. Hence, their assigned role is at odds with their functioning. Since it is assigned role that determines institutional reality, the institutionalist realist account says that the person is merely passing as (for example) White, rather than that they really are White. Thus, institutionalist realism meets the Passing Constraint.[1]

4.2. Travelling and Reality

Mallon's second constraint on an account of race is the No-Travel Constraint: the need to explain how it is possible for race to fail to 'travel' between different spatio-temporal locations. On the institutionalist realist account, race will not always travel, because collective understandings will vary from place to place, and status functions are always context-specific. The idea of race categories as the products of a localized system gives a principled and compelling explanation for their failure to travel. Let us consider a person who would be categorized as 'Black' in the US, and as 'mixed race' in the UK. This person satisfies the X-term for the status function associated with 'Black' that applies in the US context, whereas in the UK they instead satisfy the X-term for the status function associated with 'mixed race'.

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[1] One might worry that the claim that assigned role determines reality does not carry over into the case of gender very well. I restrict myself to discussion of race here because Mallon's objection is focussed on race. I address the application of this point to gender in detail in Chapter 3 (section 5.3).

Within the context of the US, the person has the institutional property of *being Black,* but in the context of the UK, the person has the institutional property of *being mixed race.* Thus, institutionalist realism also meets the No Travel Constraint.

This is where Mallon's challenge comes in. Mallon argues that, despite meeting both the Passing Constraint and the No Travel Constraint, institutionalist realism in fact fails to meet one of the core commitments of a realist account of race, as stated by defenders of realism. Mallon formulates this commitment as follows:

> [R]ace should:
> (a) Figure in explanations of the differential impacts on individuals in racially divided settings.
> And (b) Figure in the formulation and explanation of true, nonaccidental generalizations. (2004, 662)

Following Mallon, I'll call this commitment 'the Reality Constraint'. According to Mallon, institutionalist realism faces two problems when it comes to meeting the Reality Constraint. The first problem concerns part (a) of the constraint. It seems no-one thinks of being White, for example, as a matter of having a certain status function imposed upon one by way of collective intentionality. Even worse, it seems that many people apply race concepts that rest on a *false* belief in identifiable biological differences matching up with social delineations of racial membership (the 'racialist' thinking described by Appiah). If race concepts are never used, Mallon contends, then on the institutionalist realist account, no-one has a race. This is because, as Mallon understands it, institutionalist realism implies that a person is a member of a race R if and only if they satisfy the criteria central to the concept of R that is being used in their location. According to institutionalist realism, Mallon contends, race concepts are institutional concepts. However, since almost no-one thinks of race as institutional, it follows that almost no-one uses race concepts, and from *this* it follows that no-one has a race and thus that race cannot explain anything.

The second problem concerns part (b) of the Reality Constraint. Mallon notes that some of the generalizations we want to make about race involve border-crossing; for example, Root notes that, 'blacks are seven times more likely to die of tuberculosis in the United States but not in Britain' (Root 2000, S633). This is the

sort of statement we want to be able to make about race, since it directs our attention to certain racial injustices by giving us reason to doubt that differential outcomes can be explained by biological differences. Since, however, institutionalist realism holds that race is a product of context-specific and localized collective intentionality, border-crossing generalizations seem to be impossible on that account. To put the point in Searlean terms, it seems likely that there are different status functions in operation in the US and UK contexts, so that when we talk about Black people in each context we are referring to two different institutional kinds. Therefore, according to Mallon, institutionalist realism can meet neither component of the Reality Constraint.

In response to Mallon, Joshua Glasgow (2007) has argued that there is a version of institutionalist realism that can meet the Reality Constraint. In relation to the problem concerning (a), Glasgow points out that although institutionalist realism states that category membership is constrained by concept use, it does not require that the content of that concept incorporates recognition of the institutional nature of the category. In other words, the institutionalist can allow that institutional concepts may not self-referentially and explicitly recognize the fact that they are institutional. Given that this is so, the institutionalist can say that people *do* use race concepts, and hence that people *do* have races, and this paves the way for the claim that race figures in explanations of the differential impacts on individuals in racially divided settings.

It is worth taking a moment to see how this insight can be accommodated within Searle's account of institutional reality, since it will be significant for arguments in the next chapter. The examples of institutional reality discussed so far in this chapter have been ones in which the nature of that reality is not particularly obscured from the individuals concerned. For example, the average married couple are relatively unlikely to have thought very much about the ontology of their situation. Nevertheless, if one were to tell them that their being married to one another was, ontologically speaking, a matter of them occupying certain roles in an institution of marriage, and, further, that this institution existed in virtue of there being a shared idea of how one came to be married and what was involved in being married, they would be probably be quite willing to accept this. Similarly, most people will be amenable to the idea that money is valuable because we take

it to be valuable, and not because of any intrinsic properties instantiated by coins or banknotes. In the case of race, however, many people are not only unaware of the institutional nature of race, but would be resistant to this idea if it were put to them. Specifically, many people believe that they are responding to some aspect of a pre-social reality, namely biological races, possibly distinguished by racial essences. So how does institutionalist realism deal with the fact that so many people seem to actually have false beliefs about what race is?

Searle addresses this issue in his 2010 revision of his account of institutional reality. Let's take as our example the idea that monarchs rule by divine authority ('the doctrine of divine right').[2] A strong version of this doctrine was widespread in England and Scotland until 1688 (the year of the Glorious Revolution). Simplifying for the sake of argument, suppose that opinion changed very rapidly, so that prior to 1688 most people believed in the doctrine of divine right, and after 1688 no-one did. Assuming that there is really no such thing as divine right, prior to 1688 everyone was systematically mistaken about the nature of monarchs. They thought that the defining feature of monarchs was that they were endowed by divine authority with powers to rule; however, no-one actually instantiated this property.

Monarchs today are paradigm cases of institutional entities. If monarchs pre-1688 were not institutional entities, what could they have been? The two obvious possibilities are that they were pre-social entities, or that they did not exist at all. What kind of pre-social entity could a monarch be? Ruling out the possibility that monarchs really *were* divinely authorized, I have no idea. And it seems very strange to say that there were no monarchs prior to 1688 (only people mistakenly believed to be monarchs). Surely Elizabeth I was just as much of a queen as Elizabeth II? There seem to be compelling reasons, therefore, to believe that even before 1688, monarchs were institutional entities. This leaves us with the task of explaining how institutional reality can exist apparently without any status function recognition.

The key to explaining this case lies in deontic powers (Searle 2010, 119). According to the doctrine of divine right, the monarch has the deontic power to

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[2] Searle uses the example of believing that the pope is infallible (2010, 118).

(for example) make laws, because making laws is part of what the God has supposedly authorized them to do. Thus, collective acceptance of the doctrine of divine right entails collective acceptance of the proposition that monarchs have the power to make laws. Since having deontic powers is a matter of collective acceptance of prerogatives and so on, the monarch actually has the deontic power to make laws. Compare this to the post-1688 situation, when divine right had been rejected. The status function imposed on monarchs then granted them a set of deontic powers, including the power to pass laws. So the collective-intentional acceptance of the *proposition* 'the heir of the previous monarch *is* divinely authorized to rule' has the same implications in terms of deontic powers as the collective-intentional imposition of the *status function* 'the heir of the previous monarch *counts as* the political ruler'. And this is enough, according to Searle, for a status function to be imposed, and therefore for a type of institutional entity, monarchs, to exist.[3] Searle's account of institutional reality therefore supports Glasgow's response to Mallon's objection: the fact that people do not (in general) use institutional race concepts does *not* entail that there are no institutional races. If people hold beliefs about racial difference that mean that they view members of different racial groups as having different deontic powers, this is sufficient for an institutional reality of race to exist. Furthermore, on a side note, this account of how false naturalizing beliefs can support an institutional reality helps the institutionalist realist to resist the sceptic, since it demonstrates that it is possible for institutional race categories to exist even in the face of widespread acceptance of racialism.[4]

Let us now consider the second part of Mallon's objection, which is the claim that institutionalist realism cannot meet part (b) of the reality constraint. Part (b) is the requirement that race be able to feature in the formulation and explanation of true, non-accidental generalizations, and Mallon's claim is that institutionalist realism cannot fulfil this requirement because it renders border-crossing generalizations impossible. Glasgow (2007) argues that we need to be more specific about the kind

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[3] The example of divine right also alerts us to the fact that mistaken beliefs about institutional entities may be 'ideological' in the sense of reflecting and supporting certain regimes of power; I will have much more to say about this in the next chapter.

[4] Recall that the institutionalist realist seeks to show that institutional racial kinds causally explain our use of race terms, so that she can use the causal theory of reference to argue that those institutional kinds are what we are talking about when we talk about race.

of institutionalist realism that we are considering. He draws a contrast between *extreme ontological localism* and *modest ontological localism* as stances that the defender of institutionalist realism might take about the failure of race to travel (2007, 560-561). On the former, one's race really does change when one crosses a border. Someone who counts as Black in the US and as White in Brazil just *is* Black, simpliciter, before she travels to Brazil, and *is* White, simpliciter, after. On the latter, the picture is more complicated. Someone who counts as Black in the US and as White in Brazil in fact has two locally indexed properties: the property of being *US-Black*, and the property of being *Brazil-White*. When she moves from the US to Brazil, the former stops being salient and the latter becomes salient. This means that she appears to change race, even though in fact she never stops being US-Black (and, equally, she always was Brazil-White). The change she undergoes when she travels concerns not the properties themselves but the relative salience of the properties. This fact is masked by the way we refer to race as non-indexed. Thus, the contrast between extreme and modest ontological localism is the contrast between the view that race properties are unrestricted and really change when the person travels to a different location, and the view that race properties are indexed to locations and merely alter in relative salience when the person travels to a different location.

Glasgow argues that if we adopt modest ontological localism we can successfully make cross-border generalizations using institutionalist realism:

> [W]e can pick out the same kind of group in Great Britain and America by fixing the location of the racial concepts we use, and therefore, for modest ontological localism, of the two groups' locally indexed race. If we want to understand what is happening with tuberculosis fatality rates in the United States, we can compare those in the United States who are black on U.S. racial criteria (and are therefore U.S.-black, according to modest ontological localism) with those in Great Britain who are black according to, again, U.S. racial criteria (and are therefore also U.S.-black). It would only be a problem if the contrast class were identified using British racial criteria (and would therefore be Britain-black). (2007, 564)

Therefore, Glasgow demonstrates that institutionalist realism *can* satisfy the Reality Constraint provided that it adopts modest ontological localism. Modest ontological localism, moreover, sits well with the Searlean framework I have used to state my institutionalist realist account. Take, for example, a US dollar bill that is located in the UK at time *t*. It seems right to say that, at *t*, this piece of paper has the institutional property of *being US-money*, even though it lacks the institutional property of *being UK-money*. If someone – perhaps a shopkeeper to whom it has been offered as payment for goods – says of the bill at *t* 'that's not money!', this is best interpreted as the (perfectly correct) claim that the bill is not money *in the relevant sense* – i.e., it is not UK-money ('that's not money *round here*'). This is modest ontological localism: there are locally indexed properties that persist through travel, although they change in salience.

Incidentally, though, I believe that institutionalist realism could be combined with *extreme* ontological localism without detriment. Extreme ontological localism is the view that when objects are outside of the context of an institution, they cease to instantiate any institutional properties associated with that institution. On this view, the dollar bill ceases to be money when it leaves the US (or any other context where it is accepted as currency). We can square this with the need to make comparisons between contexts by framing such comparisons in terms of the properties cited in the X-term of the relevant status function. Take the sentence, 'Black people are seven times more likely than White people to die of tuberculosis in the United States but not in Britain.' If we favour extreme ontological localism, we can interpret this as follows: 'In the US, those individuals who instantiate the institutional property of *being Black* when in the US are seven times more likely to die of tuberculosis than those individuals who instantiate the property of *being White* when in the US; and this is not the case for individuals in Britain who satisfy the X-term of the status function that defines the category of *Black* in the US as compared to individuals in Britain who satisfy the X-term of the status function that defines the category of *White* in the US.' Strictly speaking, only the first half of this comparison actually refers to a racial category as such. However, the sentence makes sense and is informative, showing that we *can* make this kind of comparison even if we adopt extreme ontological localism. Moreover, the second part of the reality constraint only requires that race should 'figure in the formulation and explanation of true, nonaccidental generalizations'. Satisfying this

requirement is compatible with holding that there are *some* true, nonaccidental generalizations that might seem to be about race but in which race *as such* only features in one half of the comparison. It therefore seems to me that institutionalist realism can satisfy the Reality Constraint regardless of whether it adopts modest ontological localism or extreme ontological localism. The choice of one variety of localism over the other should therefore be made on other grounds. This is an issue I shall leave to one side, as it has no bearing on the present investigation.

Thus, institutionalist realism can satisfy not only the Passing Constraint and the No Travel Constraint, but the Reality Constraint as well, thereby meeting Mallon's challenge and showing that the label 'institutionalist *realism*' is not a misnomer.

5. Conferralism

Institutionalist realism has also been challenged by Ásta Sveinsdóttir (2013).[5] This challenge is particularly interesting because it focuses specifically on Searle's account of institutional reality. In the course of developing a unified account of human kinds, Ásta raises an objection to Searle's position, before presenting her own conferralist account of human kinds. In this section I show, first, that the institutionalist realist account can avoid the criticism Ásta levels at it, and, second, that Ásta's rival conferralist account faces a significant difficulty.

According to Ásta, institutionalist realism (which she calls 'the constitution view') is implausible because it gives a counter-intuitive account of the way properties are conferred, which we can best see by taking the example of sporting properties, such as the property of 'being a strike' in baseball. Ásta uses baseball as the example sport, but I am going to use tennis instead – partly because I understand it better than I understand baseball, and partly because I want to say something specific about umpires that is more readily apparent in the case of tennis.

Imagine the following scene. Andy Murray is playing Novak Djokovic in the final of Wimbledon men's singles tournament. Murray has won two sets, Djokovic one,

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[5] I will follow Icelandic naming conventions by referring to Ásta Sveinsdóttir by her given name (Ásta) rather than her patronym (Sveinsdóttir) in subsequent citations and discussions of her work, since this is her preference.

and we are in the fourth set, where Murray is a break up at 6-5 and serving for the match. The score is deuce, advantage Murray – so, a match point. Murray serves once, and sends the ball into the net. Now he's on his second serve; he serves fast down the centre line, and Djokovic mis-reads him and moves in the opposite direction. If the ball was in, this is an ace, and Murray has won the match. However, the umpire calls the ball 'out', meaning that Murray served a double fault and the score is back to deuce. Now, in grand slam tennis tournaments, players can use an electronic system called Hawkeye to challenge the umpire's decisions. However, each player is given three Hawkeye challenges per set, and loses one each time he or she makes an incorrect challenge. Murray has already used up all of his challenges, so can't challenge the call. However, the BBC television commentators have their own version of Hawkeye, which they can consult any time, and they use it to show viewers watching on TV that in actual fact, the ball just clipped the centre line and so should have been called 'in'. What has happened in this scenario? Did Murray serve a double fault, meaning that the score is back at deuce? Or is it the case Murray served an ace, thereby winning the match, but that everyone failed to recognize this fact because of the umpire's bad call?

Ásta argues that institutionalist realism would have to explain this situation by positing a status function that goes something like this: 'A serve where the ball bounces within the lines marking the service box, or wholly or partly on any of the lines, counts as "in", in the context of a tennis match.' This would mean that Murray did serve an ace, and therefore that he really did win the match. But, Sveinsdóttir says, clearly this is absurd. If, after the point described above, Djokovic went on to win the game and then the fourth set tie break and the fifth set, thereby taking the match and the title, we could not then turn around after the match and say that actually *Murray* had won because, now we all looked at the Hawkeye replay, we could see that the umpire made a bad call in the fourth set. The facts seem clear: it is extraordinarily bad luck for Murray that the umpire made the bad call, but the call *was* made and Djokovic *did* win the match. To put Ásta's worry another way, institutionalist realism seems to make the umpire's role 'purely epistemic', in that he or she is simply meant to track a pre-existing tennis fact; but this is not how sports actually work. Rather, the umpire's calls seem to play a role in determining what the tennis facts actually are. In addition to the fact that institutionalist realism seems to give the wrong result in this case, Ásta points out

that there seems to be something extremely odd about the idea that that there are lots of tennis facts that no-one at all knows about, and that have no implications for how tennis matches proceed (we only know about the supposed tennis fact in my example because of the BBC commentary). For all of these reasons, as Ásta rightly points out, this result is an unhappy one.

Ásta further argues that her rival conferralist view gives the right result in this case. According to conferralism, the properties that define human kinds are conferred properties, which is to say that they are properties 'that an object has in virtue of some attitude, action, or state of a subject, or group of subjects' (2013, 719). She writes:

> My suggestion is that the claim that a certain human kind is socially constructed can be spelled out in a helpful way as the claim that the kind is a conferred kind, where what is meant by that is that the property all the members of the kind share is a conferred property. (2013, 721)

To put conferralism into the context of the sporting example, the conferred property is the property of a serve being in, or out, and the subject who confers the property is the umpire. Thus, the umpire confers the property of *being in* on a serve when they do not call it 'out', and confers the property of *being out* when they do call it 'out'. Ásta says that in the case above, the umpire, because of his or her authority, makes it the case that the serve is out when he or she calls it out, thereby also making it the case that Murray double-faulted, and the score was back at deuce. This is so regardless of where the ball actually bounced. This means that it would be completely wrong to claim later that Murray really won the match because the umpire made a bad call. Thus, her claim is that conferralism, but not institutionalist realism, gives the intuitively right result in the sports example.

I do not dispute Ásta's claim that the intuitively right result is to say that Djokovic won the match. I also agree that conferralism yields this result. However, I reject the claim institutionalist realism cannot give us this result. Although Ásta's interpretation is a very reasonable one, and I believe it to be Searle's own view, this interpretation is, in my view, too simple, because it overlooks the fact that the role of the umpire can be part of what is defined by the constitutive rules of a sport. Sticking with tennis, part of what it is to play a match of competitive tennis is to stand in a particular relationship to the umpire. One way to see this is to consider

the way in which the use of Hawkeye is regulated by the rules of the game. Even though it would, in principle, be possible to refer to Hawkeye on every point where there was even a shadow of a doubt about whether the ball was in or out, the rules of the game do not permit this. The rules of the game thus make it the case that the umpire's decision is final unless it is challenged by a player (which can only happen if the player has at least one challenge remaining at that point in time). If the role of the umpire were not part of what is specified by the constitutive rules of the game, then this regulation of when the umpire can and cannot be overruled by Hawkeye would not be possible. Therefore, if we want to actually spell out a status function for an 'in' serve in tennis, we would have to say something like the following: 'A serve where umpire judges that the ball bounced within the lines marking the service box, or wholly or partly on any of the lines, or where a permissible appeal to Hawkeye shows that the ball in fact bounced within the lines marking the service box, or wholly or partly on any of the lines, counts as "in", in the context of a tennis match'.[6] This more nuanced status function gives us the result we want: on this interpretation, institutionalist realism says that Murray did serve a double fault, and Djokovic did win the match.

This, however, only defuses Ásta's criticism of institutionalist realism, showing that institutionalist realism does no *worse* than conferralism. I will now give a positive reason for favouring institutionalist realism over conferralism, namely that the conferralist view cannot, I believe, account for the possibility of racial passing. This is a problem because Ásta explicitly states that she is offering a general account of socially constructed human kinds, and, as mentioned in 4.1 above, the ability to account for racial passing is generally accepted to be a requirement for an account of the ontology of race. Admittedly, this requirement could be challenged; however, the strength of the consensus in favour of what, following Mallon, I have termed 'the Passing Constraint' is considerable (Mallon 2004; Piper 1992; Mills 1998; Root 2000). The burden of proof is therefore on the person who rejects the Passing Constraint to explain how such a widespread confusion came about. Ásta offers no such explanation in her presentation of conferralism.

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[6] This presupposes another, independent status function that specifies when an appeal to Hawkeye counts as permissible and when it does not.

The difficulty that conferralism faces with regard to racial passing can most easily be seen by considering the application of conferralism to gender that Ásta offers, and transferring this to race. Ásta favours a context-dependent conferralist account of gender. On this account, for each context in which someone finds herself or himself, we need to establish the following pieces of information:

> **Conferred property**: being of gender G, e.g., a woman, man, trans
> **Who**: the subjects S in the particular context C
> **What**: the perception of the subjects S that the person has the grounding property P
> **When**: in some particular context C
> **Grounding property**: the grounding property (2013, 723)

The answers to these questions will vary from context to context, meaning that someone could, for example, be a man in one context and a woman in another, based on what grounding property is taken to be relevant to determining gender in that context, and on how the person is being perceived by others. Unlike in the case of a sports umpire, the subjects S do not confer the property in virtue of any particular authority that they hold. Rather, they confer it by invoking or citing pre-existing social structures, or gender 'maps', to which individuals have already been subjected in various other contexts and which enjoy a degree of authority or power (though they need not be normatively justified). The role played by the grounding property is purely epistemic:

> The conferral of gender, unlike a baseball property, is not a one-time act, but rather involves a standing attitude, namely the perception by the subjects in the context that the person have the relevant grounding property. This perception can be in error and the person may in fact not have the property. What matters is simply the perception. (Ásta 2013, 724)

Since Ásta explicitly offers conferralism as a general account of human social kinds, it seems fair to assume that a conferralist account of race would work in a parallel way to the picture she gives of gender. If this is so, then what determines someone's race in a given context will be the perception that other subjects in that context have of a certain grounding property, which will probably be something to do with the person's ancestry. It is this perception, and not the fact of the matter about the person's ancestry, that will determine the race properties that the person instantiates. This means that it is impossible for someone to 'pass' as a member of

a race to which they do not in fact belong, for being perceived as (say) White actually *makes* one White in the relevant context, even if (for example) one has African ancestry and is situated within a larger context, such as the US, in which having some African ancestry is considered sufficient for someone to be Black. Passing is thus impossible on a conferralist account. I take this to be a prima facie reason to reject conferralism, at least as the debate currently stands: the Passing Constraint is widely accepted, and Ásta's conferralism is not accompanied by an argument against it.

6. Conclusion

I began this chapter by introducing institutionalist realism about human social kinds by way of Root's institutional account of race, before situating this view in relation to its rivals outside of constructionist realism. This discussion showed that metaphysical pluralism is an essential pre-condition for institutionalist realism, since it is necessary if the would-be institutionalist realist is to resist nominalism, and semantic externalism is a helpful accompaniment, since it facilitates a rejection of scepticism. I then proposed a more detailed account of institutionalist realism by setting out Searle's account of institutional reality and defining institutionalist realism about a human social kind K as the claim that K is an institutional kind in the Searlean sense. Finally, I have defended institutionalist realism from two direct objections. In response to Mallon, I have shown that institutionalist realism can meet not only the Passing Constraint and the No Travel Constraint, but also the Reality Constraint. In response to Ásta Sveinsdóttir, I have shown, via the example of sport, that institutionalist realism does not commit us to positing many strange institutional facts that have no implications for how the social world proceeds.

The purpose of this chapter has been to introduce institutionalist realism as an account of the ontology of human social kinds. The positive merits of institutionalist realism will be demonstrated during the course of the remaining four chapters of this thesis. In the next two chapters, I will apply institutionalist realism to race and gender categories. These arguments will provide further support for institutionalist realism by showing that it yields plausible accounts of these two particularly important human social kinds. In the two final chapters of

this thesis, I will use institutionalist realism about race and gender to develop an account of ontic injustice. Institutionalist realism provides a foundation for my account of ontic injustice; thus, if ontic injustice turns out to be a productive concept, this will constitute a further point in favour of institutionalist realism.

2

Institutionalist Realism About Race and Gender

1. Introduction

In this chapter and the next, I will apply institutionalist realism to race and gender. Specifically, I will argue that race and gender categories are the products of institutionalized hierarchies in which those constructed as people of colour and those constructed as women are placed below those constructed as White and/or male.[7] Another way of putting this claim is to say that races and genders are positions or roles within the institutions of White supremacy and patriarchy respectively. The claim that race and gender categories are positions within hierarchical systems is far from new. With regard to race, its most prominent champion is perhaps Charles Mills (1998, 1999), whilst with regard to gender, it is associated with the work of Monique Wittig, Christine Delphy, Carole Pateman, and Catharine MacKinnon (MacKinnon 1989, 2006a; Wittig 1996; Delphy 1996). More recently, a version of this view that encompasses both race and gender has been put forward by Sally Haslanger (Haslanger 2012b).

Searle's account of institutional reality, as set out in Chapter 1, is a powerful one. It was not, however, developed with a view to critically theorizing systems of oppression. There are some very promising points of contact between Searle's account of institutional reality and the critical accounts of race and gender just described. However, as I will show, Searle's ontology as it stands falls short of being able to accommodate these accounts fully. This is particularly the case with regard to the current realities of race and gender, when overt and explicit racism and sexism in both law and public opinion has diminished. Expanding Searle's

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[7] This is obviously complicated by intersectionality; I explain how in Chapter 3 (5.2). I hope the reader will forgive my deferring the discussion of intersectionality to the next chapter.

account of institutional reality to make space for the claim that race and gender are hierarchically defined institutional kinds is my main aim in this chapter. I will first introduce the claim that races and genders are the products of hierarchical systems, with particular reference to Mills' work on race. I will then show how Searle's account of institutional reality can accommodate some portion of the history of race and of gender, but cannot capture their current realities. Finally, I will modify Searle's account so as to enable it to capture the current realities of race and gender as forms of institutional reality.

2. Race and Gender as Hierarchical Categories

The idea that races are social categories constituted by hierarchy has a long history, as does the idea that genders are such categories. My aim in this section is not to provide a historical survey of debates on these points, but to introduce the idea of race and gender as hierarchical categories in a format that will most easily enable me to bring them into contact with institutionalist realism. To this end, I will focus primarily on work by Charles Mills and by Carole Pateman on what they, respectively, call 'the Racial Contract' and 'the Sexual Contract'. I'll begin with race.

2.1. The Racial Contract

In his book *The Racial Contract* (1997), Mills theorizes the social construction of race on a global scale. He does this via the conceptual device of the 'Racial Contract', which takes as its point of departure the idea of the social contract, a hypothetical agreement that is supposed to found and legitimate a state. The Racial Contract, in contrast with the social contract, is an *actual* agreement that institutes a *racialized* state. In Mills' words:

> The Racial Contract is that set of formal or informal agreements or meta-agreements (higher-level contracts about contracts, which set the limits of the contracts' validity) between the members of one subset of humans, henceforth designated by (shifting) "racial" (phenotypical/genealogical/cultural) criteria C1, C2, C3... as "white," and coextensive (making due allowance for gender differentiation) with the class of full persons, to categorize the remaining subset of humans as "nonwhite" and of a different and inferior moral status, subpersons, so that they have a subordinate civil standing in the white or white-ruled polities the whites either already inhabit or establish or in transactions as aliens with these polities, and the moral and juridical

rules normally regulating the behavior of whites in their dealings with one another either do not apply at all in dealings with nonwhites or apply only in a qualified form (depending in part on changing historical circumstances and what particular variety of nonwhite is involved), but in any case the general purpose of the Contract is always the differential privileging of the whites as a group with respect to the nonwhites as a group, the exploitation of their bodies, land, and resources, and the denial of equal socioeconomic opportunities to them. (11)

Thus, the Racial Contract can be seen as instigating White supremacy. It is important to note that the Racial Contract is not a contract between White people and people of colour ('nonwhites' in Mills' terminology), but rather an agreement between Whites to co-operate to maintain power over people of colour to their, the Whites', mutual advantage. People of colour are thus 'the objects rather than the subjects of the agreement' (12).

The phenotypic, genealogical and/or cultural markers by means of which people are designated as 'White' are associated with European ancestry, and Mills locates the initiation of the Racial Contract in the European conquest of the Americas. Correspondingly, non-Whiteness is then connected to non-European ancestry. The contrast between White people and people of colour is the central pivot of the Racial Contract. This is not to deny that there are nuances in the ways that differently racialized people of colour are oppressed by the terms of the Racial Contract; in fact, these differences can themselves be explained by reference to the various objectives of White people, and hence can be treated within the framework of the Racial Contract.[8] For example, Mills notes differences between the racialization of populations targeted for extermination in order that their land may be appropriated (as in North America), the racialization of populations targeted for enslavement (as in Africa), and the racialization of populations targeted for colonial rule (as in the Indian subcontinent). Whereas a population of the first kind tends to be constructed as 'savage', and hence impossible to relate to except in an antagonistic way, a population of the third kind tends to be constructed rather as 'backward' or 'childlike', though with the potential for development, and hence in need of 'guidance' (theoretically temporary, though seldom voluntarily relinquished). A population of the second kind falls somewhere in between, being

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[8] Mills also notes differences in types of Whiteness; he puts this in terms of a 'fuzzy' category that contains shades of 'off-white' (80).

thought to inhabit a state of perpetual and irremediable immaturity that nevertheless falls short of total 'savagery'.

The notion of 'subpersonhood' plays a key role in Mills' account of the Racial Contract. The status of 'subperson' is a normative status that is socially imposed on the basis of racialized bodily features, as Mills makes clear:

> Subpersons are humanoid entities who, because of racial phenotype/genealogy/culture, are not fully human and therefore have a different and inferior schedule of rights and liberties applying to them. In other words, it is possible to get away with doing things to subpersons that one could not do to persons, because they do not have the same rights as persons. (56)

Thus, the point of designating some human beings as subpersons is to enable those designated as full persons (i.e. White people) to profit at their expense, through exploiting their bodies, their land or their resources in ways that would be deemed morally impermissible if done to full persons. Mills does not emphasize this point, but I believe that subpersonhood must be understood to come in degrees: one can be rendered more or less of a subperson, depending on just *how severely* different and inferior the schedule of rights and liberties that applies to one is, compared to that applying to full persons.

Mills' account of the Racial Contract does not deny that there have been sustained acts of resistance against the Racial Contract. He does, however, claim that the Racial Contract is still in force – albeit operating in a de facto fashion rather than a de jure fashion as it has done in the past. This is to say that whereas in the past formal laws and overt state policies maintained a national and international racial hierarchy, this same hierarchy is now maintained through informal and unofficial practices only tacitly sanctioned by states, and by state policies that have concealed or unacknowledged racial implications (Mills 1997, 73). In other words, White supremacy is still with us; it simply takes a more deniable form. The shift from de jure status to de facto status is one indication of the fact that the Racial Contract is perpetually being re-written, undergoing minor changes in the process – for example, changes concerning who is included in which category – but with its basic contours of White domination being carried forwards.

In terms of ontology, Mills' main claim is that race is not only *shaped* but actually *constituted* by variations of the person/subperson distinction imposed by the Racial Contract. To be White *just is* to be someone who is designated as a full person by the terms of the Racial Contract. Similarly, to be a person of colour *just is* to be designated as a subperson (in one of a variety of ways) by the terms of the Racial Contract. Since these designations are carried out on the basis of various shifting sets of phenotypic, genealogical, or cultural attributes, those attributes are a large part of how we think about race. Nevertheless, simply having (for example) exclusively European ancestry would not make one White in the absence of the Racial Contract. Having exclusively European ancestry is indeed how people are selected for inclusion in the category of 'White' under the terms of the Racial Contract in many locations, but Whiteness itself is more than a fact about one's ancestry: it is an institutionalized status. As Mills puts it, 'one becomes "white by law"' (63).

To sum up, Mills argues that racial categories are socially constructed via a Racial Contract agreed between Europeans that imposes subperson status on non-Europeans. This contract creates racial categories, rendering non-Europeans non-White (in various ways), and, correspondingly, rendering Europeans White. The aim of the Racial Contract is to legitimate the exploitation by White people of the bodies, land and resources of people of colour.

2.2. The Sexual Contract

Mills' account of the Racial Contract was preceded and influenced by Carole Pateman's account of the Sexual Contract (1988; see also Pateman and Mills 2007).[9] Pateman argues that if we were to extrapolate a social contract from actual social history, that contract would be a sexual one, in which agreements are made between men concerning the control of women, including agreements that secure for men sexual access to women's bodies. The Sexual Contract begins with a set of beliefs about natural sex difference according to which women are unruly, associated with nature and contrasted with civil society (Pateman 1988, 102). As such, women cannot be parties to a social contract. Consequently,

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[9] I follow Pateman in using the term 'the Sexual Contract'; strictly speaking, however, the term 'the Gender Contract' would be more accurate, given how the terms 'gender' and 'sex' are used in this thesis.

> [T]he original contract is a fraternal pact.... The individuals who enter the contract are brothers (sons of a father) who transform themselves into a civil fraternity by contracting together.... They also have a common interest *as men* in upholding the terms of the sexual contract, in ensuring that the law of male sex-right remains operative. (Pateman 1988, 102-3, italics in the original)

Pateman goes on to argue that the Sexual Contract structures all of civil society, including capitalist wage contracts:

> Women have not been incorporated into the patriarchal structure of capitalist employment as 'workers'; they have been incorporated as *women*; and how can it be otherwise when women are not, and cannot be, men? The sexual contract is as integral part of civil society and the employment contract; sexual domination structures the workplace as well as the conjugal home. (142, italics in the original)

There are important differences between Mills' account of the Racial Contract and Pateman's account of the Sexual Contract. For one thing, Mills is more explicit than Pateman that the Racial Contract creates racial categories as such (though see Pateman 1988, 226). However, the view that gender categories are constituted by social relationships of domination and subordination has been stated very explicitly by a number of feminists, including Catharine MacKinnon, Andrea Dworkin, Christine Delphy, and Monique Wittig. For MacKinnon (1989, 2006a) and for Dworkin (1981, 2006), sexuality in the form of eroticized hierarchy, including the sexual objectification of women, is crucial to this process. Wittig (1996) similarly places emphasis on sexuality, but focuses more on a norm of heterosexuality than on eroticized hierarchy. Delphy (1996) also emphasizes heterosexuality, but sees economic role as similarly crucial. Despite the differences between these theorists, each of them shares the view that there are no gender categories prior to unequal social arrangements. Wittig, for example, is clear on this point, though she uses 'sex' where I would use 'gender':

> It is oppression that creates sex and not the contrary.... The category of sex does not exist a priori, before all society. And as a category of dominance it cannot be a product of natural dominance but of the social dominance of women by men, for there is but social dominance. (1996, 26-27)

The reading of the Sexual Contract I will work with in the following argument takes gender to be constituted by Sexual Contract, and does not posit any prior set of

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biological 'sex' categories that are to be contrasted with social 'gender' categories.[10] In this regard, it is parallel to Mills' account of the Racial Contract.

Another difference between Mills' account of the Racial Contract and Pateman's account of the Sexual Contract concerns the idea of subpersonhood. This term is an innovation on Mills' part. Echoes of it can, however, be found in Pateman's work (1988, 60). Moreover, the notion of gendered subpersonhood tallies with the work of other feminist theorists. MacKinnon, for example, argues that human rights abuses typically suffered by women, such as rape, serve to deprive women of human status in an important sense:

> Legally, one is less than human when one's violations do not violate the human rights that are recognized… While disbelief and associated impunity reign, the violated are – systematically and effectively speaking – *rendered not fully human legally or socially*. When and where this denial is overcome and rights against the extreme and normal are recognized, the treatment is defined as inhuman and the victims human. Women are in the midst of this process.' (2006b, 3, italics added)

Although MacKinnon focusses on human status rather than the status of personhood, the shape of her claim is very much in parallel to Mills' account of racial subpersonhood. Women, according to MacKinnon, are systematically treated in ways that fall short of the standards we set for morally appropriate treatment of human beings, and these shortfalls are not recognized as violations of human rights. As a consequence, women as a group come to count socially as less than fully human. For reasons that will become clear in Chapter 4, I prefer to work with the notion of personhood. I will therefore talk of gendered as well as of racial subpersonhood, though it should be understood that I am not claiming that these two forms of subpersonhood work in exactly the same way.

Finally, I believe that Mills' distinction between the de jure and the de facto phase of the Racial contract applies just as well to the Sexual contract. Although there is no sharp boundary, we have, over the last one hundred and fifty years or so, seen a reduction in the explicit legal oppression of women. For example, in many parts

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[10] A stronger reading is available, and indeed is suggested by Delphy's phrasing. This stronger reading not only refrains from positing a prior set of biological sex categories but actively *denies* the existence of such categories. This active denial seems to me to require a further argument, engaging with debates in the philosophy of biology, which I cannot supply here.

of the world, women have gained the vote and many other formal political rights. As with race, this does not indicate that the Sexual Contract has been overturned, but rather that it has taken on more covert forms.

The view of the Sexual Contract I have arrived at is therefore in many respects parallel to the Racial Contract described by Mills. The Sexual Contract constructs gender categories and gendered individuals in such a way that those constructed as women are socially defined as subpersons, and thereby serves to legitimate men's domination of women. It existed as a de jure regime of explicit laws in the past, though in its present de facto state it operates in a more covert fashion.

3. De Jure Subordination and Institutional Reality

Mills' account of the Racial Contract gives us an invaluable picture of the workings of White supremacy. It goes a long way towards meeting what he describes, in a later book, as the need to 'make a plausible social ontology [of race] neither essentialist, innate, nor transhistorical, but real enough for all that' (1998, xiv). From the point of view of analytic social ontology, however, the account is not as detailed as it could be. Similarly, accounts of the Sexual Contract have seldom been written from the perspective of analytic social ontology. Questions remain about precisely how the Racial and Sexual Contracts are able to shape social reality. Do these contracts depend on collective intentionality? If so, in what way? On what else do they depend, and how? And how do we get from an agreement or a collective understanding to a set of real categories? In my view, these questions are important ones. As Sally Haslanger has argued, if we want to dismantle problematic social realities, we need to find 'the levers for change', which requires that we understand exactly how they are constructed, including how the social and the non-social depend upon one another (2012c, 215). So a more detailed ontological investigation into the accounts of the Racial and Sexual Contracts sketched above will help make them more effective in prompting real change in the world.

Institutionalist realism is one promising way to pursue such an investigation. Although the view is realist, and although it holds that institutional kinds are

epistemically objective, it also draws attention to the contingency, constructedness, and historically situated nature of these kinds. Institutionalist realism thus seems well-placed to meet Mills' desiderata for an ontology of race – desiderata that I take to apply equally well to gender. MacKinnon, for example, is committed to the claim the gender is real; as she puts it, 'The fact that reality is a social construction does not mean that it is not there; it means that it is there, in society, where we live' (2006d, 56). She also holds that the reality of gender hierarchy is what Searle would term epistemically objective: 'the reality of people who don't have power exists independently of what they think. The social constructs that control their lives very often are not their constructs' (2006d, 60). All of this speaks in favour of an institutionalist realist reading of the Racial and Sexual Contracts.

A parallel can also be drawn between the importance of deontic powers to institutionalist realism and the centrality of the concept of 'subpersonhood' to the Racial and Sexual Contracts. Subpersonhood is a state defined by the allocation of a 'different and inferior schedule of rights and liberties'. The possibility of cashing out this schedule in terms of deontic powers, which in turn are held to define institutional categories, offers a further promising connection between institutionalist realism and the Racial and Sexual Contracts as sketched above.

In this section, I will begin to apply Searle's account of institutional reality to the Racial and Sexual Contracts, focussing on the de jure forms of these contracts. I will argue that the account is well-suited to explaining the ontology of race and gender categories during the de jure phase of the Racial and Sexual Contracts.

3.1. Status Function Declarations

As explained in Chapter 1, Searle's account of institutional reality holds that institutional entities are created via the collective intentional imposition of a status-function onto some prior entity.[11] Status-functions are functions that can only be fulfilled in virtue of the entity in question being regarded as having a certain status. Status functions serve to create and modify conventional deontic powers – entitlements, obligations and so forth. The suggestion raised by bringing the Racial

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[11] Searle 2010 allows for cases where there is no prior entity, and a new entity is created, such as a corporation, but for our purposes the original formulation will do; see Chapter 1 (section 3).

and Sexual Contracts together with institutionalist realism as described in Chapter 1 is that raced and gendered individuals are institutional entities created through the imposition of status functions that allocate women an inferior set of deontic powers relative to men, and that allocate people of colour an inferior set of deontic powers relative to White people. Furthermore, these inferior sets of deontic powers are so significantly limited that they fall short of the basic set of deontic powers that are typically taken to be associated with personhood – hence the idea of racialized and gendered 'subpersonhood'.

Searle claims that, in many cases, status functions are initially enacted through a particular kind of speech act, a 'status function declaration'. In a status function declaration, some entity or kind of entity X is described as Y in such a way that a deontology is created. For example, someone with appropriate authority might say, 'I appoint you the chairperson', making it the case that someone now counts as the chairperson (Searle 1996, 54). Status function declarations, then, alter conventional deontological reality (by creating conventional deontic powers, rights, obligations) and these deontological systems, in turn, are what define institutional reality.

As discussed in Chapter 1, it is not necessary for status functions to be recognized *as* status functions, i.e. as being constitutive rules imposed through collective recognition. In some cases, institutional reality is created through a naturalizing belief that something already is the way the status function represents it as being (for example, the belief that the heir of the previous monarch already *is* divinely authorized to rule). What matters is that this belief must have the same implications for deontic powers as would the collective recognition of the status function. In other words, we do not need to know that we are creating institutional reality when we make a status function declaration; we might think ourselves to be merely reporting a natural (or at any rate a pre-social) fact.

There is ample historical evidence of explicit status function declarations of this sort concerning race during the de jure phase of the Racial Contract, as Mills points out:

> Although no single act literally corresponds to the drawing up and signing of a contract, there is a series of acts – papal bulls and other theological pronouncements; European discussions about colonialism,

> "discovery," and international law; pacts, treaties, and legal decisions; academic and popular debates about the humanity of nonwhites; the establishment of formalized legal structures of differential treatment; and the routinization of informal illegal or quasi-legal practices effectively sanctioned by the complicity of silence and government failure to intervene and punish perpetrators – which collectively can be seen, not just metaphorically but close to literally, as its conceptual, juridical, and normative equivalent. (1999, 20-21)

Consider, for example, the 1857 *Dred Scott v. John F. A. Sandford* decision of the US Supreme Court, in which the court upheld the institution of slavery and ruled that 'Negroes' could not be citizens.[12] It is hard to imagine a more overt declaration of the subperson-status of Americans with African ancestry. It is also very clear how this status function declaration formalizes and maintains a conventional deontological reality, for the ruling directly deprives Black Americans of rights. Another example, this time from the UK, concerns the common law status of African people as property. A 1667 ruling by the Solicitor General confirmed that 'negroes ought to be esteemed goods and commodities within the Acts of Trade and Navigation' (quoted in Pateman 1988, 144). Each of these status function declarations may have been considered a report of a supposed pre-existing fact, the 'fact' of Black inferiority, but, as we have seen, this does not impede their efficacy in creating or maintaining institutional reality.

Legal documents and decisions marking an initial ruling allocating subordinate status to all women qua women (as opposed to persons of colour qua persons of colour) are much more difficult to locate. However, according to Searle, laws in general are a form of 'standing' status function declaration: they declare that certain types of entity are to have a certain status, and this status is in effect until the law is revoked. And there are plenty of laws that allocate inferior status to women. One of the most significant historical laws concerning women in the UK was the law of coverture, which dictated that married women were not legal persons but rather extensions of their husbands' person. This was described by Sir William Blackstone in the 1760's as follows:

> By marriage, the husband and wife are one person in law: that is, the very being, or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of her husband; under whose wing, protection, and *cover,* she performs

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[12] *Scott v. Sandford*, 60 U.S. 393 (1857).

everything; and is therefore called... a *femme-covert*... her husband [is called] her *baron*, or lord. (quoted in Pateman 1988, 91)

Under coverture, married women could not hold property or enter into contracts. They also had no rights to guardianship of their children. Elements of coverture began to be rolled back in the 19th century, but its legal influence persisted well into the late 20th century. Perhaps the most grievous, and in many places the most persistent, legacy of coverture is the marital rape exemption. In the UK, non-consensual sex between a man and his wife did not legally constitute rape until 1991. Prior to that point, the law of rape specified that it concerned 'unlawful' sexual intercourse (Sexual Offences [Amendment] Act, 1976) and husbands were deemed to have a lawful ('conjugal') right to sex with their wife. The law of coverture seems to show that the non-personhood of at least a sizeable subset of women has in the past been legally enshrined.[13]

It is fairly easy, then, to locate utterances that look a lot like status function declarations for both race and gender that allocate subperson status to people of colour and to women. What about the actual status functions themselves? As explained in Chapter 1, in the simplest version of Searle's account, status functions take the form 'X counts as Y in C'. The final formula Searle gives for status functions, however, is slightly more nuanced: 'We make it the case by Declaration that for any x that satisfies condition p, x has the status Y and performs the function F in C', where F is spelt out as a set of deontic powers. The purpose of explicitly formulating a status function is to express what Searle calls the 'logical form' of the actual speech act. The phrase 'logical form' is used in an unusual way here, but I take Searle to mean that the status function formulation captures the implications of the status function declaration for social reality, although it doesn't need to correspond to the actual words used. The important point in this regard is that the speech act represents entities that satisfy p as having the deontic powers specified as F. It is this representation that is set out in the formulation of a status function.

If we want to describe the status functions imposed by the status function declarations described above, then, we would need to spell out the deontic powers

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[13] Given the economic pressure on women to marry and the idea that there was something unnatural about women who never married, we can further say that women in general were pressured to join this subset.

attached to different racial and gender categories. This is a difficult task: these powers vary in different contexts, and even in a single context they are likely to be complex. I shall not, therefore, attempt to spell out in full the actual status functions for any particular context. Rather, I shall give an *outline* of a status function for each category – which is to say, I shall give partial statements of the actual status functions that are in place at particular times and in particular locations. These status function outlines apply to many different contexts, and can be rendered more precise by filling in the placeholder notions. One placeholder notion I shall use is 'around here', the placeholder for context discussed in Chapter 1. The second is the notion of subpersonhood. The notion of subpersonhood expresses the idea of a set of deontic powers that is more limited than those usually associated with personhood, without the need to specify precisely what these deontic powers are.

With regard to gender, we get two status functions, based on visible reproductive organs:[14]

> Category of 'men': For any human x, if x satisfies the condition 'has a penis and testicles and does not have a vulva or vagina', x has the status 'man' and x functions, ceteris paribus, as a full person around here.

> Category of 'women': For any human x, if x satisfies the condition 'does not have a penis and testicles and does have a vulva and a vagina', x has the status 'woman' and x functions as a subperson around here.

I shall explain the 'ceteris paribus' clause in the status function for 'man' in a moment. First, I will set out the status function outlines for race. This task is rather more complicated than that of setting out the status function outlines for gender, because whereas there are only two genders under the de facto Sexual Contract, the de facto Racial Contract includes many different races, which are differently demarcated in different contexts. An outline of status functions for race, therefore, requires a third placeholder, namely the criteria for membership in a particular racial group ('conditions p' in Searle's general formulation).

I'll begin with the categories of 'White' and 'Black':

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[14] Recall that I am discussing the de jure phase of the Sexual Contract; more recent iterations of the contract might involve more than two genders.

Category of 'White': For any human x, if x satisfies the condition 'instantiates phenotypic/genealogical/cultural features [C1, C2, C3], which are associated with Europe,' then x has the status 'White' and x functions (ceteris paribus) as a full person around here.[15]

Category of 'Black': For any human x, if x satisfies the condition 'instantiates phenotypic/genealogical/cultural features [D1, D2, D3], which are associated with Africa', then x has the status 'Black' and x functions as a subperson around here.

These status functions come with the caveat that even these quite broad specifications may not cover the way that these categories have functioned in all contexts under the de jure Racial Contract. For example, the status function for 'White' may at some points in time have referred to some subset of European countries – say, Scandinavia and Western Europe exclusive of Ireland.

Some other racial categories have been defined in parallel ways under the de jure Racial Contracts, using a set of features associated with a region to assign subperson status. Some examples might be the category variously termed Native American, American Indian, or Indigenous, the cluster of categories variously termed South Asian, Indian, Pakistani or Bangladeshi, and the category variously termed Hispanic or Latino/a. Other categories, such as the category of 'coloured' in South Africa, would need a more complex specification of the membership conditions that made reference to a combination of features linked to different geographic locations.

The categories just mentioned fit the model of subpersonhood allocated on the basis of features that are linked to a particular geographic region that characterizes the status function I give for 'Black'. However, I do not think that this model captures all cases. Some non-White racial categories at particular times may not have carried a reduced enough set of deontic powers for the term subperson to be apt; the category 'Japanese' may be one such example at some times (though not, for example, around the time of WW2). And some non-White racial categories may not aptly be described in terms of links to a particular geographic region. For example, whether or not 'Jewish' is a racial category today (rather than, say, a

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[15] The 'ceteris parabus' clause permits for intersectionality; see Chapter 3 (section 4).

religious or a cultural category), it was certainly a racial category at many times and places in the past, and indeed one associated with a particularly severe subperson status. Yet although the idea of Jewishness is linked to a geographic region, namely present-day Israel and Palestine, there are many people with ancestral links to this region who would not be considered Jewish. It seems that other factors, such as religion, might be doing more work than geography in linking the phenotypic, genealogical and cultural features in virtue of which people have been categorized as Jews under the de jure Racial Contract. Caution is therefore required with the outline status functions I have proposed for race: the models generalize to cover some other cases, but not all cases.

Having given the status function outlines for both race and gender, I can now explain the 'ceteris paribus' clause that is present in both the status function for 'man' and the status function for 'White'. The idea is that meeting the criteria for one of these status functions confers on one the status of full person, provided that one is not constructed as a subperson for another reason. For example, a Black man, on this view, does not end up functioning as a full person, because the fact that he counts as Black means that the 'ceteris paribus' clause in the status function for 'man' is not fulfilled. This is to say that although the person in question has the status 'man', he does not end up functioning as a 'full person'; this is blocked by the subperson status assigned to him as a Black person. The interaction between status functions is complex, and I discuss intersectionality in detail in Chapter 3 (section 4.2). For now, what matters is the idea that the status of 'full person' is always conferred provisionally, and can be blocked by membership in other categories.

In short, during the de jure phase of the Racial and Sexual Contracts we can quite easily locate status function declarations allocating an inferior schedule of deontic powers, amounting to subperson status, to women and to people of colour. Although the precise status functions that have defined racial and gender categories have varied in different times and places, the notion of subpersonhood can be used to give states function outlines for these categories.

3.2. Collective Recognition

According to Searle, the maintenance of institutional reality after an initial status function declaration depends on continued collective intentional recognition. As noted in Chapter 1, mere recognition – i.e. simply taking something to be part of the world – is sufficient: approval or endorsement is not needed. What is crucial, though, is a deontological dimension. A necessary part of recognizing banknotes as money, according to Searle, is considering oneself to be under an obligation to accept them in return for goods and services. A person who recognizes a status function has a desire-independent reason for acting in accordance with the deontology prescribed by that status function (2010, 141). This is extremely important: it is because collective recognition has this deontological dimension that the deontological reality created by the original status function declaration can be carried forward.

If we apply this view to gender, any explicit belief that women and men are different in ways that rationalize their having different entitlements and duties counts as a form of gender status function recognition. These beliefs do not need to explicitly position men as superior and women as inferior. The important point is that the beliefs operate to justify different entitlements and duties that function to the detriment of women. For example, the belief that women are such pure and virtuous creatures that they ought not to sully themselves with the dirty business of politics, and therefore should not be able to vote or hold political office, is a form of gender status function recognition. The same applies mutatis mutandis for race. As previously discussed, status function recognition includes beliefs of this kind that are underpinned by mistaken assumptions about natural, biological, spiritual or otherwise non-social supposed gender or racial difference. Beliefs of these kind are certainly prevalent in the history of Western society. Moreover, those who hold these beliefs have been able to enforce them through violent coercion. Police assaults on protesters, such as assaults on suffragettes in the UK and on Black civil rights protestors in the US, are one example of this. The ability to enforce status functions through violent coercion has given the supporters of racist and sexist status functions more sway over institutional reality than those who oppose them. This should not come as a surprise; as MacKinnon puts it: 'Yes, society is largely

made of people's consciousness of social relations. That doesn't mean that everyone's consciousness constitutes social reality equally' (2006a, 60).

Although racist and sexist beliefs are by no means unique to White people or to men, they obviously have not been universally shared. There have always been thinkers – usually, though by no means exclusively, thinkers who are themselves women and/or people of colour – who have rejected and criticized racist and/or sexist beliefs. What implications does this fact have for the claim that racist and sexist status functions were, in the past, subject to collective recognition? A person who engages in non-compliance with racist and sexist institutional rules as a deliberate act of protest obviously does not participate in recognizing them. Even in severely oppressive and violent situations where racist and sexist institutional rules are enforced with lethal violence, people can and do choose to prioritize defiance over survival. Such people have tended to be in the minority, however, except at moments of profound social change.

A more common case is that of someone who acts in accordance with an institution even though she believes it to be illegitimate. According to Searle, a person who goes along with an institution she takes to be unjust because she feels powerless to oppose it is participating in recognition of that institution (2010, 107-108). Here, however, I think that Searle is running together two different kinds of stance. By Searle's own lights, status function recognition creates desire-independent reasons for action. So the case he has in mind must be one where a person takes an institution to impose genuine obligations on her, even though she thinks these obligations are unfair. For example, consider a person who thinks that the institution of private property is unjust, but who still considers herself to have a desire-independent reason not to steal, and so refrains from shoplifting. Call this kind of case 'resigned recognition'. Resigned recognition is different from cases where the person goes along with a status function but does *not* gain a desire-independent reason for action – cases that I'll call 'tactical compliance'. Someone who tactically complies with a status function follows the deontology prescribed by that status function only in order to avoid undesirable consequences.[16] For

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[16] One way of thinking of the contrast between resigned recognition and tactical compliance would be in terms of a contrast between seeing the institution in question as authoritative versus seeing it merely as powerful.

example, consider a person who thinks that the institution of private property is unjust and who furthermore doesn't think that taking things from stores violates any rights or is in any way immoral, but who nevertheless refrains from shoplifting purely because she does not want to risk going to prison. Unlike the first non-shoplifter, this second non-shoplifter does not have a desire-independent reason not to steal. To return to the cases of race and gender, imagine first a woman in a context where women are not permitted to study medicine, who thinks it is very unfair that she cannot study medicine, but who nevertheless recognizes that studying medicine is not something women may do. She does not consider, say, disguising herself as a man and sneaking into medical lectures, or persuading a doctor to teach her privately; she takes herself to be under an obligation not to do this (perhaps she would say, if asked, that it would not be 'ladylike'). This is a case of resigned recognition. On the other hand, consider a person of colour in a context of segregation who does not use Whites-only facilities because, although she considers herself to have every right to use them, she does not want to face the risk of violence and arrest that is likely to follow. This is a case of tactical compliance.

We ought therefore to distinguish more carefully than Searle does between cases in which someone recognizes an institution even though they consider it unjust, and cases in which someone tactically complies with the rules of an institution. In the first case, the person has a desire-independent reason to comply with the rules of the institution, and in the second case they do not.[17] The first person, but not the second, participates in status function recognition. Even though the threat of violent coercion may be crucial to both resigned recognition and tactical compliance, these two stances towards a status function have different implications for institutional reality.

Based on this analysis, women who had a stance of resigned recognition towards gender status functions did participate in collective recognition. Similarly, people of colour who had a stance of resigned recognition towards racial status functions did participate in collective recognition. Those whose stance was one of tactical compliance, however, did not. I will make no attempt to speculate about the relative frequency with which each of these attitudes could be found during the de

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[17] This is an inverted version of Searle's example of a thief who recognizes that by stealing from you he is violating your rights (2010, 9).

jure phase of the Racial and Sexual Contracts. This is because it is not necessary to do so in order to show that the relevant status functions enjoyed collective recognition. For that, explicit racist and sexist beliefs backed by force are more than sufficient.

To sum up, the forms of status function recognition for racist and sexist status functions that I have identified are (a) explicit beliefs in the superiority of men over women and White people over people of colour, and (b) reluctant recognition of institutional rules as creating desire-independent reasons for action. Reluctant recognition is distinguished from tactical compliance, and those who engage in tactical compliance do not participate in collective recognition. These forms of status function recognition, together with violent coercion, were sufficient to maintain institutional reality in the de jure phase of the Racial and Sexual Contracts.

4. De Facto Subordination and Institutional Reality

We have seen that the de jure phase of the Racial and Sexual Contracts can be captured by Searle's account of institutional reality. The shift from the de jure to the de facto phase of these contracts is marked by removal of official practices of racial and sexual oppression, primarily revoking unjust laws or providing laws against discrimination. Now, Searle's account could accommodate this shift provided that there were still overt beliefs in racial and gender hierarchy, which would constitute continued status function recognition. These beliefs, however, are significantly diminishing, and in some social contexts are actually quite rare. Applying Searle's account as it stands would therefore entail that race and gender have been institutional kinds in the past, but are in the process of ceasing to be or have already ceased to be institutional kinds due to decline in explicit beliefs in (natural/biological) racial and gender hierarchy. I find this position unsatisfying because it undercuts one of the most crucial insights of Mills' account of the Racial Contract: the basic contours and dynamics of White dominance remain more or less constant across the shift from de jure to de facto racial subordination. I think this is equally true for gender. For this reason, I want to explore the possibility of

theorizing the de facto phase of the Racial and Sexual Contracts in terms of institutionalist realism.

With this in mind, in this section I propose a modified version of Searle's account of institutional reality, one that would open up space for the claim that race and gender are currently institutional kinds. I will advocate making four modifications to Searle's account as stated so far. The first two involve aspects of social behaviour that are important to how race and gender work, but that are overlooked in Searle's account. The third involves social phenomena that are not produced through collective recognition, but arise as by-products of other social phenomena. The final modification concerns the way that the notion of deontic power is understood. All four modifications have already been proposed by others responding to Searle, and the most substantial modification, the third, has been adopted by Searle in his more recent work.

4.1. Telic normativity

In her book *Power and Social Ontology* (2007), Åsa Andersson argues that there is a form of normativity that is not captured in Searle's account of deontic powers. This form of normativity concerns social ideals. As Andersson puts it:

> Consider the following statement from the Dr Phil TV-show...; "a good woman knows how to run a household". I take "good" in this sentence to refer to a special kind of normativity, telic normativity. Being a woman, man, or from a certain class seems to a large extent to be about certain kinds of ideals, i.e. ideal standards that we and others measure us against. (Andersson 2007, 97)

The ideal standards Andersson has in mind are normative, not only in the sense of being laden with ideas of value and attitudes of approval and disapproval, but in the sense of providing reasons for action. When there are ideal standards associated with womanhood, they exert pressure on behaviour and can be invoked as an explanation for certain modes of action. If someone asks a woman why she is doing something, she might reply, 'because that is what a good woman does', and this would be an intelligible answer. Andersson calls this form of normativity 'telic normativity' because it is associated with a goal or telos.

She argues that telic normativity makes an important contribution to defining social roles:

> Many *functions* are defined in terms of goals or purposes, rather than in terms of rights and obligations. We impose a purpose or telos on knives [i.e. cutting things], which makes it meaningful to speak of good or bad knives. Likewise, with the social role of being a woman: The role is not only constituted by constitutive rules which specifies rights and obligations, but also by ideals: what counts as having fulfilled this purpose and what counts as having succeeded as a woman is measured against an ideal. (2007, 97)

Andersson argues, and I agree, that telic normativity cannot be explained in terms of deontic powers, and requires attention as a distinct phenomenon. Being ineligible to vote because one is a woman is a matter of lacking a deontic power; feeling that one ought not to ride a bicycle because to do so would not be ladylike, on the other hand, is not a matter of lacking a deontic power, but rather a case of being subject to the force of a telic norm. Trying to spell the bicycle case out in terms of obligations or duties seems contrived. Or to take a more unpleasant case, a woman who is unable to bring rape charges against her husband because the law does not recognize marital rape lacks a deontic power; a woman who feels under pressure to have sex with her husband even when she doesn't want to because she believes that 'a good wife takes care of her husband's sexual needs' is subject to the force of a telic norm.

The idea of telic normativity is introduced by Andersson in the context of an account of social power. I propose to interpret it as a supplement to Searle's account, the idea being that although institutional entities are characterized by deontic normativity, telic normativity is another form of social power, one that emerges from social practices. Although one might try to argue that telic normativity can also feature in status functions, Andersson does not make this claim, and I will not pursue it here. I take it, therefore, that for institutional entities to exist, there must be deontic powers attached to the role in question. However, note that institutional entities can be subject to telic norms qua institutional entities. For example, a company director has many deontic powers, and these deontic powers are constitutive of her role as company director. Some of them place her under obligations, where failure to meet these obligations – for example, failure to report to the board in accordance with a certain procedure – might result

in dismissal. But there may also be a telic norm that the company director ought to send each employee a Christmas card. If the director fails to do this she will be judged negatively, but she will not lose her job.

Interestingly, deontic powers and telic powers that are centred on the same role can come into conflict. For example, imagine a doctor working as a general practitioner in an under-resourced health service where there are also many very strict targets about waiting times. The doctor has an obligation to try as hard as she can to meet the targets, and this seems to be a deontic matter, an obligation that defines her institutional role as a GP. Yet there is also a telic norm that a GP will respond to patients with compassion and sensitivity and will try and discern any underlying factors that the patient might not be articulating directly, such as depression. Here, it seems that the doctor's official obligations conflict with living up to the ideals associated with her role, since the time it would take to respond to her patients in the way she would wish would result in her getting very behind on her waiting time targets. In other words, deontic power and telic power are pulling her in opposite directions.

Telic normativity plays a significant role in social conceptions of race and of gender. Ideas about what is suitable or appropriate behaviour for White people, for Black people, for Asian people, and so on, and ideas about what is suitable behaviour for men and for women, abound. Moreover, they can exert a significant influence on people's actions and modes of living. In some cases, systematic clashes of telic norms play a role in creating structural difficulties. For example, a telic norm attached to being a company director seems to be the following: 'a good company director lets people know who is the boss'. Yet a telic norm attached to women seems to require them to take care of the feelings of others: 'a good woman makes people around her feel comfortable'. These telic norms conflict, placing women company directors in a situation where they cannot satisfy all the telic norms that apply to them. This case highlights that if we fail to attend to telic normativity, we will be missing out on a substantial aspect of race and gender as they are currently lived. We should therefore acknowledge them as part of the broader social reality of gender and race.

4.2. Socialized practices

Hubert Dreyfus (1999) argues that Searle's social ontology misses out on an important aspect of social reality that he terms 'social norms'. By 'social norms', Dreyfus means socially acquired patterns of behaviour that are not available to introspection, but which are part of the way we navigate the social world: things like the distance we position ourselves from other people, the volume at which we speak, and so on. Behaving in these ways is not typically something people do deliberately, but deviations from them tend to strike most people as strange and uncomfortable. These behaviours 'are learned by members of a group being socialized into a sense of what is collectively considered appropriate and inappropriate' (Dreyfus 1999, 15). Dreyfus correctly observes that these patterns of behaviour are differentiated by gender; the ways of standing and speaking that most women learn are different from those learned by most men, and women behaving in male-typical ways tend to strike people as odd or to provoke reactions of discomfort, as do men behaving in female-typical ways. We can add that the same applies for race in at least some contexts.

Although Dreyfus terms these patterns of behaviour 'norms', they are somewhat different from the telic norms Andersson identifies. To avoid confusion, I will instead term them 'socialized practices'. One important difference between telic norms and socialized practices concerns intentional recognition. Andersson's account of telic norms makes clear that they depend on collective intentional recognition in the same sense that is required for institutional facts. Socialized practices, on the other hand, are not produced through collective intentional recognition of status functions such as 'Distance D counts as the appropriate distance between two strangers who are different genders and who are standing talking together in a public place'. Rather, Dreyfus tells us, 'For those raised in a culture, a prelinguistic sense of tension can create a sense of the appropriateness and inappropriateness of a social activity without the mediation of linguistic representation' (16). Social norms concern this 'gestalt tension', and do not require any explicit recognition: 'All that is needed to *produce* a social norm is… [that] the tensions and tension-resolutions that people socialized into a culture feel in specific social situations must be coordinated' (16).

The coordination necessary for the existence of socialized practices is maintained through the interactions that take place between adults and children:

> A child learns such a social norm [as appropriate standing distance] from her parents without the parents even sensing that they are inducting her into the practice. Simply, if the child stands too close or too far away, the parent feels a tension and corrects the impropriety by moving closer or backing away. The child then ends up feeling comfortable in each specific situation only when standing at the culturally appropriate distance. (Dreyfus 1999, 16)

Dreyfus argues, and I agree, that socialized practices cannot be made to fit Searle's model of institutional facts: they do not involve collective intentional recognition of a status function. This is not to say that they are totally absent from the theoretical picture Searle paints, however. On Searle's account, socialized practices would be part of what he terms 'the Background'. The Background is a collection of dispositions and stances towards the world that supports intentional activity. The Background is non-intentional, but consists of 'a set of presuppositions for the application of intentionality' (Searle 2010, 31). More precisely, the Background is made up of 'abilities, tendencies, and *causal structures generally*' (Searle 1996, 129, italics in the original) that play a causal role in the functioning of intentional mental states. Thus, the Background performs, among others, the following functions: enabling perceptual interpretation, structuring sequences of events into narrative trajectories, inclining people towards certain kinds of actions, and facilitating certain kinds of readiness. Since the Background is non-intentional, it does not contain any representations of the constitutive rules of institutions. However, the Background can be formed in such a way that it is responsive to these rules. This is to say that the Background can enable perceptual interpretation, incline people towards certain kinds of action, and so on, in ways that are conducive to compliance with institutional rules. As Searle puts it, 'one can develop, one can evolve, a set of abilities that are sensitive to specific structures of intentionality without actually being constituted by that intentionality' (1996, 142). The notion of evolution is crucial to Searle's description: the Background mechanism that ensures the person follows the rules of the institution is causally sensitive to those rules in the sense of having evolved in adaptation to those rules over time. Thus, the person acts the way they act because the rules are as they are, but the person is not following the rules, either consciously or unconsciously.

As an example, consider driving a car. When someone learns to drive, they first become familiar with institutional rules, such as 'always indicate before making a turn', at an intentional level. Later, the person will stop thinking 'now I ought to signal that I'm going to make a turn'; they will just reach for the indicator lever out of habit, without taking any conscious decisions. They have developed causal structures that operate beneath the level of intentionality to facilitate rule-compliant behaviour. A similar thing can happen on a society wide-level (1996, 126). For example, suppose that a society has a telic norm stating that a virtuous woman will lower her gaze when talking to a man. At one time, this ideal of female modesty might be explicitly accepted, such that people would be willing to reprimand a woman who looked a male interlocutor in the face. As a result of this telic norm, socialized practices develop, so that girl children develop non-intentional causal structures that facilitate socially appropriate behaviour. Suppose that the explicit belief that it is immodest for a woman to look male interlocutors in the face is forgotten. No-one need explicitly direct girls to lower their gazes, but socialized practices may mean that the causal structures that lead them to do so persist even though the telic norms have withered away. According to Searle, a person in this situation 'doesn't need to know the rules of the institution and to follow them in order to conform to the rules; rather, he just is disposed to behave in a certain way, but he has acquired those unconscious dispositions and capacities in a way that is sensitive to the rule structure of the institution' (Searle 1996, 144). Following Searle, I will say that a Background is 'sensitive' to an institution when (1) it is structured so as to support compliance with the constitutive rules of that institution, and (2) there is a causal link between the existence of the institution and the Background's being structured in that way.

Dreyfus' account of socialized practices goes further than Searle's account of the Background by showing that there can be socially shared Background dispositions even without institutional rules being collectively recognized to begin with. Rather, they can develop through processes of socialization on the basis of tension-resolving behaviour. This is an important insight. Moreover, since socialized practices, such as gendered or racialized deportment, play a key role in the differentiation of social groups, they need to be explicitly acknowledged by any account of the ontology of human social kinds that seeks to be useful to feminist and antiracist projects. An understanding of socialized practices also implies that

Background changes will tend to lag behind explicit changes to institutional rules, meaning that it is not only possible but actually rather likely that Backgrounds will be sensitive to institutional rules that are no longer explicitly recognized. For all of these reasons, it is helpful to distinguish socialized practices from the rest of the Background. Searle's model as it stands does not provide the tools for us to do this. I therefore agree with Dreyfus that socialized practices deserve particular attention of a kind Searle does not pay them: socialized practices do not fit into the model of institutional facts, and nor is it theoretically helpful to lump them into the Background, since we risk losing sight of the important role that they can play in maintaining unjust social arrangements.

However, Dreyfus also makes a stronger claim that I want to resist, which is that socialized practices are in some sense prior to institutional facts. He writes:

> It is, after all, what feels appropriate for men and women to do that gets stabilized as a system of rough gender rules. And it is for the most part such "rules" that are subsequently codified as men's and women's rights and obligations. (1999, 18)

I think that this overlooks the power of explicit, collectively recognized justificatory narratives in getting gendered (and racialized) socialized practices going. Given the long history of traditional western beliefs about women's inferiority, it's not clear how we can say that gender-differentiated socialized practices somehow come first, and are 'subsequently' codified into more explicit status functions concerning gender. This claim strikes me as implausible to about the same degree as Searle's apparent belief that explicit institutional rules always "come first" and are then incorporated into Background dispositions. My preference, then, is to say nothing either way about the order in which socialized practices and institutional facts arise, but to note that they are frequently, perhaps typically, mutually supporting. The crucial point is that socialized practices are visible in our ontology as an element of the social world that is both (a) distinct from institutional facts and (b) important enough to be picked out from the Background.

4.3.++++=---- Opaque social facts

The third amendment to Searle's account as stated so far comes in response to an objection raised by Amie Thomasson. In Searle's original account, all social concepts are self-referential; as he puts it, 'Part of being a cocktail party is being

thought to be a cocktail party; part of being a war is being thought to be a war'
(Searle 1996, 34). This implies that the existence of social entities is transparent
in the sense that those whose collective recognition creates the entity must believe
it to exist. A type-token distinction is relevant here: all social kinds, or types of
social entity, must be self-referential, but individual token social entities need not
be (Searle 1996, 53). For example, in order for money to exist, people have to
believe that things that satisfy conditions P count as money (the type case). If this
is so, then even if no-one believes of a particular banknote that it is money – say
because it fell through the cracks of the floorboards immediately after it was
printed – it is still money if it satisfies conditions P (the token case) (Thomasson
2003, 274). Thomasson further distinguish between two varieties of opacity in
relation to social kinds. A social kind is epistemically opaque if it can exist even if
no-one believes that entities of that kind exist; and a social kind is conceptually
opaque if entities of that kind can exist even if no-one has any beliefs at all about
the relevant kind of entity (275). Thomasson argues that some social facts are both
epistemically and conceptually opaque. One example she gives of an opaque social
fact is the fact that the economy is in recession:

> [Recessions] certainly depend on collective intentionality (and thus
> qualify as social facts by Searle's criterion), for they depend on collective
> acceptance of certain monetary systems. But a given economic state can
> be a recession even if no one thinks it is, and even if no one regards
> *anything* as a recession or any conditions as sufficient for counting as a
> recession. The concept of a recession is recent – the first recorded use
> of the term was in a 1929 article in the *Economist* – but there could
> have been recessions long before then. Contrary to Searle's general
> claim, seeming to be a recession is not logically prior to being a
> recession. (2003, 276)

Importantly for our purposes, Thomasson also cites racism as an opaque social
phenomenon (2003, 276). She goes on to describe opaque social phenomena such
as recessions and racist social structures as 'by-products of our collective beliefs,
practices, and existing institutions' (278). Although an opaque social phenomenon
depends on some form of human collective recognition, it does not depend on
direct recognition of *that very phenomenon itself*. One reason why the existence of
opaque social phenomena is significant is that it explains how novel discoveries
are possible in the social sciences. If all social phenomena were transparent, it
would not be possible for social scientists to discover previously unidentified social

phenomena, since every social phenomenon that existed would already be the subject of collective recognition (276).

Responding to Thomasson, Andersson offers an account of how opaque social phenomena can be accommodated in Searle's ontology. This account has since been adopted by Searle (2010). According to Andersson, opaque social phenomena, such as recessions and racial or gendered social structures, can be reduced to transparent institutional facts using a micro-level/macro-level model. She describes this model as follows:

> I regard structure as a higher order feature or a macro-phenomenon constituted by micro-phenomena. For instance, the surface features of water, being colourless, liquid etc. are viewed as surface phenomena or macro-features. These macro-features are explained by the chemical composition of water, i.e. by the micro-level. (2007, 113)

The same relationship between macro-features and micro-features applies to social and institutional facts. Thus, according to Andersson, 'macro-phenomena [of the social variety] are complex aggregates of institutional facts and intentional states. For example, inflation is a certain complex aggregate of institutional facts and intentional states' (2007, 115). In this case, the institutional facts are facts about money, and the intentional states are each individual's decisions about what to do with their money. Andersson is a reductionist about macro-level (or opaque) social phenomena in the sense that she believes that claims about the macro-level are literally true, but are made true by facts at the micro-level. The macro-level has no added causal powers beyond those of the micro-level, and it does not have any special features that would call for a distinctive ontology.

Andersson's explanation of opaque social facts as macro-level social facts that are reducible to intentional states plus micro-level (transparent) institutional facts allows the phenomenon to be accommodated within Searle's social ontology without any fundamental changes. Searle adopts this solution in *Making the Social World,* describing opaque or macro-level social facts as 'fallouts' from transparent institutional facts (2010, 116-117). I agree with Andersson and Searle that the micro-macro model is a good one since it explains the phenomenon of opaque social facts in a way that is ontologically parsimonious and theoretically simple. I do, however, wish to add one further detail to the account. As stated above,

Andersson holds that opaque social facts are reducible to micro-level institutional facts, plus intentional states. I believe that we also need to include three further things at the micro level: facts about telic normativity, facts about socialized practices (in Dreyfus' sense), and brute physical facts. Let me explain why I think this by way of an example used by Andersson, that of a gender structure.

Andersson takes gender structures to be opaque social phenomena. A gender structure, in the sense Andersson has in mind, is a social situation in which women's opportunities are systematically restricted in disproportion to their relevant abilities (2007, 124). One example she gives of a gender structure in action is revealed by a piece of research showing that women applying for academic research grants in Sweden needed a research record 2.5 times better than the record needed by a male applicant in order to have the same chance of securing a grant. Now, I believe that there are at least some circumstances under which socialized practices and brute physical facts will be relevant to the existence of a gender structure. To see how this could be, first let us suppose that the grant application involves a face-to-face interview. And further let us suppose that applicants employ gender-typical bodily behaviour during these interviews, where male-typical behaviour comes across as more confident and authoritative than female-typical behaviour. Finally, let us suppose that the interviewers associate confidence and authority with being a good researcher, meaning that the candidates who seem authoritative and confident are more likely to be seen as the best candidates. Thus, male candidates do better than comparably qualified female candidates. Now, the gendered bodily behaviour is an example of a socialized practice, as discussed above, and the conception of good researchers as confident and authoritative is an example of telic normativity. So socialized practices and telic normativity can be part of the micro-level to which opaque social facts can be reduced: without these factors, there would not be a gender structure in the situation I have described. Moreover, consider that in order for bodily behaviour to impact on an interviewer's decisions, the interviewee has to be visible to the interviewer. If the country in question is a very large one in which travel is difficult, interviews might be conducted by telephone. Or if there was a curtain across the interview room, preventing the interviewer from seeing the interviewee, then

gendered bodily behaviour could not impact on an interviewer's decision.[18] This shows that brute physical facts can also form part of the micro-level. In the scenario I have described, the opaque social fact that women's research grant applications are less likely to be successful than those of similarly qualified men is reducible to (1) institutional facts, such as the fact that applicants must attend an interview in order to be considered for a grant, (2) facts about individual intentionality, such as an interviewer's individual beliefs, (3) facts about socialized practices, such as the gendered behaviour displayed at interviews, (4) facts about telic normativity, such as the conception of good researchers as confident and authoritative, and (5) brute physical facts, such as the geographical location or the arrangement of the interview room. The micro-macro explanation still applies, but our understanding of the micro-level ought to be somewhat broader than Andersson suggests: it ought to include socialized practices, telic normativity, and brute physical facts, in addition to micro-level/transparent institutional facts and individual intentionality.

4.4. Deontic powers as enforceable claims

The final modification that needs to be made to Searle's account of institutional reality in order to render it suitable for feminist and anti-racist social criticism concerns deontic powers. Searle describes deontic powers as conventional powers that 'regulate relations between people'; he goes on to list as examples of deontic powers 'rights, responsibilities, obligations, duties, privileges, entitlements, penalties, authorizations, permissions, and other such deontic phenomena' (1996, 100). Yet he does not go into a great amount of detail about what it takes for someone to have a certain deontic power. According to Andersson, however, deontic powers should be understood as substantive entitlements rather than merely formal ones. The distinction between substantive and formal entitlements is fairly intuitive:

> A person can have rights such as the right to adequate housing without knowing how to use it, since she does not know how to work the bureaucracy to get an apartment. This would be an example of a formal right. This person can also have the substantial right in the sense of

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knowing how to work the bureaucracy to get an apartment. (Andersson 2007, 14)

Andersson favours a substantive understanding of deontic powers because she holds that power should be understood as a capacity. On this understanding of power, a formal entitlement is not a power as such but rather a resource for power – something that someone can use in order to help them exercise a capacity. To actually have a power, one must have the capacity to do the relevant thing. Thus, in order for an entitlement to also constitute a power, it must be a substantive one.

This idea of deontic powers as substantive bears some similarity to Susan James' work on rights (2003). James argues that rights should be understood as enforceable claims. To have a right to X is to have a claim to X that one is in practice able to enforce. To use James' example, if I have a legal entitlement to healthcare but the medical staff at my local hospital will not treat me due to social prejudice, and if there is no complaints procedure that I can use to force the hospital to provide treatment to me, then I do not have a right to healthcare because my claim to be treated is not enforceable. Now, I do not wish here to defend James' claim that *rights as such* are enforceable claims. Rather, I want to suggest that deontic powers should be understood as enforceable claims: I have a deontic power to do X if and only if I have an enforceable claim to do X. This means that James' discussion of enforceable claims can be used to illuminate deontic powers.

James notes that the ease with which someone must be able to enforce a claim in order for it to count as 'enforceable' for them depends on the nature of the claim:

> If, for instance, it were to become extremely difficult to exercise the right to walk the streets of central London during the middle of the day, and all attempts to get the right enforced met with failure, we might regretfully conclude that, since there was no longer an effective mechanism for enforcing it, the right had ceased to exist… In this part of the world, a right to walk the streets during the day is a right to do so easily. There are other cases, however, where we accept that claiming a right involves a great expenditure of effort, and where we do not regard this obstacle as enough to obliterate the right. We may even believe that some rights *should* be difficult to claim, and thus believe that they are effectively enforceable even when they involve complex procedures that are not ordinarily accessible. (2003, 138)

As an example of a claim that we might consider to be enforceable even if enforcing it involves significant effort, consider copyright, the right to control use and

reproduction of one's artistic endeavours. If anyone could claim copyright over anything, with no checks, this would be bad, because people could claim copyright over things they did not produce and thereby unfairly restrict cultural exchange. For this reason, the process of claiming copyright has to include providing evidence that one did indeed produce it. However, if claiming copyright is so expensive or challenging that the average person could never manage to do it, then this would also be a problem. When it comes to copyright, then, an enforceable claim is a claim the enforcement of which may require some effort, but not excessive cost or great expertise. In this sense, the level of effort that can be required for enforcement before a claim counts as unenforceable depends on the nature of the claim and on the context.

Understanding deontic powers as substantive alters Searle's account of institutional reality. Deontic powers, understood substantively, are indeed produced through collective recognition. However, they never depend *just* on collective recognition, because in order for deontic powers to be created, the relevant claims need to be enforceable. Enforceability, in turn, depends on various factors including material conditions and socialized practices, as well as collective recognition. For instance, suppose everyone collectively recognizes that all adult citizens have the right to vote, but voting takes place in a way that is inaccessible to people with disabilities (voting booths are up flights of stairs with no lift, or there is no Braille version of voting materials available). Further suppose that there is no official mechanism available for challenging this inaccessibility, and non-disabled people are unresponsive to calls to rectify it. In this case, disabled citizens lack the deontic power to vote. Having the deontic power relies on collective recognition plus the conditions required for enforceability, such as material conditions. Collective recognition can obviously play a role in providing a reason for people to secure the relevant material conditions; but until this happens, collective recognition alone does not create a deontic power. In order for disabled people to have the deontic power of being entitled to vote, it is not enough that the law says that all adult citizens may vote, nor even that everyone in society agrees that all adult citizens may vote. Physical access to the means of voting, or (failing that) effective mechanisms for enforcing the provision of such access, is also required.

The switch to a substantive conception of deontic powers rather than a formal one is the most significant modification to Searle's account of institutional reality among the four I have proposed. My motivation for making this change is that I am interested in an account of institutional reality that is useful for capturing the realities of oppression, whether racial, gendered, or of another variety. What matters primarily to oppressed people is what they can in fact do, not what they are in theory entitled to do. Many of the most important claims of racial and gender justice have concerned substantive deontic powers in situations where formal deontic powers were already in place. For example, the voting rights campaign of the American Civil Rights Movement concerned the effective inability of Black people in the South to vote, even though they were legally enfranchised, due to racist restrictions placed on voter registration. The formal right was there, but the substantive right was missing. A merely formal conception of deontic powers renders Searle's theory of the social world largely irrelevant to the concerns of theorists interested in the unequal power relationships, such as race and gender, which dominate our social reality at present.

I also believe this move to a substantive conception of deontic powers is in keeping with the spirit of Searle's account. Searle urges us to:

> [C]onstantly remind ourselves that the whole point of the creation of institutional reality is not to invest objects or people with some special status valuable in itself but to create and regulate power relationships between people. Human social reality is not just about people and objects, it is about people's activities and about the power relationships that not only govern but constitute those activities. (2010, 106)

My claim is that only a substantive conception of deontic power can do justice to the role of power in governing and constituting people's activities. Although Searle's account of deontic powers as formal entitlements is internally coherent, it nevertheless results in a theory of institutional reality that is unsatisfying by Searle's own lights.

5. Qualitatively Opaque Institutional Kinds

Having made the four modifications to Searle's account listed above, I am now in a position to articulate the revised understanding of institutional reality that will

allow for race and gender to be understood as institutional kinds that are hierarchically defined, even in the de facto phase of the Racial and Sexual Contracts. My claim will be that institutional kinds can be what I will term 'qualitatively opaque': even though people must be aware of the *existence* of the kind in order for it to exist, they need not be aware of its *nature*. I will begin by explaining how deontic powers can be different to what they are believed to be, and then go on to show how this makes possible the existence of qualitatively opaque institutional kinds.

5.1. Opaque Deontic Powers

Although deontic powers are present in Searle's account of institutional reality from the beginning, they are accorded greater centrality in more recent statements of his view (Searle 2010). Initially, Searle states that institutional facts are those facts created by means of a status function – a particular type of function that can only be fulfilled in virtue of collective recognition. Later, he adds that institutional facts are those that carry implications for deontic powers, since status functions by definition imply deontic powers. Based on this, Searle holds that opaque social kinds are never institutional kinds because they are do not have implications for deontic powers (1996, 22-24). All opaque or macro-level phenomena such as recessions are social phenomena, not institutional phenomena, according to Searle. They can only become institutional phenomena if they are discovered and become the subject of collective recognition with implications for deontic powers, bringing them down to the micro-level. For example, if a government policy about what must be done in a recession is enacted, recessions become micro-level transparent institutional phenomena, even if they were macro-level opaque social phenomena when they were first discovered. This position follows from the claim that institutional facts are all and only those defined by status functions, where status functions necessarily concern deontic powers – *provided that deontic powers are understood as merely formal*. If, however, we adopt a substantive understanding of deontic powers, then macro-level phenomena *can* have implications for deontic powers – or so I will be arguing.

To begin with, note that both Thomasson and Andersson agree that some social powers depend on the macro-level.

In a footnote, Thomasson comments:

> Although Searle spends a great deal of time discussing the place of power in social reality, here again he discusses only those powers with which a person becomes endowed in virtue of collective intentional acts accepting that the person has the relevant power (to drive legally, to rule the country...) (1995, 104). But not all forms of social power are created through explicitly endowing someone or something with power; powers, too, may arise as unnoticed by-products of existing social institutions. (2003, 276, footnote 8)

Andersson develops this point in more detail in her work on social power. She argues that the powers produced at the macro-level are not deontic powers, but rather what she terms 'causal social powers' (2007, 150). A social power, for Andersson, is any power that depends on collective intentionality. Social power is then subdivided into normative power, which operates through the perception of normative reasons, and causal power, which does not. Deontic power, along with telic power, is a form of normative power, and as such is necessarily transparent or visible, meaning that all opaque social power is causal social power as opposed to deontic power (Andersson 2007, 149-152).

Andersson's claim that facts about deontic power are always transparent stands in tension with the claim that deontic powers should be understood as substantive. This is because opaque facts can have implications for the enforceability of claims that are formally granted at the transparent level. A case will help us here. Suppose that wives have the legal right to refuse their husband sex (i.e. non-consensual sex between a husband and wife counts as rape in law) but that in practice there are so many serious barriers to prosecuting rape cases involving husbands and wives (low reporting rates, poor police investigation, few prosecutions, sceptical juries) that there has never been a single conviction, despite marital rape occurring frequently. In this situation, the claim of wives not to be forced into sex with their husbands is not one that is enforceable. If deontic powers are understood as substantive, then it follows that wives do not, after all, have a deontic power to refuse their husband sex. Note that if we focus solely on the micro-level, it looks as though wives *do* have such a power, because the law formally grants it to them. Yet due to the complex interaction of telic norms, socialized practices, institutional set-ups, and individual intentionality, wives in fact lack the deontic power to refuse their husbands sex, the law notwithstanding. In other words, the existence of the

deontic power is determined at the macro-level, since this is where the enforceability of claims that seem to be granted on the micro-level is determined. It can be the case that people believe, accept, and recognize that wives have the right to refuse their husbands sex; and yet for all that, wives do not in fact have that right, or deontic power. Thus, there are at least some facts about deontic powers that are opaque.

In the case just described, the opaque factors block a formal right from counting as a genuine deontic power. But what about the possibility that deontic powers can come into existence at the opaque level? In other words, should we say that opaque facts about deontic powers are always negative ones, where macro-level phenomena are blocking deontic powers that seemed to have been created at the micro-level, or can new deontic powers be created at the macro-level? I think that considerations of the reciprocity involved in deontic powers favour the latter. If wives *lack* the (deontic) power to refuse their husbands sex, then it would seem that, correspondingly, husbands *have* a deontic power to have sex with their wives regardless of consent. Deontic power can thus be not only blocked, but also created at the macro-level.

It is therefore necessary either to give up the idea that deontic powers should be understood as substantive, or to give up the idea that deontic power is always transparent. Given the importance of using a substantive notion of deontic power for capturing oppressive social realities, as argued above in 4.4, returning to a merely formal understanding of deontic powers is not a viable option. For this reason, I think that we should accept that deontic powers are therefore not necessarily transparent, but can sometimes be opaque.

At first blush, this may seem like an odd position to reach. If deontic powers do not necessarily operate through the perception of normative reasons for action, what exactly is supposed to be distinctive about them? Here is Searle:

> Deontic powers have a unique trait, again, I think, uncommon and perhaps unknown in the animal kingdom: *once recognized*, they provide us with reasons for acting that are independent of our inclinations and desires. If I recognize an object as "your property," for example, then I recognize that I am under an obligation not to take it or use it without your permission. Even if I am a thief, I recognize that I

am violating your *rights* when I appropriate your property. (2010, 9, first italics mine, second in the original)

Note the clause 'once recognized'. According to Searle, an agent who recognizes a deontic power gains a desire-independent reason for action, even if they do not in the end act on that reason (2010, 129-130). However, this allows for the possibility that a deontic power can exist without being recognized. Unrecognized or opaque deontic power does not create desire-independent reasons for action. Nevertheless, I maintain that these powers are still deontic powers because they are still about rights, responsibilities, prerogatives, obligations and so on, all of which are created through collective intentionality in conjunction with other factors (namely telic normativity, socialized practices, individual intentionality, and brute physical facts). Adopting this position allows us to retain both the idea that deontic powers are substantive and the idea that deontic powers create desire-independent reasons for action for agents who recognize them.

5.2. Status Functions

Let us now see what implications the existence of opaque deontic powers has for institutional reality. Searle equates institutional facts with status functions. As we saw above, status functions can be created through status function declarations. Searle allows that there are cases in which institutional facts obtain but no explicit status function declaration takes place. In such cases, however, the creation of an institutional fact requires a representation of some sort that does the same job as a status function declaration. Discussing the case in which a line of stones is constructed as the boundary of a territory, Searle states:

> There need not be any specific moment at which there is a speech act of Declaring, but there must be some speech act or set of speech acts and other sorts of representations that constitute representing the line of stones as a boundary in a way that makes it into a boundary. (2010, 96)

The relevant 'way of representing' the line of stones is to represent it as having implications for the deontic powers of individuals. To represent a line of stones as a boundary is to represent it as *a point in space that we may not ordinarily cross.* This representation works like a status function declaration because it creates deontic powers, and, in doing so, creates an institutional entity, the boundary.

How does the recognition that there can be opaque forms of deontic power affect this picture of status functions? The first thing to note is that, on my view, institutional entities can have deontic powers that are different from the deontic powers they are represented as having. For example, husbands need not be represented as having the deontic power to have sex with their wives without their consent in order for husbands to in fact have that deontic power. The second point that we need to recognize is that Searle takes status functions to be defined in terms of the deontic powers they create. He describes the form of collective intentionality involved in imposing a status function as follows: 'We make it the case by Declaration that the object X has the status Y and thus is able to perform the function F in C'; he then goes on: 'Where, remember, the function itself will be spelled out as a set of deontic powers' (2010, 99). When there are opaque deontic powers in the picture, then, these will be part of the status function, once fully spelled out. Thus, a consequence of my claim that there can be opaque deontic powers is that we do not always know what we are doing when we impose status functions. We can represent a certain object, X, as having certain implications for deontic powers (or, if X is a person, as themselves having certain deontic powers) but the deontic powers that are created or modified as a result of this representation may not match the content of the representation. For example, we may represent wives as gaining the deontic power to inherit their husband's estate if he dies and to act as his next of kin in medical contexts. However, it may be the case that – due to the interaction of other institutional facts, facts about individual intentionality, about telic normativity, about socialized practices, and brute physical facts – wives also lose the deontic power to refuse their husbands sex. My claim, then, is that the spelling out of status functions in terms of deontic powers that Searle describes may require making reference to opaque deontic powers. In cases where this is so, the nature of an institutional category will be opaque, although its existence will be transparent. For example, people will know that wives exist, but they will not know all of the deontic powers that are involved in becoming a wife.

This position retains the equation between institutional facts and status functions to which Searle is committed. The class of existing institutional facts can still be equated with the class of status functions. This is because, on my view, the existence of a status function requires representation of entity X as having status

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Y, but the deontic powers that define Y do not need to be transparent to those participating in the imposition of the status function. In terms of race and gender, what this means is that individuals still need to be represented as raced and as gendered in order for race and gender to exist. Bodies need to be represented as White, Black, male, female, with bodily features assuming social significance via representation, in order for there to be institutional human kinds that are races and genders. But that representation need not overtly convey the deontic powers different institutional kinds have: the deontic powers created can exceed our understanding of them. To describe this situation, we can say that although all institutional kinds are *existentially transparent*, some are *qualitatively opaque*.

To sum up my view, although the creation of an institutional kind requires that the entities that comprise that kind be represented as having a certain distinctive status, the deontic powers that define that status need not be explicitly contained within the representation. Opaque deontic powers cannot create a new kind of institutional entity, but they can enter into the status function that defines a kind of institutional entity. Institutional entities can be partly defined by deontic powers that are not apparent to those who participate in constructing them, making them qualitatively opaque.

6. Conclusion

My aim in this chapter has been to investigate race and gender as institutional kinds by combining the account of institutionalist realism set out in Chapter 1 and the accounts of the Racial and Sexual Contracts developed by Mills, Pateman and others. According to these accounts, races and genders are positions within hierarchical social systems in which people of colour and women are subordinated. Following Mills, I have distinguished between a de jure phase of the Racial and Sexual Contracts, in which explicit laws and policies mandate oppression, and a de facto phase, in which oppression takes place through more covert mechanisms.

I have argued that the account of institutionalist realism given in the previous chapter, which is based on Searle's account of institutional reality, can be successfully applied to the de jure phase of the Racial and Sexual Contracts.

Explicit laws and policies, together with naturalizing beliefs about racial and gender difference, constitute status function declarations that assign subperson status to people of colour and to women, thereby creating institutional kinds that are hierarchical in nature. In the de facto phase, however, these factors are absent or much reduced. I have argued that in order to apply institutionalist realism to the de facto phase of the Racial and Sexual Contracts, it is necessary to revise the account of institutional reality. First, we need to recognize the existence of opaque social kinds, which are macro phenomena that are reducible to a micro-level consisting of institutional facts, telic normativity, socialized practices, individual intentionality, and brute physical facts. Second, we need to adopt a substantive understanding of deontic powers, on which a deontic power is an enforceable claims. These revisions allow for the existence of opaque deontic powers, which in turn allows for the existence of qualitatively opaque institutional kinds. If an institutional kind is qualitatively opaque, those who participate in status function recognition do not know about all of the deontic powers that defined that institutional kind, although they do know that the kind exists.

This revised version of institutionalist realism allows for there to be institutional kinds that are in fact hierarchical even if there are no explicitly oppressive policies in place, and even if there are no naturalizing beliefs about the relative superiority and inferiority of different groups: these institutional kinds may be qualitatively opaque. It thus paves the way for giving an institutionalist realist account of the current reality of race and gender that reveals racial and gender categories to be hierarchically defined institutional kinds.

3

Contemporary Realities of Race and Gender

1. Introduction

In the previous chapter, I identified two forms that status function recognition took in the de jure phase of the Racial and Sexual Contracts: discriminatory laws, and explicit beliefs in biologically-based gender and racial hierarchy. Both of these factors have changed significantly over the last century or so. Discriminatory laws have largely been abolished, and there has been a significant reduction in racist and sexist explicit beliefs. As I established in the previous chapter, however, it does not follow that race and gender no longer exist as hierarchical institutional kinds, for some institutional kinds are what I have termed 'qualitatively opaque'. A qualitatively opaque institutional kind is one in which the status function is defined by deontic powers that are not apparent to those who participate in collective recognition of the kind in question. Such deontic powers, which I describe as 'opaque deontic powers',[19] depend on socialized practices, telic normativity, and brute physical facts, besides explicit individual and collective intentionality. Whilst institutional kinds can be qualitatively opaque, they must be existentially transparent, meaning that the existence of the kind is apparent to those who participate in the collective recognition.

In the first half of this chapter, I will argue that race and gender categories are qualitatively opaque institutional kinds: despite the progress that has been made in combatting racism and sexism, races and genders are still hierarchical in nature. On this analysis, the shift from the de jure to the de facto Racial and Sexual Contracts is a transition from transparent to opaque institutional kinds. In the

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[19] Strictly speaking, it is facts about the powers that are opaque rather than the powers themselves: if the fact that X has (or lacks) deontic power P is an opaque social fact (in the sense discussed in Chapter 2, section 4.3), then I shall say that P is an opaque deontic power.

second half of this chapter, I will set out some desiderata for an account of race and gender, and argue that the institutionalist realist account of race and gender at which I have arrived meets these desiderata.

2. The De Facto Racial and Sexual Contracts

In this section, I will apply the modified version of institutionalist realism developed in Chapter 2 to the de facto phase of the Racial and Sexual Contracts. My aim is to show that, despite the profound changes in racial and gender oppression that have taken place over the last century or so, race and gender are still institutional categories that are hierarchically defined, such that women and people of colour occupy a subperson status.

In describing the de jure phase of the Racial and Sexual Contracts, I identified two factors as crucial in creating and maintaining institutional reality of race and gender: laws differentiating between different racial and gender groups, and explicit beliefs in the inherent, biologically grounded inferiority of women and of people of colour. These two factors have both undergone radical shifts. Laws that differentiate between women and men, and between members of different racial categories, are almost entirely gone from Western states, and remaining laws referencing gender and race tend to be aimed at promoting gender and racial equality (for example, anti-discrimination laws, laws against hate speech and incitement, and laws permitting affirmative action). Beliefs are rather harder to measure than laws, but it seems fair to say that beliefs in the biological inferiority of women and of people of colour are significantly reduced, and receive much less social tolerance.

Despite these changes, there are still hugely differential outcomes in terms of the life experience of members of different genders and races. In this section, I will argue that these differential outcomes indicate that members of different racial and gender categories still have different (substantive) deontic powers. These powers are now opaque, but, as argued in Chapter 2, opaque deontic powers can still constitute an institutional reality.

2.1. Racial and Gender Inequality

I take as a starting point of this project the idea that race and gender constitute significant axes of inequality in contemporary European and North American society; certainly, it is not my intention to persuade readers of this point if they are not already sympathetic to it. My current aim, then, is to illustrate the *kinds* of inequality I have in mind, rather than to make a decisive case for the *existence* of racial and gender inequality.

Let us begin with race. In the UK, there are serious economic inequalities that fall out along racial lines. Ethnic minorities in the UK are more than twice as likely to be unemployed than White people (11.3% vs. 5.5%) (Department for Work and Pensions 2015). Wealth inequalities are even more pronounced: a 2009 survey found that whereas the average White household had assets of £221,000, the average for Black Caribbean households was £76,000, for Bangladeshi households it was £21,000, and for Black African households, just £15,000 (Khan 2011). Unsurprisingly, these disparities are reflected in statistics on child poverty. In a study focussed on 7-year olds, almost 75% of Pakistani and Bangladeshi children were found to be living in poverty, as were more than 50% of Black children. Among White 7-year-olds, the figure was 25% (The Poverty Site 2014, cited in Fitzpatrick et al. 2014). A similar pattern is evident with regard to homelessness. Although data on homelessness is difficult to gather, a picture emerges from the reports of homelessness services. According to one report, '[o]n average, homeless day centres in London approximate that 27% of their clients are members of BME [Black and Minority Ethnic] groups, compared to [a BME population] of only 11% nationally. Figures for direct access homeless hostels indicate that approximately 38% of clients are from BME groups.' (Homeless Link 2011; cited in Fitzpatrick et al. 2014).

Statistics also attest to substantial racial disparities concerning policing and the justice system in the UK. In some areas of the UK, Black people are 17.5 times more likely than White people to be stopped and searched by the police (Andrews 2015). In London in 2009/10, 78% of Black people found with cocaine in their possession were charged rather than cautioned, compared to 44% of White people (Release 2013, cited in Andrews 2015). The proportion of Black people in jail in the UK is 7 times their share of the population (Ramesh 2010). These figures

suggest a thread of racial inequality running through various aspects of the policing and justice systems.

I turn now to gender. Economic gender inequality in the UK is pronounced. The gender pay gap for full-time employment stands at 9.4% (Equal Pay Portal, 2015, calculated using hourly pay). Although the under-representation of women in high-paying jobs is often a topic of comment, disparities at the other end of the scale are much less often reported. Yet these are severe: as of 2013, 27% of women earned less than the living wage, as compared to 16% of men (Helm 2013). Single parent poverty is also a relevant factor, since 90% of single parents are women: 42% of single parents live in poverty after housing costs are taken into account (UK Women's Budget Group 2015). Among working pregnant women and new mothers, maternity leave is a precarious time: one in nine is made redundant, dismissed, or treated so poorly they feel obliged to quit their job (Topping 2015).

Women suffer intimate and sexual violence at a vastly disproportionate rate compared to men. According to the NHS, using Home Office figures, on average each year 100 women are killed within a domestic abuse context, almost always by a man. By contrast, around 30 men a year are killed in a domestic abuse context, where in one third of these cases the killer is another man, and in just under a third, the killer is a woman with a documented history of being abused by the man in question (Domestic Violence London 2016). Sexual assault rates are also high. One in five women reports experiencing some form of sexual offence at least once since the age of 16, and one in twenty reports experiencing rape, attempted rape, sexual assault, or attempted sexual assault. The Ministry of Justice estimates that about 85,000 women per year suffer one of these crimes in England and Wales, compared to 12,000 men (Ministry of Justice, Home Office, and Office of National Statistics 2013, all subsequent statistics from this report). Of these women, 56% were raped or assaulted by their current partner, and only 15% reported the incident to the police. Conviction rates for rape remain very low, with 7% of reported rapes resulting in a conviction. The possibility of multiple offences being committed by the same person or perpetrated against the same person makes it difficult to estimate the proportion of actual rapes that result in a rape conviction. However, combining the 7% conviction rate for reported rapes with the 15%

reporting rate for rape and other sexual assaults would suggest that the percentage of actual rapes that result in a rape conviction is around 1%.

Together, these facts illustrate the kinds of race and gender inequalities that I have in mind. It should, of course, be understood that different aspects of inequality interact. For example, the over-representation of people of colour in prison populations contributes to employment inequality, since having a criminal record makes it much harder to get a job (Anderson 2010). Similarly, widespread sexual harassment can be a factor in keeping women out of some forms of employment (MacKinnon 1979; Cockburn 1983).

2.2. Differential Deontic Powers

When it is an opaque fact that members of group X lack deontic power P, it will be the case that people tend to think that members of X are entitled to P, if they think about it at all; but that as a matter of fact, this entitlement cannot be enforced. My suggestion is that whereas previously (under the de jure Racial and Sexual Contracts) it was a transparent fact that some deontic powers were withheld from people of colour and from women – the right to employment on equal terms, for example – it is now an opaque fact. As argued in Chapter 2, qualitatively opaque institutional facts depend on not only individual and collective intentionality, but also socialized practices, telic normativity, and brute physical facts. These factors give rise to differential deontic powers, where deontic powers are conceived of as substantive rather than formal, and these deontic powers in turn characterize the institutional kinds in question. I will consider each of these factors in turn in relation to racial and gender inequality.

Socialized practices are habits and dispositions acquired from our cultural contexts, in a manner that need not be conscious either on the part of the one who acquires the habit, or of those from whom the habit is acquired. Although Dreyfus (1999) emphasizes embodied dispositions in connection with socialized practices, I see no reason why socialized practices cannot also concern habits of cognition that do not necessarily have a prominent embodied dimension. As such, I take socialized practices to include what is known as implicit bias. Implicit biases are 'relatively unconscious and relatively automatic features of prejudiced judgment and social behavior' (Brownstein 2015). They can include implicit associations, for

example associations between women and caregiving, or between Black people and violence.

There is abundant evidence of implicit bias concerning race and gender that can affect employment. Studies have shown that a CV bearing a female name will be evaluated less positively than the same CV bearing a male name (Moss-Racusin et al. 2012). The same effect holds for a CV bearing a name associated with non-White racial groups compared to the same CV bearing a name likely to be read as White (Bertrand and Mullainathan 2004). Implicit attitudes outside of the workplace also have implications for economic inequality, at least when it comes to gender. Virginia Valian argues that implicit attitudes cause housework and childcare to be seen as a woman's responsibility, which has obvious implications for the amount of time and energy a woman is able to devote to her job (1999). Valian surveys a number of studies demonstrating that:

> Men perceive doing an almost equal amount of household labour – 48 percent – as unfair to themselves; they see the division as fair to both parties when they are doing just 36 percent of the work. Only when their wives average just above 70 percent of the work do husbands see the inequality as unfair.
>
> Married women who work have similar cut-off points. They do not find the division of work unfair to themselves until they are doing about 75 percent of the household work. When they are doing 66 percent of the work they judge the division as fair to both parties…. Men and women are in basic agreement: women should do most of the household work. (1999, 40)

Since this effect is only somewhat mitigated if both partners hold the explicit belief that fairness requires a 50/50 split, it seems that implicit attitudes are playing a part here by causing couples to perceive the division of household labour as closer to 50/50 than it actually is.

Another factor at work in this case, of course, is telic normativity. Powerful social norms associate women with caregiving and nurturing, whilst disassociating men from these activities. As Valian puts it, these norms tell us that '[a] woman is less of a woman if she does not make a house a home, and a man is less of a man if he does' (1999, 44). Telic normativity can also play a role in workplace negotiations. For example, telic norms appear to mandate different types of interpersonal behaviour from women and from men. Women are expected to smooth social

interactions and take care of the feelings of others. In certain work environments, this telic norm can lead to leadership behaviour on the part of women being judged negatively, where the same behaviour would be seen as appropriate when coming from a man. For example, a woman may be deemed 'bossy' where a man would have been deemed 'authoritative'.

The third factor that contributes to opaque facts about deontic powers is brute physical facts. Consider, for example, pregnancy. Although by no means all women can or do experience pregnancy, and although some (trans) men experience pregnancy, individuals who count socially as women comprise the vast majority of those who experience pregnancy. The nature of pregnancy is to some degree a brute physical fact. This fact is part of the causal explanation for some types of gender discrimination. For example, if publically visible anatomy and age gave no clue as to who was likely to be capable of becoming pregnant, employers would not be able to pre-emptively discriminate against women in hiring processes with a view to avoiding having their employees take maternity leave. I do not wish to overstate the implications of brute physical facts in this regard, since the phenomenon of pregnancy is clearly a socially laden one. However, there are some brute physical facts that are part of the causal explanation for pregnancy-related discrimination, which in turn contributes to gender inequality.

Brute facts also play an important role in racial inequality through the role of space in racial segregation. The layout of cities is to some extent a matter of institutional fact; for example, the fact that a certain space is a public park is an institutional fact. Yet the distance between various points is a brute physical fact, and distances are relevant to racial segregation and racial inequality. For example, the 'spatial mismatch' hypothesis seeks to explain some aspects of racial inequality in the US by way of the difficulty urban Black populations have in obtaining distant suburban jobs, and the correspondingly low wages available for jobs in urban centres (Anderson 2010, 27). Some brute physical facts play a role in spatial mismatch: the fact that *these human beings* are in this location, and *that physical structure* is in that location, is a brute physical fact. (The fact that the human beings in question are Black people, and the fact that the physical structure in question is an office or factory or shop where jobs are to be had, are, of course, institutional facts.) Again, I do not wish to overstate the importance of brute

physical facts: my claim is merely that they form part of the first-order phenomena to which second-order or opaque facts about deontic powers can be reduced.

So far, I have explained how socialized practices, telic normativity, and brute physical facts can contribute to the existence of opaque facts about the differential deontic powers of members of different racial categories and of different genders – and, by extension, to the existence of races and genders as qualitatively opaque institutional kinds. Let us not, however, forget intentionality. There are two main ways in which intentionality contributes to racial and gender inequality. The first is via explicit racist and sexist beliefs. Even though such beliefs have become less socially acceptable, one explicitly sexist or racist individual occupying a decision-making position can have a significant impact on outcomes in a particular case – for example, in the context of appointment panels. The more such individuals there are, the greater this impact will be. The second way in which intentionality contributes to the existence of qualitatively opaque institutional kinds, however, is more significant. This concerns widely shared beliefs about social justice – specifically, beliefs that society is broadly fair, and that factors such as race and gender do not affect a person's life-chances. For example, the perception that the running of the jobs market is basically fair ('meritocratic') contributes to viewing women's differential achievements as evidence of women's biologically-based differential capabilities or priorities, rather than as an outcome of discrimination. Similarly, failure to perceive systemic racial inequalities leads some to the view that the enduring economic disadvantage of certain racial groups is due to 'cultural factors' internal to those groups. These explicit beliefs – which may be sufficiently widely shared to constitute a form of collective intentionality – function to obstruct efforts to redress injustice. They therefore help to prevent formal entitlements from becoming enforceable, thereby contributing to the existence of opaque facts about deontic powers.

My suggestion is that the de facto Racial and Sexual Contracts are maintained by a combination of implicit racial and gender bias, brute physical facts, false beliefs about racial and gender social structures, and explicit racist and sexist beliefs. Together, these factors render unenforceable the claims people of colour and of women to liberty, safety, and economic security – besides all the other social goods that depend on these, such as housing and education. Individuals and states can

and do get away with routinely doing things to people of colour and White women that they could not get away with doing to White men. In other words, people of colour and White women are still deprived of important deontic powers. Since subperson status consists of being allocated a different and inferior schedule of rights and liberties compared to full persons, people of colour and White women therefore retain the subperson status that they were allocated during the de jure stages of the Racial and Sexual Contracts. Although this status is no longer assigned through a direct and explicit conceptualization of women and of people of colour as inferior, the deprivation of deontic powers assigns it just as effectively.

I conclude, then, that the institutional categories of race and gender persist in the de facto phases of the Racial and Sexual Contracts. These categories are defined by the following status functions:

Gender[20]

Category of 'men': For any human x, if x satisfies the condition 'has a penis and testicles and does not have a vulva or vagina', x has the status 'man' and x functions, ceteris paribus, as a full person around here.

Category of 'women': For any human x, if x satisfies the condition 'does not have a penis and testicles and does have a vulva and a vagina', x has the status 'woman' and functions as a subperson around here.

Race

Category of 'White': For any human x, if x satisfies the condition 'instantiates phenotypic/genealogical/cultural features [C1, C2, C3], which are associated with Europe,' then x has the status 'White' and x functions (ceteris paribus) as a full person around here.[21]

Category of 'Black': For any human x, if x satisfies the condition 'instantiates phenotypic/genealogical/cultural features [D1, D2, D3], which are

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[20] I am using gender terms here without distinction as to age, so that 'man' should be taken to include boys, and 'woman' should be taken to include girls.

[21] The 'ceteris parabus' clause permits for intersectionality – see Chapter 3 (section 4).

associated with Africa', then x has the status 'Black' and x functions as a subperson around here.

Together with other status functions for non-White racial groups that have the same structure as that for 'Black'.

The idea here is that the phenotypic, cultural and/or genealogical features that are the basis for assignment of race can vary in different social locations. As in the de jure phase of the Racial and Sexual Contracts, the Y-terms 'subperson' and 'full person' are shorthand ways of summing up sets of deontic powers, where a subperson has an inferior schedule of deontic powers compared to a full person. Whereas these deontic powers were transparent in the de jure phase, in the de facto phase they have become opaque.

2.3. Continued Subpersonhood

I have argued that women and people of colour are assigned inferior sets of deontic powers as compared to men and to White people respectively. However, the term 'subperson' may still strike some readers as an excessively strong way of summing up this difference. Let me therefore conclude this section by offering the following three supporting reasons for continuing to use this term to describe the de facto stage of the Racial and Sexual Contracts.

First, note that this term is by no means distant from other descriptions of the contemporary reality of racial oppression. I take it that something very close to subpersonhood has been discussed under the label of 'racial stigma'. Racial stigma, according to Elizabeth Anderson, involves racial stereotypes that carry dishonourable group meanings (2010, 45-46). These dishonourable meanings consist of a tendency to attribute negative behaviour or conditions to inherent traits of the group rather than to external factors, in such a way as to rationalize antipathy. In a similar vein, Glenn Loury, following Irving Goffman, understands stigmatization as entailing 'doubting the person's worthiness and consigning him or her to a social netherworld', also describing it pithily as 'the nonattribution of common humanity' (2002, 81). Summing up his argument, he writes: *I want to suggest with the stigma idea that a withholding of the presumption of equal humanity is the ultimate mechanism of racism in American public life.'* (2002, 88, italics in the original). Loury's statement of racial stigma here sounds very close to

Mills' account of subpersonhood, although couched in terms of humanity rather than personhood.

In a similar vein, Catharine MacKinnon, in considering the current status of women, argues that:

> The given status of certain people is seen as tautologous with, even justified by, the deprivations of their human rights.... Victims are thereby rendered ideologically appropriate to their treatment, the unequal treatment serving to confirm their ontological status as lesser humans. When nothing is done, the treatment, and social status accordingly, confirm and create who one is. (2006b, 3).

Here, the idea of second class status created through second class treatment is strongly reminiscent of subpersonhood. The idea of subpersonhood, then, is by no means an outlier when compared to other accounts of racial and gender inequality.

Second, I take it that there can be degrees of subpersonhood depending on how much worse the schedule of rights and liberties is. I think it is very plausible that the subperson status of women and of people of colour is less extreme now than it was in the past. Nevertheless, many important deontic powers – including many that we take to be human rights, such as security of person – are still lacking. For this reason, I believe it is still appropriate to speak of subpersonhood. In claiming that the subperson status of women and of people of colour is still being perpetuated, I do not mean to suggest that this status is still as severe as it has been in the past.

A final supporting reason for thinking that the status of women and of people of colour is still aptly described as one of 'subpersonhood' is that implicit associations exist that seem to associate members of those groups with non-human characteristics and distance them from characteristics strongly linked to personhood. A study carried out in the US found evidence of an implicit association between Black people and apes (Goff et al. 2008). White participants primed with images of Black faces were faster to identify 'fuzzy' images of apes than participants primed with either White faces or neutral images. A second experiment showed the association to be bi-directional, with participants primed with images of apes paying more attention to Black faces than to White faces. Further experiments showed that the association was not linked to general out-

group prejudice, and did not depend on implicit anti-Black attitudes or on explicit knowledge of a stereotype of Black people as ape-like. Finally, the researchers examined the material consequences of the Black-ape association. They found that participants primed with ape-associated words were more likely to condone a video of police beating a Black suspect, but no more likely to condone police violence against a White suspect. They also examined the use of ape-associated words (such as 'jungle', 'bellow', or 'savage') in newspaper reports of crimes in Philadelphia that were eligible for the death penalty, and found that ape-associated terms were more likely to be used about Black defendants than White defendants. Perhaps most disturbingly, they also found that (controlling for variables such as the nature of the crime and exacerbating circumstances) the frequency with which ape-associated terms were used to describe Black defendants correlated with the likelihood of the defendant receiving a death sentence. This study suggests that the devaluation of Black lives operates in part through the positioning of Black people as ape-like.

Turning to gender, a perception of women as enjoying less full personhood than men can be discerned in gender schemas. Valian describes these schemas in terms of a differential attribution of agency:

> In white, western, middle-class society, the gender schema for men includes being capable of independent, autonomous action (*agentic*, in short), assertive, instrumental, and task-oriented. Men act. The gender schema for women is different; it includes being nurturant, expressive, communal and concerned about others... Women nurture others and express their feelings. (1999, 13, italics added)

I will consider the notion of personhood more fully in Chapter 4, but for now I wish to note that the capacity for agency is surely central to our notion of personhood. This is not to say that nurturing attitudes are unimportant or lacking in value, but in currently dominant conceptions of personhood they do not play as central a role in distinguishing persons from non-persons as does agency. Therefore, in conceptualizing men, but not women, as agentic, these gender schemas encode a perception of women as less fully persons than men.

In both the case of race and the case of gender, then, implicit associations seem to situate (some) people of colour and women in a precarious position relative to personhood. Black people are associated with apes, a non-human animal usually

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considered non-persons, and women are distanced from agency, a characteristic distinctive of personhood. Although these studies are limited, and would not by themselves serve to justify the claim that women and people of colour are subpersons, they offer further support for the decision to continue to use the notion of subpersonhood to describe the de facto Racial and Sexual Contracts.

3. Racial and Sexual Violence

Having outlined how the de facto Racial and Sexual Contracts operate, I now want to consider a specific example in order to further illustrate the model I am proposing. In this section, I will examine how violence against people of colour and violence against women contribute to the maintenance of an institutional reality within which women and people of colour occupy a subperson status. I will also consider the ways in which violence highlights the continuity between the de jure and de facto phases of the Racial and Sexual contracts.

3.1. Racial Violence

My focus in this section is on killings of unarmed Black people in the context of law enforcement. Let us start with some cases. Killings of unarmed Black people by the police are by no means confined to the US; however, I will focus on the US in this discussion in order to avoid potential problems arising from conflating different contexts.

Amadou Diallo, a 22-year-old Black man who had immigrated to the US from Ghana, was shot and killed by four police officers in New York in February 1999. The officers mistook Diallo for a crime suspect and accosted him. Diallo reached into a pocket for his wallet, containing ID, and the officers opened fire, shooting 41 bullets of which 19 hit Diallo. The officers claimed to have mistaken the wallet for a gun. They were charged with murder and reckless endangerment, and acquitted.

Trayvon Martin, a 17-year-old Black youth, was shot and killed by George Zimmerman, a neighbourhood watch member, in Florida in February 2012. Zimmerman had followed Martin as he walked home from a shop, and claimed to

have been acting in self-defence under Florida's notorious 'Stand Your Ground' law. He was charged with murder, and acquitted.

Rekia Boyd, a 22-year-old Black woman, was shot and killed by Dante Servin, an off-duty police officer, in Chicago in March 2012. Servin claimed to have mistaken a mobile phone in the hand of one of Boyd's companions for a gun. He was charged with involuntary manslaughter, but the judge ordered the jury to return a verdict of not guilty.

Tamir Rice, a 12-year old Black boy, was shot and killed by Timothy Loehmann, a police officer, in Ohio in November 2014. Rice was playing with a toy gun in Ohio, a state in which it is legal to openly carry firearms. Police received a report of someone carrying a gun, which the caller described as 'probably fake'. Loehmann and another officer, Frank Garmback, arrived at the scene and, within two seconds, Loehmann had shot and fatally injured Rice, though the officers claim to have delivered three warnings before firing. Neither officer administered first aid, leaving Rice to bleed on the ground for four minutes before others arrived at the scene. Rice died of his injuries in hospital the following day. Neither officer was charged.

In each of these cases, the victim was Black and unarmed, the killer was either an official or unofficial agent of law enforcement, the rationale for the killing was self-defence, and the killer was not convicted of any crime.

There is no official comprehensive record of police killings in the US; this in itself is a significant fact. However, some data for killings in 2015 is available from the Guardian newspaper, which in June 2015 launched a crowdsourced database called 'The Counted'. Although submissions are verified by reference to news reports, the statistics should be treated as provisional. They are, however, suggestive. For example, 29% of those killed were Black, whereas the overall US population is only 13% Black, and Black people killed by the police between January and May were more than twice as likely as White people to have been unarmed at the time. Although imperfect, these statistics are sufficient to establish that the four cases listed above are not isolated incidents.

There is ample evidence of explicitly racist attitudes among some police officers. For example, emails among police officers in Ferguson, where Michael Brown, an

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unarmed Black man, was killed by police officer Darren Wilson in 2014, reveal many profoundly racist comments. One email likened multiracial welfare claimants to dogs, another joked about stoning Muslim women, and one image labelled a photograph of a chimpanzee as Barack Obama (Swaine and Laughland 2015).

Victim-blaming attitudes concerning killings of Black people in law enforcement contexts are commonplace. Vanessa Wills describes this as 'the logic of black guilt', which she takes to be 'a specific application of victim-blaming, in which the transgression that makes the victim complicit in his or her victimization turns out to be, at bottom, his or her very blackness itself, a condition associated in the racist imagination with inferiority and criminality' (Wills 2013, 228). The prevalence of the logic of Black guilt can be highlighted by considering situations in which the races of the killers and the victims are reversed. When Wills asked her students to consider a situation analogous to Trayvon Martin's death involving a White 17-year-old being pursued by a Black adult man, 'The classroom rippled with nervous laughter... The students recognized [the scenario] as totally impossible – and indeed, it might as well be a piece of science fiction' (230).

A number of studies have identified implicit biases that are relevant to shootings of unarmed Black people. One study found evidence of a bidirectional association between Black people and crime, where the association functions as a perceptual cue that 'renders crime objects relevant in the context of Black faces and Black faces relevant in the context of crime' (Eberhardt et al. 2004, 877). For example, White male subjects primed with images of Black faces were quicker to recognize crime related objects, such as guns and knives, and those primed with crime-related objects were quicker to recognize Black faces. Other studies have focussed more specifically on shootings. Asked to distinguish between guns and harmless objects, subjects were slower to respond correctly when the harmless objects were in the hands of Black people rather than White people, and were faster to respond correctly to weapons in the hands of Black people than to weapons in the hands of White people (Greenwald, Oakes, and Hoffman 2003). In another study, a simple video game was created in which subjects encountered figures holding objects, some of which were guns and the rest of which were mundane items such as drinks cans. The task was to press keys on a keyboard to indicate a decision to 'shoot' the

figures holding guns and to 'not shoot' the figures holding other objects. Subjects were faster to correctly shoot when the figure was Black, and faster to correctly not shoot when the figure was White. When forced to do the task in a shorter time, they were more likely to incorrectly shoot when the unarmed figure was Black, and to incorrectly not shoot when the armed figure was White. As the researchers comment, 'If a target was African American, participants generally required less certainly that he was, in fact, holding a gun before they decided to shoot him' (Correll et al. 2002). The bias did not seem to be affected by the race of the participants. Another study, particularly relevant to the killing of Tamir Rice, found 'that Black boys are seen as older and less innocent and that they prompt a less essential conception of childhood than their White same-age peers' (Goff et al. 2014).

Several commentators have noted the continuity between killings of Black people in law-enforcement contexts and historic forms of officially or informally sanctioned violence against Black people, notably lynching and fugitive slave laws. For example, Stephen C. Ferguson II and John H. McClendon III describe the presumption that Martin was obliged to prove to Zimmerman's satisfaction that he was entitled to be in the gated community as '[a]kin to a runaway slave or the pass laws of former Apartheid South Africa' (Ferguson II and McClendon III 2013, 50). Timothy Joseph Golden compares Martin's death to an incident from the autobiography of Frederick Douglass (2013). Demby, a slave, runs into a creek to escape a flogging from the overseer. The overseer orders him to come out, and shoots him dead when he refuses. Golden observes that, 'Demby had neither the protection of the positive law nor the social and cultural practices of his day. And although the positive law has changed, Trayvon Martin is in a situation that is worse than Demby's: the positive law affirms his humanity, but the social and cultural context does not' (2013, 79). I agree with Golden that the continuity between the two cases is striking; and although I am not sure to what extent it is possible to determine that Trayvon Martin's situation is straightforwardly 'worse' than Demby's, there is certainly something particularly perverse about the mis-match between formal laws about the right to life of Black Americans and the frequency and impunity with which they are killed. It is this mis-match that is the basis of my analysis of the de facto Racial Contract. To put the case in the terms of my analysis, although Black people now have a formal entitlement to life and to

security of person, the routine violation of this right with impunity means that the formal entitlement is not enforceable, and so the deontic power is lacking. The fact that Black people lack this deontic power is an opaque social fact that supervenes on a range of first-order facts. These include explicit collective intentionality, such as explicit racist beliefs and attitudes of victim blaming, and socialized practices, such as implicit associations between Black people and crime.

3.2. Sexual Violence

Women suffer many forms of gender-based violence. For example, in the UK two women per week are murdered by a current or former partner. Here, however, I will focus on sexual assault, including rape, in order to show that there is a continuity between the legal regime that in the past formally sanctioned sexual assault on women within marriage, and the current situation.

The marital rape exemption – the law that prevented non-consensual sex within marriage from being considered a crime – was formally ended in England and Wales in 1991 (and in Scotland two years previously). Current law defines rape as intentional penetration with the penis of the vagina, anus or mouth, without consent and without reasonable belief in consent (Sexual Offences Act 2003, Part 1, Section 1). There is no reference to marriage in the law, and the previous mention of 'honest belief' has been replaced by a more stringent 'reasonable belief'. These are substantial legal changes; yet responses to women's actual experiences of rape by police and the legal system remain poor, as detailed in 2.1 above, with victimization rates high (one in twenty), and reporting and conviction rates very low (15% and 7% respectively). Particularly noteworthy is the fact that in 56% of cases of rape, attempted rape, sexual assault or attempted sexual assault against a woman, the offender was the victim's current or former partner (Ministry of Justice, Home Office, and Office of National Statistics 2013, 16).

This state of affairs is maintained in part by a set of widely held false beliefs surrounding rape and sexual violence, often termed 'rape myths'. Rape myths include the following:

1. That rape always involves overwhelming physical force, and that victims of rape always physically resist their attacker.
2. That consent cannot be withdrawn part-way through a sexual act.

3. That consent is automatically present if a prior consensual sexual act between the same parties recently took place.

4. That rape is only committed by strangers and cannot occur within marriage/a relationship/a friendship.

5. That it is reasonable to for someone to assume that another person consents to sex if that person acts or dresses in a way that is "sexually teasing" or "sexually provocative"; or, that victims of rape who acted or dressed in a "sexually teasing" or "sexually provocative" way deserved to be raped.

Note that all of these beliefs are in direct contradiction to the legal definition of rape. Nevertheless, rape myths have a significant impact on women's experiences of rape. In one study, researchers looked at rape myth acceptance among a group of women who had been raped (Peterson and Muehlenhard 2004). Some of the women had been victims of what the researchers term 'unacknowledged rape': that is, the women reported an experience that matched the legal definition of rape, but were not willing to apply the term 'rape' to the experience. The researchers investigated the hypothesis that among women who had been raped, those women who did not acknowledge the rape were more likely (a) to accept rape myths, and (b) to have been raped in circumstances which matched the rape myths they accepted. They found support for this hypothesis in relation to two rape myths, corresponding to 1 and 5 above. This is to say that for certain rape myths, participants who had been raped in a way that corresponded to the myth *and* who accepted the myth were significantly less likely than other participants to have acknowledged the rape. Specifically, participants who (a) accepted the rape myth 'a woman who "teases" men deserves anything that might happen' and (b) described their own actions before being raped as "sexually teasing" were less likely than other participants to have acknowledged the rape. Similarly, participants who (a) accepted the rape myth 'If a woman does not physically fight back, you cannot really say it was rape' and (b) reported they had not physically fought back in the case of their own rape were less likely than other participants to have acknowledged the rape.

Peterson and Muehlenhard's research strongly suggests that one effect of rape myths is to prevent some victims of rape from conceptualising their experience *as* one of rape. A systematic literature review covering the period of 1993-2013

identified consistent evidence of positive correlation between rape myth acceptance and willingness to acquit rape defendants (Burrowes 2013). Qualitative studies have also linked rape myths with reduced judgements of complainant credibility (Ellison and Munro 2009). They thus make women less likely to recognize and report their rape, and less likely to be believed if they do report. As argued in 2.2 above, failure to recognize that a certain social structure exists can give rise to a looping effect, as the effects of that structure are misattributed. In the present case, the belief that the legal system's handling of rape is basically fair contributes to supporting the popular idea that women are prone to fabricating allegations of rape – another rape myth. So the collective intentional acceptance of rape myths contributes to preventing women from reporting rape and from receiving justice when they do report rape.

Although the legal definition of rape, at least in the UK, is much improved, legal frameworks still play an important role in limiting women's deontic powers. For example, juries are warned not to let rape myths influence their decision, but this happens at the end of a trial, when it is less likely to be effective, rather than at the beginning of a trial (Burrowes 2013). Sometimes legal frameworks take the form of problematic precedents for the application of laws, rather than directly discriminatory laws. One especially striking illustration of the complicity of law in depriving women of the deontic power to ensure their sexual integrity concerns the treatment of rape in international law. Despite the horror and lasting harm of rape, and despite its documented use as a tool of oppression and a weapon of war, international law has been very slow to recognize rape as a form of torture and hence as a human rights violation, though this has now changed (MacKinnon 2006c, 21).

All of the beliefs that lead to under-reporting, victim blaming, and unfair acquittal, all of the legal precedents and social policies and procedures that contribute to the low conviction rate, and all of the attitudes that fail to see any problems with the way in which rape law functions combine to establish a state of affairs in which women are unable to enforce their claim to control sexual access to their own bodies. Women are thereby deprived of this deontic power. This account offers an explanation of some of the paradoxical logics to be found in social discourses surrounding rape. Rape in the abstract is seen as a terrible thing to happen to a

person, yet most rapes of most women are not typically seen as particularly terrible events because they are not recognized as rape (or, tellingly, are not seen as 'real rape', or '*rape* rape', which is the terrible kind). The superficial recognition of women as persons conflicts with the (opaque) subperson status of women. This explains why rape in the abstract is almost universally accepted to be very bad, but the rape of women is systematically denied, ignored and excused.

The cases of race and gender violence discussed in this section have, I hope, served to illustrate my claims about opaque deontic powers, institutional reality, and subpersonhood. The basic point is simple: if people of colour really had the same social value as White people, and if women really had the same social value as men, a status quo in which levels of racial and sexual violence are as high as they currently are would not be tolerated.

4. Desiderata for an Ontology of Race and Gender

The previous section completes my institutionalist realist account of race and gender. I have argued that races and genders are institutional kinds that are hierarchically defined, such that people of colour and women are constructed as subpersons. My next task in this chapter is to show that this account is an attractive one. I will begin by setting out four desiderata that an account of gender and race ought to be able to meet.

The first desideratum for a critical ontology of race and gender is that it should describe reality in a way that is not only accurate, but that is also helpful to those seeking to enact emancipatory change. The thought behind this desideratum is that there may be multiple ways of describing a reality that can be more or less helpful to critical social projects. For example, there may be a theory that accurately captures the ontology in a way that is theoretically elegant or simple, but which simplifies some details that are very important for emancipatory change. Such a theory may not get anything about the ontology wrong, exactly, but it fails to offer any purchase on certain aspects of social reality that the critical social theorist is interested in. The critical social theorist needs an account of race

and gender that makes injustices concerning these categories readily apparent, and that helps to identify 'levers for change' (Haslanger 2012c, 215).

The second desideratum is that the account of race and gender should be sensitive to intersectionality. Intersectionality, roughly speaking, is the idea that different forms of oppression are not additive, simply stacking one on top of the other; rather, different axes of oppression interact in complex ways. The term was coined by Kimberlé Crenshaw, although the concept has a long history in Black feminist thought (Crenshaw 1991). Attending to intersectionality means recognizing that the oppression experienced by a woman of colour, for example, cannot be neatly separated into the oppression she experiences as a woman and the oppression she experiences as a person of colour. If she is arrested on suspicion of soliciting by a police officer who then sexually assaults her, does this happen because she is a woman or because she is Black? If she is given appalling medical care when she arrives at a hospital in the middle of what turns out to be a miscarriage, does this happen because she is a woman or because she is Asian? The concept of intersectionality highlights the misguided nature of questions such as these. By showing that race and gender are intermeshed, it also draws our attention to the dangers of trying to analyse racist and sexist oppressions in isolation from one another. Intersectionality theorists have pointed out that attempts to specify the nature of racial oppression without reference to gender tend to end up focusing on the experiences of men of colour, and attempts to specify the nature of gendered oppression without reference to race tend to end up focusing on the experiences of White women (hooks 1981). The concept of intersectionality applies to other axes of oppression besides race and gender, such as class, disability, and sexuality. Following Ann Garry (2011), I understand intersectionality not as a theory or a methodology, but as what Garry terms a 'framework checker'. Intersectionality does not offer us an account of social categories, power, agency, identity, and so on; rather, it provides a standard that methodologies and theories should meet. An adequate account of the ontology of race and gender, then, should be sensitive to intersectionality.

Third, the account of gender should respect the gender identifications of trans people. I take it that this requires (a) acknowledging their assertions of their gender to be true, and (b) showing it to be inappropriate to relate to them as if they were

a member of any gender other than the one they identify with. So respecting the gender identification of a trans women means agreeing that when she says, 'I am a woman', she says something true; and that if someone says that she is a man or calls her 'he', that person acts inappropriately. The need to respect trans people's gender identifications constitutes a constraint on an account of the ontology of gender because failure to respect the gender identifications of trans people is linked, conceptually and empirically, to serious harms against trans people. For example, Talia Bettcher argues that, at present, trans people are subject to 'reality enforcement': attempts, sometimes forcible, to make them conform to a model of gender that equates gender with genitals (Bettcher 2007). When someone says to a trans woman, for example, 'You're really a man!', that person is subjecting the woman to reality enforcement, trying to slot her back in to the dominant conceptual system, typically on the basis of a belief about her genital endowment (past or present). In particular, Bettcher identifies a particularly vicious form of reality enforcement that she terms the 'basic denial of authenticity' (BDA). The BDA is the idea that a trans person's gender is inauthentic. This denial takes the form, according to Bettcher, of a double bind. A trans person can either be open about their trans status, in which case they are viewed as pathetically confused, or they can conceal it, in which case they will, if discovered, be viewed as a dangerous deceiver, and quite probably a sexual predator. In neither case is their identified gender acknowledged. As Bettcher demonstrates in her analysis, the BDA is linked to various forms of transphobic violence, including forced public exposure of the genitals, which functions as an attempt to 'reveal' the 'hidden truth' behind the trans person's 'deceit'. Since failure to respect trans people's gender identifications is a key plank of a social reality that oppresses trans people, it is crucial that a critical social ontology of gender shows respect for trans people's gender identifications.

The fourth and final desideratum is that the account should take seriously the lived experiences of race and gender. One important factor here is the embodied dimensions of these categories. People tend to experience race and gender as bodily categories, and the experience of being positioned as a member of a certain race or gender category can have implications for one's experience of one's body. A critical account of the ontology of race and gender should be able to account for these embodied experiences. Another important aspect of lived experience is

epistemic experience. There are various accounts of how race and gender have an epistemic impact, and I don't want to stipulate that an account of the ontology of gender and race should uphold all of these (this would in any case be impossible, since several of them are incompatible). I do want to suggest that it will be a positive feature of the account if it is compatible with at least some of these accounts, especially those most directly rooted in lived experience.

To sum up, we have four desiderata for a critical ontology of gender and race.

1. To describe reality accurately in a way that facilitates emancipatory change.
2. To be sensitive to intersectionality.
3. To respect the gender identifications of trans people.
4. To take seriously lived experiences of race and gender, including embodied and epistemic dimensions of experience.

5. Meeting the Desiderata

5.1. Critical Relevance

The first desideratum is the one about which I shall have least to say, for I take it to have been already apparent as a guiding principle of the account of institutional reality that I have been attempting to construct. My stated aim has been to bring greater ontological detail to the critical accounts of race and gender articulated by Mills, Pateman, and other theorists. I take the primary critical importance of those projects to lie in two insights: first, the insight that there is a considerable amount of continuity between historic, explicit racial and gender oppression and current, more covert, oppression; and, second, the insight that racism and sexism structure a wide variety of social arrangements, rather than being confined to one or two areas of life. Jointly, these insights serve to orient us towards looking for concealed structures based on lived experiences of oppressed people, and to caution us against being satisfied with merely formal equality. Insofar as the critical insights of accounts of the Racial and Sexual Contracts are valuable ones from the point of view of bringing about emancipatory social change, and insofar as the institutionalist realist account succeeds in bringing greater detail and clarity to

these insights, then the institutionalist realist account fulfils the desideratum of facilitating emancipatory social change.

5.2. Intersectionality

In setting out the institutionalist realist account of race and gender, I have so far treated race and gender as though they were distinct categories that overlap. This is, of course, a simplification: as intersectionality theorists have shown, race and gender categories do not only overlap, but are intermeshed, interacting in complex ways. Moreover, each of them is also intermeshed with other categories, such as class, sexuality and disability. How can this complexity be represented within the institutional model?

The answer to this concerns status functions. Intersectionality, I will suggest, can be explained in terms of the interaction of status functions. Each person satisfies the criteria for many status functions, and these status functions do not simply stack neatly, one on top of the other. Rather, the deontic powers specified by different status functions interact and modify one another in a way that is contextually variable.

The basic idea of status functions interacting is not specific to the particular racial and gendered status functions I am considering here. Indeed, it can be seen in very simple examples of the kind favoured by Searle. For instance: Bob is both a homeowner and a convicted criminal serving time in prison. In virtue of counting as a homeowner, Bob has the deontic power to be in his own house when he likes; but of course he doesn't have that power at the moment, because in virtue of counting as a convicted criminal serving time in prison he lacks the deontic power to leave the prison. Yet he is still a homeowner, for all that, because he meets the criteria for counting as a homeowner (he has deeds of sale for his property, etc.). *Under the right circumstances,* Bob would enjoy the deontic powers associated with being a homeowner. Similarly, although in a much more complicated way, a man of colour still counts as a man because he satisfies the criteria of the relevant status function, even though his race prevents him from enjoying the full entitlements associated with masculinity that are enjoyed by White men. Although he has the status of 'man', he is prevented by his race from fulfilling the functioning associated with masculinity, that of a full person.

Indeed, it seems to me that all status functions – which, the reader will recall, are a type of constitutive rule – may potentially interact with other status functions. As an even more simple case, consider the constitutive rules of chess. Knights in chess move in an L-shape, but a player who tries to move her knight in an L-shape on the far side of the board when her king is in check on the near side of the board is contravening the rules of chess - unless, that is, the movement involves taking or blocking the piece that is placing her king in check. The constitutive rules about how knights move and how a player must respond to a check interact, modifying each other. To state any one rule by itself ('knights can move in an L-shape') is a simplification, though in some circumstances it may be a useful or informative one, as when one is teaching chess to a complete beginner. In exactly the same way, the specifications of the status functions for race and gender that I have given are simplifications, although I hope that they are useful and informative ones. It is worth stressing again that race and gender are not the only axes of oppression. White cis men are not going to be treated as subpersons on the basis of their race or gender. However, they may well be oppressed (and perhaps even constructed as subpersons) on the basis of their social class, sexual orientation, or disability status (to name but a few possibilities).[22]

In order for this model to do justice to the complexity of intersectionality, it is necessary to understand that when it comes to institutional categories such as race and gender, any formulation of a status function is always an abstraction. The Y-term in the status function formula – 'X counts as Y in C' – is to be spelled out by way of the deontic powers that members of the institutional category in question gain or lose. For the formula to fully capture the status function it would need to specify how the status function interacts with all other relevant status functions, and the changes to deontic powers that are produced in each case. Even if this is possible for a limited number of status functions in simple, highly formalized institutions – like the game of chess – it is certainly not possible for any of the

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[22] A somewhat complicated case would be a man who is treated badly because he has a feminine gender presentation. I would be inclined to see this an attempt to enforce the constitutive rules of male supremacy: this man is seeming to function like a woman, but observers judge that his assigned role is that of a man, and therefore action is prompted to try to return him to 'correct' functioning. The negative treatment this man experiences is, in my view, better conceived of as a coercive attempt to get him to play by the rules of the gender system as already described than as a case of his being constructed as a member of a specific and denigrated social category ('feminine man'?). However, this point is not essential to my view.

status functions with which institutionalist realism about social kinds is concerned. For this reason, the formulations of status functions I have offered for dominant race and gender categories contain a 'ceteris paribus' clause that alerts us to the necessity of keeping intersectionality in mind.

It is crucial to recognize that the formulations of the status functions I have proposed are merely outlines. As I have said, a full statement of the status functions would have to list in detail all of the implications of membership for deontic powers. One of the problems with theories of gender that do not account for intersectionality is that the complexity of women's lived experience tends to be reduced to the experience of White, Anglo, cis, straight, non-disabled economically and educationally privileged women, who, in an ideological sleight-of-hand, are used as a stand-in for 'all women' (Spelman 1988). Despite its abstraction, my account does not exhibit this problem. The outline I have offered of the status function characterizing women, for example, has been deliberately chosen as a critical tool to focus attention on relations of power. Crucially, the women for whom this abstraction is *most true* (i.e. the women upon whom the most severe subperson status is enforced) are the women who are situated at the intersection of multiple axes of oppression: women of colour, impoverished women, disabled women, and so on. The same applies to race; for example, poor people of colour are constructed as subpersons to a greater degree than more affluent people of colour are. Because the abstraction in my account is explicitly declared and of such a nature that it functions to centre those who are multiply oppressed, rather than to marginalize them, it is compatible with the recognition of intersectionality.

5.3. Trans Respect

There is some tension between the institutionalist realist account as it stands and the desideratum of respecting the gender identifications of trans people. The institutionalist realist account of gender portrays gender as something that is imposed from the outside by others. Moreover, gender categories are typically imposed at birth on the basis of genitals. Whilst there are sub-contexts in which self-identification is the primary basis for gender attribution, these remain extremely limited. And although recognition of trans people in mainstream contexts has greatly increased in recent years, this recognition tends to be confined to trans people who have undergone genital surgery, indicating that the practice of

gender attribution is still tightly tied to genital status. So at first, it does not seem as though the account respects the gender identifications of trans people: some, indeed many, trans people count as members of genders other than the one they identify with, on the institutionalist realist account.

In this section, I will add more detail to the institutionalist realist account of gender so as to enable it to meet the desideratum of respecting trans people's gender identifications. As a starting point, let us re-visit the distinction between functioning and assigned role that was introduced in Chapter 1 in order to account for racial passing (of which more shortly). There I distinguished functioning and assigned role as follows:

1. Assigned role: how an entity should be categorized according to the rules of the institution.
2. Functioning: how an entity actually gets categorized by most people's application of the rules of the institution.

I now wish to add a third aspect of institutional reality:

3. Identity: how people feel themselves to fit within the institution.

Whilst assigned role and functioning are relevant to all institutional entities, identity is only relevant to persons. Identity, in the sense I am interested in here, concerns a person's felt sense of which institutional category they belong in. We can think of this as a kind of inner 'map' that functions to guide the person through institutional reality (Cross 1991; Haslanger 2012e). Crucially for our purposes, a person's identity need correspond neither with their assigned role nor with their functioning. In the following discussion, I'll focus on the identity 'woman', although what I say can be applied to other gender identities as well.

The institutional category of woman only comes into existence within the context of a set of practices governed by constitutive rules, but once this category exists, the idea of 'woman' can be taken up by individuals in ways that depart from, and may even run counter to, the logic of the institution within which it developed (Young 2005a). A person can feel herself to be a woman even if she does not satisfy the conditions stipulated by the status-function that defines the category of woman within the relevant institution, and even if others around her do not relate to her

as a woman. This notion of identity is similar to Hacking's notion of the 'vector from below', whereby people can place their own interpretations on labels that have been imposed on them by those in positions of authority (the 'vector from above') (see Chapter 1, section 2.1). I am extending this idea by adding the claim that people can *associate* themselves with labels *other than* the labels that have been imposed on them 'from above'. These resistant forms of association in turn feed back, over time, into the general and official understandings of the categories, changing their contours.

What exactly does it mean, though, to 'feel oneself to be a woman'? This is an important question, since a lot depends on this notion in my account. Some answers are immediately ruled out. Clearly, feeling oneself to be a woman need not involve believing oneself to have, or desiring to acquire, the properties specified in the X-term of the status function – in this case, particular bodily features, especially a particular genital configuration. There are plenty of trans women who do not desire genital surgery. Nor can feeling oneself to be a woman be thought to require affirming women's institutionalized status, for many women, both trans and cis, identify as women whilst having a strongly critical attitude towards gender norms. So identification with a certain body type and endorsement of certain norms are both ruled out as bases for gender identity.

I wish to suggest that feeling oneself to be a woman is best understood as a matter of taking the norms associated with women to be relevant to oneself. But what exactly does this amount to? One way of taking a set of norms to be relevant to oneself is to endorse the content of those norms as part of one's practical identity. Having a commitment to following the norms of femininity is therefore one way of identifying as a woman, on my view. It is also perfectly possible, however, to take a set of norms to be relevant to oneself whilst holding a critical attitude towards those norms.

To illustrate how this works for a female gender identity, take the example of body hair. Consider a woman who feels that having visible body hair on her legs is unattractive, embarrassing and unacceptable. In a visceral way, having hairy legs *feels wrong* for her. This feeling – this instinctive sense of how her body 'ought to be' – is part of her gender identity. It is in line with a dominant norm of feminine appearance, and will therefore enable her to navigate the social and material reality

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of someone perceived as a woman in a way that avoids receiving social censure for violating that norm. Now contrast this with the experience of another woman who does not remove hair from her legs. Her awareness of her body includes the awareness that in having hairy legs she is contravening dominant norms of feminine appearance – on some level she knows that *people like her are not meant to look like that*, according to dominant ideology. This may be so despite the fact that she is perfectly content to have hairy legs and for them to be seen by others. Her experience of social and material reality includes *navigating* the norm that women should have hairless legs, even though she is not *complying* with it. In a physical sense, the hairy-legged woman is doing (or, more aptly, *not* doing) the same as most men – like most men, she has hair on her legs that she does not remove. But her experience of having hairy legs is not the same as it would be if she identified as a man: if she identified as a man she would not be conscious of violating a norm of feminine appearance, since she would not see those norms as applying to her. This embodied and largely subconscious sense of what it means *for her* to have hairy legs is therefore part of her female gender identity.

This understanding of gender identity interprets it as a response to the social norms that are associated with the social positions that constitute gender as class, meaning that the nature of those social positions will have implications for gender as identity. The account therefore acknowledges that the oppressive nature of the social position of 'woman' plays a role in shaping female gender identity. Nevertheless, the account does not entail that female gender identity is inherently oppressive. Let us return to the idea of identity as a map formed to guide someone through institutional reality. One way in which a map could guide someone classed as a woman through institutional reality is by guiding her towards behaviours that are prescribed as 'feminine'. In this case, it may be a form of internalized oppression, because, taken as a whole, current norms of feminine behaviour encode and express women's subordination (Bartky 1990). Equally, though, a map could guide someone classed as a woman through institutional reality by guiding her to resist norms of acceptably feminine behaviour. In this case, it may be enabling her to reject subordinating ways of being, thereby forming part of an emancipatory project. For example, if the hairy-legged woman described above experiences her violation of dominant norms of feminine appearance as something positive that contributes to her sense of herself as a feminist, then this

aspect of her gender identity will have an emancipatory function for her. On my account, then, a female gender identity is neither inherently oppressive nor inherently emancipatory (nor even inherently neutral), but has the potential to function in any of these ways depending on how it guides the person through institutional reality. Moreover, we should bear in mind that the norms associated with women include the norm that women should have certain kinds of bodies. Having an affinity with a certain body type, including having the desire to change aspects of one's body, can therefore be seen as an aspect of female gender identity.

The inclusion of identity as a dimension of institutional reality opens the way for the institutionalist realist account to respect the gender identifications of trans people. All we need to do is to stipulate that when someone says 'I am a woman', we have an ethical obligation to interpret this as an assertion about identity, in which case it will always be true (when the assertion is genuinely intended).[23] This speaks to the first part of the Trans Respect Constraint. In order to address the second part, we need to stipulate that it is ethically appropriate to relate to people in terms of how they identify, rather than in terms of their assigned role or their functioning; thus, anyone who relates to someone in a way that is not compatible with that person's gender identity is acting unethically.

This ethical stipulation is in line with Bettcher's preferred response to the BDA (basic denial of authenticity; see section 4 above). As a non-oppressive alternative to the model of gender-as-genitals on which the BDA rests, Bettcher recommends that we adopt a model that accords everyone 'First Person Authority' (FPA) over their gender (Bettcher 2009). What Bettcher has in mind here is a norm whereby we take someone's statement on a particular matter to be authoritative on that matter. Specifically, the kind of authority Bettcher has in mind is ethical authority. Bettcher introduces the idea of ethical FPA by means of the example of someone saying 'I want to go home now'. Now, it is possible for the person to be mistaken about their desires, which means that this declaration cannot be seen as having perfect *epistemic* authority. Nevertheless, it is unethical to undermine someone when they state their desires in this way: if I say that I want to go home, and it is

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[23] I take this ethical obligation to be a defeasible one that can be overridden in cases where we are sure that a person is specifically intending to speak about assigned role, and where responding to them on this basis does not reinforce transphobic assumptions.

clear that I mean it, then others around me ought to respect this, and not start interrogating me about my confidence in my understanding of my own mental states. Applying this to gender, ethical FPA entails that if I say, 'I am a woman', then it is ethically inappropriate for someone to respond 'No, you're not', or even 'Are you sure?'. My assertion of my gender should be taken as ethically authoritative. According to Bettcher, affirming a norm of ethical FPA is sufficient to counter the BDA. It is precisely this ethical norm that I am proposing to incorporate into the institutionalist realist account of gender.

However, there may seem to be a remaining problem. Institutionalist realism as I have stated it maintains that it is assigned role that determines the fact of category membership. Indeed, this position is necessary if institutionalist realism is to remain capable of meeting the Passing Constraint. This may seem unsatisfying: has the account really met the Trans Respect Constraint if it must allow that there is a sense in which a trans woman may be truthfully said to be 'a man'? This is an important worry. In order to respond to it, let me return to Bettcher. According to Bettcher, the (ethical) FPA over gender concerns 'existential identity' rather than 'metaphysical identity'. Here is Bettcher's explanation of this contrast:

> By metaphysical self-identity, I mean a self-conception that answers the question "What am I?" It involves an overall picture of the world (including categories such as men and women) in which one then locates oneself. By existential self-identity, I mean an answer to the question "Who am I?" where this question is taken in a deep sense. Thus, while "Talia Mae Bettcher" is an answer to the trivial question "Who am I?" it is not an answer to the profound question "Who am I, really?" The question, when taken in full philosophical significance, means: What am I about? What moves me? What do I stand for? What do I care about the most? Unlike metaphysical self-identity, existential self-identity is not a conception of self. Rather, the fact that one holds all of the beliefs that one holds (true or false, self-regarding or not) goes into the set of facts that determines "who one is, really." Much of one's attitudes, values, and commitment go likewise into making this determination. This falls under the reach of FPA. (2009, 110)

There are two reasons for thinking that we cannot sensibly affirm FPA over metaphysical identity. First, since metaphysical identity refers to a general picture of gender categories, one person's assertion of their gender, if interpreted in terms of metaphysical identity, would be liable to conflict with the assertions of others. Suppose, for example, that person A says she is a woman because she feels an

affinity for ways of behaving that are understood as feminine; person B says that she is a woman because she has a vulva and XX chromosomes; and person C says that she is a woman because she is oppressed in a particular kind of way. Now, A, B, and C are endorsing different accounts of the metaphysics of gender: each of their assertions includes a different claim about what it is that makes someone a woman. These claims are not compatible. If we were to say that each of A, B, and C has FPA over their metaphysical gender identity, then we would have to say that each of their claims about what makes someone a woman in general is correct. Thus, if we accorded everyone FPA over their metaphysical identity in respect to gender, we would be committed to contradictory accounts of the nature of gender categories.

The second reason that we cannot affirm FPA over metaphysical identity is that it is perfectly possible for someone to be mistaken about their metaphysical gender identity, even by their own lights. As Bettcher says, 'if one believes some neurological state makes one a woman and it turns out one lacks this state, it follows one is not a woman' (2009, 111). Importantly, however, we do not *need* to affirm FPA over metaphysical identity in order to affirm it over existential identity. A person's existential identity concerns what is important to them, and is thus bound up with their reasons for acting. This means that it is existential identity, rather than metaphysical identity, that confers intelligibility on a person's reasons for acting as they do, thereby functioning as the 'anchor' of the narrative the person is constructing about themselves. FPA over existential identity is, according to Bettcher, sufficient to avoid the BDA.

Bettcher's notion of metaphysical identity corresponds to the notion of assigned role in the institutionalist realist account (since both concern objective category membership), whereas her notion of existential identity corresponds to my notion of identity. This means that the gender identifications of trans people will be respected in a model in which everyone has ethical FPA over their existential gender identity and it is an ethical requirement to relate to others in terms of their (existential) gender identity and not in terms of their assigned role (metaphysical identity) or their functioning. I therefore conclude that the institutionalist realist account can meet the Trans Respect Constraint once the notion of identity is introduced alongside the notions of assigned role and functioning.

A difficult issue arises when we widen our focus to race, however. I do want to say there is such a thing as racial identity that can be understood in roughly the same way as gender identity, i.e. in terms of taking certain norms to be relevant to one (cf. Haslanger 2012e; Cross 1991). However, there is a problem with the idea that we should take racial identity, rather than assigned role, to be decisive in our interactions with others, which is that this seems to be at odds with established ways of thinking about race. One way of getting at this problem is to consider what in Chapter 1, following Mallon, I termed 'The Passing Constraint'. The Passing Constraint stipulates that an account of race should allow for the possibility of someone 'passing' as a member of a racial category to which they do not belong, with or without their agency or knowledge. If racial identity is what determines the truth of claims such as 'Alex is Black', however, then the possibility of passing is limited. Consider a person who, unbeknownst to herself, has Black ancestry in a context in which any Black ancestry is sufficient for a person to count as Black, and who considers herself White. On most accounts of passing, this person *is* a Black person passing as White. But if we are engaging with the identity dimension of race, this is false; rather, the person simply is White. Similarly, focussing on functioning would yield the result that the person is White. So the need to account for passing weighs in favour of taking assigned role to be the sense of race that we use, by default, in our interactions with others, not identity (and also not functioning). I do not mean to suggest that folk beliefs about racial passing are beyond question. They are, however, taken by many to be a constraint on adequate accounts of race, and rejecting them would require a powerful argument (see Chapter 1).

It seems troublingly arbitrary to say that identity is the sense of gender that we should use by default, but that assigned role is the sense of race that we should use by default. This difficulty came to public attention in 2015 in the US in relation to a woman called Rachel Dolezal, who was born to and raised by White parents but had given the impression of having Black heritage, and who had taught African-American Studies and served as president of a NAACP chapter (McGreal 2015). Subsequently, Dolezal claimed that although she was 'biologically born white to white parents', she 'identif[ies] as Black' and this is the basis of her claim to *be* Black (Svrluga 2015). Dolezal's claim to be Black can therefore be interpreted as a demand that people prioritize identity over assigned role in how they relate to her.

The question, then, is whether Dolezal's claims to *be* Black exert the same kind of ethical demand as a trans woman's claim that she *is* a woman.

Many commentators argued at the time that this question should be answered in the negative (McGreal 2015). The main argument for this was that race is determined by objective facts about ancestry, not by one's own subjective sense of self; in my terms, they advocated prioritizing assigned role over identity. This argument runs into problems, however, when comparisons are drawn between race and gender. An analogous claim can of course be made about gender: that gender is determined by objective facts about genitals or chromosomes, not by one's own subjective sense of self. Some commentators argued that since identity should be prioritized in the case of gender, it should also be prioritized in the case of race; others tried to resist this move. One reason given for resting the move was that gender identities are not chosen, whereas racial identities are; a trans woman does not choose to identify as a woman, but Rachel Dolezal chose to identify as Black. This claim was at times paired with the suggestion that gender identities are determined by biological factors that are not yet fully understood (and hence that trans[gender] people are 'born that way'). This, however, is an unpromising line of argument. First, Dolezal reports feeling a strong racial identification since childhood; the strongest argument for treating gender and race differently in this respect would take that assertion on face value, rather than depending on the premise that Dolezal is dishonest. Second, evidence for a biological basis for gender identity is inconclusive, and it is far from clear that the need to respect trans people's gender identifications would be obviated by the discovery that gender identity is not biologically grounded.

A much more promising line of argument can be based on the political difference between trans people and those whose racial identities differ from their assigned racial category. Trans people constitute an identifiable group who report significantly overlapping experiences and suffer severe and widespread discrimination and oppression on the basis of their trans status. By contrast, people whose racial identities differ from their assigned racial category are very few and far between, and, although Rachel Dolezal was the target of much criticism, she has not been systematically oppressed on the basis of the contrast between her assigned race and her racial identity. I want to suggest that the basis

for the ethical imperative to prioritize gender identity over assigned gender role in our interactions with people stems from the collective situation of trans people as an oppressed group and the negative implications for that group of prioritizing assigned gender, as discussed above. In other words, this imperative is not only rooted in a concern to respect an individual's self-description in general, but in a particular political context relating specifically to gender. Since this context is not shared by those whose racial identities differ from their assigned racial category, there is no equivalent ethical imperative for a norm of FPA over race. We can describe Rachel Dolezal as a White person who identifies as Black without becoming complicit in a systematic injustice, but we cannot describe trans women as men who identify as women without becoming complicit in a systematic injustice, because trans women as a group are systematically harmed by the BDA and our description would contribute to that harm. This is not to say that Dolezal necessarily deserves any criticism for the way she represented herself; it may well be that her identity ought to be respected as a sincere self-conception. The point is that describing Dolezal as a White women who identifies as Black, rather than as a Black woman (simpliciter), does not constitute disrespect, for it does not contribute to her oppression.

To sum up, I have introduced the notion of *identity* as an aspect of institutional reality alongside *assigned role* and *functioning*. Respecting the gender identifications of trans people requires that a norm of First Person Authority be accepted for gender identity, and that gender identity be prioritized over assigned role and functioning for the purposes of relating to people. My account is fully able to do these two things. Moreover, I have offered a principled reason for accepting an asymmetry between gender and race in this regard, meaning that the account is still able to account for racial passing. I will have more to say about the politics of trans experiences and identities in Chapter 4.

5.4. Lived Experience

The final desideratum is that the account of gender should be compatible with the lived experience of race and gender. The first aspect of lived experience that I will focus on concerns the embodied dimensions of race and gender.

The embodied dimensions of gender have been the subject of much theorizing. Women's gendered bodily dispositions have frequently been analysed as consequences of a restricted social role (Young 2005b) and as markers of inferior status (Bourdieu 2001). Iris Marion Young, for example, famously discusses the way that girls and boys differ in how they throw a ball (2005b). Whereas boys tend to use the whole body, reaching around behind them and using their legs to gain momentum, girls are more likely to confine their movement to the arm. Young argues that this is just one example of a typically feminine form of bodily experience whereby the body is experienced more as 'a thing in the world like other things' than as a series of capacities for interacting with the world:

> Insofar as [women in sexist society] learn to live out our existence in accordance with the definition that patriarchal culture assigns to us, we are physically inhibited, confined, positioned, and objectified. As lived bodies we are not open and ambiguous transcendences that move out to master a world that belongs to us, a world constituted by our own intentions and projections. (Young 2005b, 42-43)

This embodied experience, Young argues, is a product of women's socialization within a sexist context in which they are assigned a limited social role, are assumed to be less capable and less robust, and are subjected to constant aesthetic scrutiny.

In a similar vein, George Yancy (2008) captures some of the embodied elements of race and of racist interactions through exploring his experience of entering an elevator in which there was a White woman. Despite Yancy being smartly dressed, the White woman immediately reacted with obvious physical discomfort and fear, clutching her bag tightly. Yancy argues that the woman need not entertain any conscious racist thoughts on this occasion for her response to his physical presence to be aptly described as racist. As he points out, 'deep-seated racist emotive responses may form part of the white *bodily* repertoire, which has become calcified through quotidian modes of bodily transaction in a racial and racist world' (5). The woman's physical reactions cause bodily responses in Yancy as well:

> My movements become and remain stilted. I dare not move suddenly…. I feel trapped. I no longer feel bodily expansiveness within the elevator, but corporeally constrained, limited. I now begin to calculate, paying almost neurotic attention to my body movements, making sure that this "Black object," what now feels like an appendage, a weight, is not too close, not too tall, not too threatening. (15)

As Yancy shows, the dispositions that support the institutional reality of White supremacy are themselves embodied, and trigger embodied responses in others when they manifest in behaviour.

The institutionalist realist account of gender and race that I have put forward can accommodate the embodied aspects of these categories. The embodied experiences described by Young and by Yancy are both forms of what, in Chapter 2, I termed 'socialized practices' (drawing on Dreyfus [1999], who terms them 'social norms'). These embodied dispositions are acquired though processes of socialization taking place in sexist and racist contexts. These processes may be to a large degree unconscious, and the resulting dispositions may operate without conscious intervention. These racialized and gendered dispositions concern our experience of our embodied self, and are often interactive, with a 'White gaze' or a 'male gaze' both conditioning the embodied experience of the one who gazes and at the same time calling forth responses in those at whom the gaze is directed. The fact that these raced and gendered socialized practices take the unequal forms that they do is a consequence of the institutional reality of race and gender categories in the past. Women are socialized in ways that limit their agency because women have historically not been considered full agents; Black people are socialized in ways that position them as criminal others because Black people have historically been considered criminal others, and so on.

Yet these embodied dispositions are by no means epiphenomenal within a White supremacist and patriarchal society. Rather, they form part of the micro-level that explains the limitation of the deontic powers of women and of people of colour. One important way this happens is through the interaction of embodied dispositions and explicit beliefs. For example, women's embodied dispositions may cause women to be perceived as less competent, reducing their ability to obtain employment. Similarly, people of colour may experience an unease in hostile surroundings that is perceived by others as suspicious, making it more likely that they will be unfairly targeted by law-enforcement agencies and thereby reducing their ability to move freely through social space. Thus, the racialized and gendered embodied dispositions that have been described by feminists and by critical race theorists are very much present in the account of institutional reality.

Another aspect of lived experience that the institutionalist realist account should be able to accommodate is epistemic experience. Now, there have been many different attempts to theorize the epistemic dimensions of gendered and racialized experience, and it would be foolish to attempt to explain them all by way of the institutionalist realist account. I do, however, want to draw attention to one particularly interesting congruence, which concerns an epistemic phenomenon that has been called 'double consciousness'. The idea of double consciousness concerns the damaging effects of White supremacy on the consciousness and self-conception of people of colour. The term comes from W. E. B. Du Bois, though a similar phenomenon has also been described by other philosophers of colour. Here is Du Bois:

> [T]he Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world – a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. (Du Bois 1996, 5)

In a similar vein, Mills observes that the Racial Contract requires a 'depersonalizing conceptual apparatus' through which people of colour come to see themselves (1999, 87-88). The institutionalist realist account of race I have developed aptly captures at least one aspect of double consciousness. In the terms of this account, the 'depersonalizing conceptual apparatus' of which Mills writes is the system of status functions and associated deontology of White supremacy. People of colour must come to see themselves via this apparatus because, as I have described above, they must navigate that institutional reality in order to survive. Double consciousness is a complex phenomenon, but if I am right then one form of double consciousness involves a person having a critical stance towards the institutional reality within which they are situated, accurately recognizing its constructed and contingent nature, but also at the same time being forced to participate to some extent in the forms of consciousness that uphold it, whether by way of reluctant recognition or tactical compliance (see Chapter 2, section 3.2).

Moreover, my institutionalist realist account captures a sense of objectivity that is at work in at least some classic statements of double consciousness. In the passage cited above, Du Bois refers to a 'tape' by which Black people are measured, which

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suggests an objective, external standard. Even more directly, perhaps, Frantz Fanon writes:

> I subjected myself to an *objective* examination, I discovered my blackness, my ethnic characteristics; and I was battered down by tom-toms, cannibalism, intellectual deficiency, fetichism, racial defects, slave-ships, and above all else, above all: "Sho' good eatin'".[24] (2008, 84-85, italics added)

In the terms of my account, the institutional reality of racial subordination is epistemically objective despite being ontologically subjective (see Chapter 1, section 3). That is, although this institutional reality (or indeed any institutional reality) depends on human psychological factors for its existence, given that these factors obtain there are facts about this reality that are independent of the mind of any particular individual. Thus, a person of colour who experiences double consciousness is someone who has forced to recognize both (1) that they are objectively inferior, and (2) that this inferiority is socially constructed (it is neither a natural nor an inherent property). On my account, then, double consciousness is a sort of double perspective on institutional reality, one that can think both within and outside of that reality, and part of its force comes from the epistemic objectivity of institutional reality. I take it to be a virtue of the institutionalist realist account that it can capture the phenomenon of double consciousness in this way.

6. Conclusion

This chapter completes the institutionalist account of the ontology of race and gender. In Chapter 1, I set out institutionalist realism in general. In Chapter 2, I explained the Racial and Sexual Contracts, applied institutionalist realism to the de jure phase of these contracts, and developed institutionalist realism to make space for an account of the de facto phase of the Racial and Sexual Contracts. In this chapter, I have addressed the de facto phase in detail, arguing that contemporary categories of race and gender should be understood as institutional categories that are hierarchical in nature. I have argued that differential outcomes for members of different gender and racial categories are evidence of differential

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[24] The phrase "sho' good eatin'" is a reference to a racist advertising slogan for Banania, a powdered chocolate drink.

deontic powers that define these categories. These deontic powers are opaque, and depend on a complex group of factors including social norms, socialized practices (including implicit biases), physical facts, and collective and individual intentionality. The interaction of these factors prevents women and people of colour from being able to enforce various important entitlements, including entitlements to life, safety, and bodily integrity. As a result, women and people of colour continue to be constructed as subpersons. I have also argued that this institutional realist account of gender and race meets four important desiderata: it has critical relevance, it is compatible with recognition of intersectionality, it is respectful of the gender identifications of trans people, and it takes into account the lived experiences of women and of people of colour.

Although I have highlighted the advantages of institutionalist realism about race and gender, I have not undertaken to compare this account with rival views, and I do not propose to do so now. I will, however, close this chapter by situating the institutionalist realist account of race and gender I have proposed here in relation to one view to which it is particularly closely related. This view is Sally Haslanger's constructivist realist account of gender and race (Haslanger 2012b, c, d, a). According to Haslanger, races and genders are 'objective types', where an objective type is a set unified by some property (which need not be essential to the members of the set). Races and genders, Haslanger argues, are unified by properties concerning the way that people are positioned within social hierarchies on the basis of certain observed or imagined bodily features. Women are understood as those who are subordinated on the basis of being observed or imagined to have bodily features associated with a female role in biological reproduction, and men as those who are privileged in the basis of being observed or imagined to have bodily features associated with a male role in biological reproduction. Similarly, Black people are understood as those who are subordinated on the basis of observed or imagined biological features associated with ancestral origins in Africa, White people are understood as those who are privileged on the basis of being observed or imagined to have bodily features associated with ancestral origins in Europe, and other racial categories are defined with reference to other geographical regions as appropriate.

This account of race and gender was initially proposed by Haslanger as an account of what she terms the 'target concepts' of race and gender, which is to say that concepts that would, if adopted, best further critical feminist and anti-racist projects (2012b). In later work, Haslanger suggests extending the view to claim that these definitions also capture the operative concepts of race and gender, which is to say, the concepts of race and gender that can be discerned in our ordinary practices (2012d). This extension of the view would be accomplished by way of an appeal to semantic externalism, specifically objective type externalism, which Haslanger defines as follows:

> '*Objective type externalism*: terms or concepts pick out an objective type, whether or not we can state conditions for membership in the type, by virtue of the fact that their meaning is determined by ostension of paradigms (or some other means of reference fixing) together with an implicit extension to things of the same type as the paradigms.' (2012d, 374)

On this view, race and gender terms can turn out to refer to types that are quite different to the types to which we thought they referred; for example, they can turn out to refer to social types rather than to biological types. This is because the paradigms we can agree on may turn out to be unified by an objective type that is surprising to us. As Haslanger argues,

> We can all confidently identify members of different races.... But if this is the case, then the terms 'Black' and 'White' pick out the best fitting and most unified objective type of which the members of the list are paradigms – even if I can't describe the type or my beliefs about what the paradigms have in common are false. What that type is is not yet clear. But given how weak the constraints on an objective type are, undoubtedly there is one. (Haslanger 2012a, 306)

The claim would then be that the objective types that best unify the paradigm cases of raced and gendered individuals are the hierarchical social types identified by the definitions given above. Haslanger also notes that these objective types exist within a matrix of social practices, within which power circulates and subject positions are formed (2012d, 370).

The similarities between the account Haslanger's account of race and gender as objective types and my own institutionalist realist account will be clear: both take race and gender categories to be defined hierarchically and to be imposed on the

basis of presumed bodily features. More precisely, I see my view as being broadly compatible with the objective types account. I take institutionalist realism to offer an explanation of the objective types, the matrix within which they exist, and the relationship between these two things that is more detailed than the one found in the objective types account as set out by Haslanger. According to my institutionalist realist account, the types in question are institutional kinds, and the matrix amounts to an institution. This version of the objective type account has fairly strong metaphysical commitments, and Haslanger's statement of that account is certainly compatible with metaphysically weaker positions. As Haslanger indicates in the last quote, the constraints on what can constitute an objective type are very weak, whereas the constraints on what can constitute an institutional kind are much more substantial. I have already set out my argument for thinking that race and gender categories are (still) institutional kinds, and I do not propose to rehearse it again. Let me simply say, then, that the reason I think it is worthwhile to defend institutionalist realism rather than a weaker version of the ontology of objective types is that it articulates the existence of the Racial and Sexual Contracts forcefully and in great detail. Institutionalist realism allows us to claim that patriarchy and White supremacy are ongoing institutions, and that the metaphysics of race and gender has not been radically altered by the progress that has taken place over the last 100-plus years. It remains to be seen whether a weaker version of the ontology of objective kinds could do the same.

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Ontic Injustice

1. Introduction

In the previous two chapters, I argued that races and genders are institutional kinds, and that each is defined by status functions allocating subperson status to people of colour and to women respectively. In this chapter, I argue that this state of affairs constitutes a particular kind of wrong: those constructed as women and/or as people of colour are among those who experience a distinctive form of injustice which I term 'ontic injustice'. I will first define ontic injustice and give an explanation of the moral wrong it involves. I will then consider the implications of ontic injustice for two key political concerns, equality and freedom. Next, I will discuss the question of how different forms of ontic injustice are to be distinguished from one another. Finally, I will analyse the relationship between ontic injustice and the institutionalist realist account of social kinds.

2. Defining Ontic Injustice

The concept of ontic injustice identifies a particular dimension of injustice relating to human social kinds. Roughly, it is an injustice that one suffers in being made into a member of a certain social kind. This is to say that *the very fact of being a member of that kind* constitutes a wrong. I will understand a wrong as a harm that is morally impermissible, or as a violation of a moral entitlement. I am wronged if my interests are set back in a way that I was morally entitled to expect that they would not be set back. Importantly, I do not intend to use 'wrong' in a way that implies that there is necessarily an agent who can be identified as the 'wrongdoer' (I shall discuss this point more in the next section).

Let us begin with a general definition of ontic injustice:

> **OI General:** Ontic injustice occurs when an individual is wronged by being socially constructed as a member of a certain social kind.

In defining ontic injustice I am aiming to identify a distinctive form of injustice that takes place through social construction. The social construction itself – the very fact of being made into a member of a certain social category – is what constitutes the injustice. The definition should not be understood to include just any wrong for which a certain sort of social construction is a precondition. In a case of ontic injustice, the social construction must *constitute* the wrong in question; I shall explain this requirement in more detail below.

Before we can understand more fully what ontic injustice involves, however, we need to connect the general definition of ontic injustice given above to a particular account of the ontology of human social kinds. I will use the institutionalist realist account that has been developed in chapters 1-3. Recall that on this account, being a member of an institutional category is fundamentally a matter of the allocation of deontic powers. To be a judge, for example, is to count socially as someone who is entitled to deliver sentences, instruct juries, and so on. Membership in an institutional category can not only augment one's deontic powers, but can remove or abridge them, depending on the category. Here, then, is a more specific definition of ontic injustice:

> **OI Specific:** Ontic injustice consists of an individual being constructed as a member of an institutional category where this involves a wrongful deprivation of deontic powers.

As I have argued, women and people of colour are currently deprived of various important conventional deontic powers. This is to say that, currently, to be constructed as a woman or as a person of colour is to count as the sort of person who, socially speaking, lacks certain significant entitlements and prerogatives. A person who, in virtue of being a member of an institutional kind, is deprived of the deontic power to, say, control sexual access to their own body, receive a fair trial, or earn a fair wage, thereby suffers a wrong. The thought here is that it is not only a wrong to be actually raped, wrongfully incarcerated or underpaid; it is a wrong to be *made into the sort of person* to whom these things are permitted to happen,

whether overtly, through official sanction of these forms of ill-treatment, or tacitly, through being deprived of effective means of objecting to it. Any individual constructed as a person of colour and/or as a woman is therefore a victim of ontic injustice.

Note that in order for ontic injustice to take place, the category needs to be an institutional one, not just a social one: it is only institutional categories that are characterized by the allocation of deontic powers. Another way of putting this point would be to say that the category in question needs to be defined by a status function (a function that cannot be fulfilled merely in virtue of physical properties) and not just any kind of function. This specific definition of ontic injustice builds on the general definition by showing precisely *how* one can be wronged by being constructed as a member of a certain social category: it is the wrongful deprivation of deontic powers that constitutes the ontic injustice.

It is important to stress that, for membership in an institutional category to constitute ontic injustice, more is required than that category membership merely be a consequence of some wrong or merely lay a necessary foundation for some further wrong. To make this clear, I will now give two cases where ontic injustice does *not* occur.

First, imagine someone who is part of a society with a very unjust economic system – let us suppose that there is no equality of opportunity. This person is in a badly off position in that system. In virtue of being in this position, they receive state benefits, and count, as a matter of institutional reality, as a 'recipient of benefits' (we can suppose that being a recipient of benefits entitles one to certain things, such as reduced entry to public amenities and free school meals for one's children, making it an institutional category). In this society, however, recipients of benefits are not stigmatized, and benefits are sufficient to adequately meet people's needs. Under these circumstances, being constructed as a recipient of benefits is a consequence of injustice because the economic system that leads to some people being in need of benefits is an unjust system. However, being constructed as a recipient of benefits is not an *ontic* injustice, because membership in this category does not wrongfully curtail one's deontic powers. This illustrates the claim that for category membership to constitute an ontic injustice it is not enough that the category in question is the *product* of injustice.

Second, consider a case in which there is an ethno-religious group – call it group X – that has been persecuted in the distant past but is not currently persecuted. Members of group X are not in general disadvantaged or discriminated against. Very occasionally there is an isolated incident of anti-X prejudice, which is taken seriously by the authorities and is effectively punished. Anti-X prejudice, then, is an incidental occurrence rather than a pervasive phenomenon, and as such has no significant impact on the social meaning of being a member of group X. Members of group X do not suffer an ontic injustice because they do not have their deontic powers curtailed: when anti-X prejudice occurs it is recognized as wrong, and effective steps are taken to obtain redress for the victim. Although being a member of group X is a precondition for experiencing anti-X prejudice, and although anti-X prejudice is unjust, membership of category X in and of itself does not constitute a wrong because the members of category X are not deprived of deontic powers. This shows that for category membership to constitute an ontic injustice it is not enough that the category in question is a *precondition* of injustice.

The artificiality involved in setting up these examples demonstrates that ontic injustice is a very pervasive phenomenon. In real life, for example, I think recipients of state benefits certainly *do* suffer ontic injustice, at least in the UK. I am in general wary about constructing artificial examples that are close to real life cases because I believe that this can have a distorting effect on debates about the real world. However, I have done so here in order to achieve conceptual clarity concerning what does and does not constitute ontic injustice. In order for ontic injustice to occur, the deontic powers that characterize membership of an institutional category need to be themselves wrongful; membership in the category being a consequence or a precondition of injustice is not sufficient.

As we have seen, institutional reality has three dimensions. In chapter 1, I distinguished between assigned role and functioning, and in chapter 3, I added a further dimension, identity. Assigned role is how a person ought to be categorized according to the rules of institutional reality, given all the relevant facts about them. Functioning is how a person is actually perceived and treated by others, given what is believed about them. Identity is a person's own sense of how they are positioned relative to institutional categories. So for example, consider a person, Anna, who has Black ancestry of which she is unaware, and who lives in a

society in which having some Black ancestry is sufficient for a person to count as Black. Anna is perceived by others as a White person, and thinks of herself as White. Anna's assigned role is Black, she is currently functioning as White, and her identity is White. Each of these three aspects of institutional reality captures important information about this person's situation. How, then, does ontic injustice fit with this three-way distinction between assigned role, functioning, and identity?

Functioning, the second dimension of institutional reality, is directly relevant to a person suffering ontic injustice. Suffering ontic injustice is a matter of being deprived of deontic powers, and a person is only deprived of deontic powers when unjust categorization systems impact on their functioning. To suffer ontic injustice qua X one must be functioning as an X. Note, then, that one can suffer ontic injustice qua X even if one's assigned role is Y. So Ben, who has no Black ancestry but is believed to do so, suffers ontic injustice in virtue of functioning as Black, even though his assigned role is not Black.

Assigned role is thus not directly relevant to ontic injustice. Anna, for example, is not currently suffering an ontic injustice, although she may suffer it in the future if her ancestry is discovered. Assigned role is, however, indirectly relevant to ontic injustice in two ways. First, if one's assigned role is at odds with one's functioning, there is always a risk that one might be forced into functioning in accordance with that assigned role, as is the case for Anna. So someone whose assigned role is X, where X is characterized by the deprivation of deontic powers, but who is currently functioning as a member of another category, is at constant risk of ontic injustice, even though she does not currently suffer ontic injustice qua X. Second, we can say that a system of categorization – an institutional reality – exhibits ontic injustice insofar as the categories are defined in wrongful ways. If we are identifying the people who are harmed by ontic injustice, we need to consider functioning, but if we are assessing a system of categorization to see whether it exhibits ontic injustice, we need to consider assigned role.

The third dimension of institutional reality, identity, is also not directly relevant to ontic injustice, although it is indirectly relevant in two ways. The first is that identifying as X when one's assigned role is Y could lead one to function as X, thereby suffering any ontic injustice associated with the category of X. This may

have happened in the case of Rachel Dolezal, an American woman with no Black ancestry who identifies and presents herself as Black and was believed to be Black by her community for many years (Svrluga 2015). One way of reading this case is to say that Dolezal's identification as Black led her to present herself as Black and therefore to function as Black, meaning that she suffered ontic injustice during that period of her life. Identity is relevant to ontic injustice here because of its causal impact on functioning.

The second way in which identity is indirectly relevant concerns the negative impact of ontic injustice on identity. One of the knock-on harms of ontic injustice is how our identities are shaped. We can see the effects of ontic injustice in our identities, as when someone comes to see treatment that is in fact unjust as being what they deserve. However, remember that, on my account of what it is to have a certain identity, one can identify as, say, Black without endorsing the role assigned to Black people, or accepting as legitimate the norms that are supposed to govern a Black person's behaviour. It is therefore perfectly possible for someone to be wrongfully deprived of deontic powers, thereby suffering an ontic injustice, whilst at the same time holding a strong belief that this deprivation is wrong and having an unimpaired sense of self-worth. There is a strong tendency for ontic injustice to impact negatively on identity, but it need not, and will not do so in all cases. Therefore, the damage done to people's sense of self by unjust systems of categorization is not part of what we might term the 'intrinsic injustice' of ontic injustice, which is to say, the wrong that is definitive of ontic injustice. Rather, it is a 'secondary harm': a probable, but not inescapable, consequence of the intrinsic injustice (Fricker 2007, 44).

I have suggested that the individuals who experience ontic injustice qua women are those who function as women. Recall that in Chapter 3 (section 5.3) I argued that the term 'women' is best used to refer to those who identify as women, due to the need to respect the gender identifications of trans people. (The equivalent does not hold for race.) I will therefore adopt the term 'f-women' to mean 'those individuals who function as women'; note that, from the point of view of identity, this excludes some women (e.g. closeted or routinely mis-gendered trans women) and includes some non-women (e.g. closeted or routinely mis-gendered trans men). When discussing those who suffer ontic injustice qua women, I will use the

term 'f-women'. This may strike some as an unnecessarily complication; however, I think it is very important to avoid making what appear to be general claims about women as such that inappropriately exclude some women and/or include some non-women.

We now have a basic grasp on what ontic injustice is. Ontic injustice consists of the construction of individuals as members of institutional categories where this involves the individuals in question being wrongfully deprived of deontic powers. A category's being the product of, or a precondition for, injustice is not sufficient for membership of that category to constitute an ontic injustice; the set of deontic powers associated with membership must be themselves wrongful. The wrong of ontic injustice concerns people's functioning, although we can also take a structural perspective and talk of systems of categorization being wrongful, in which case we will be considering assigned role. Ontic injustice tends to have a negative impact on people's identities, although this is not part of ontic injustice proper and need not occur in all cases.

3. The Wrong of Ontic Injustice

In defining ontic injustice, I have referred to the idea of an individual being wronged, specifically to their suffering a wrongful allocation of deontic powers. In this section I explore the nature of this wrong more fully.

The victim of ontic injustice is socially defined as having a lesser moral standing than they in fact do. I propose to understand this type of wrong as a failure to respond appropriately to properties of the individual that merit a certain moral response – for example, their being a person. This is to say that the wrong of ontic injustice consists of morally relevant features of the individual being denied or contradicted by allocations of deontic powers. In other words, the deontic powers allocated to a victim of ontic injustice license others to act towards the victim in ways that violate moral entitlements that the victim has in virtue of the sort of being that they are. For example, consider a system of racial categorization that permits Black slavery, i.e. one that deprives those constructed as Black of the deontic power to be free from enslavement. Black people, like all other autonomous

agents, have a moral entitlement to be free from enslavement. Thus, the deontic powers they are allocated in this system of racial categorization deny them something to which they are in fact morally entitled (freedom from enslavement). The wrong of ontic injustice consists in the *mismatch* between that to which individuals are morally entitled, and the conventional deontic powers they are accorded.[25]

This way of explaining the wrong of ontic injustice is reminiscent of Stephen Darwall's account of what he terms 'recognition respect' (Darwall 1977).[26] According to Darwall, there are two quite different attitudes that go by the name of 'respect'. On the one hand, 'appraisal respect' is a positive evaluation of a person; this is the sort of respect involved in respecting someone as a sportsperson, or as a philosopher. Appraisal respect can be withdrawn, for example if one learns that one's favourite sportsperson has been taking performance enhancing drugs, or that one's favourite philosopher is a serial plagiarist. Recognition respect, on the other hand, is a matter of recognizing certain properties of someone or something, and being disposed to respond appropriately to these. This is the attitude involved in respecting someone as a person, or in respecting a work of art. We recognize that the person has certain morally relevant properties that mean that we ought not to harm her, exploit her and so on. Similarly, we recognize that the work of art has aesthetic value, and we ought not to wantonly destroy or damage it. Unlike appraisal respect, recognition respect cannot legitimately be withdrawn; even someone who has forfeited our appraisal respect as a sportsperson still has a claim to our recognition respect as a person. Darwall further identifies a sub-category of recognition respect, *moral* recognition respect, in which the properties in question are morally relevant. The case of respecting the person is a case of moral recognition respect, whereas the case of respecting the painting is not. It is moral recognition respect that will concern us here.

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[25] Note, therefore, that my account of the wrong of ontic injustice implies a modest metaethical commitment: the account requires that moral facts not be the same as institutional facts. If moral facts were equated with institutional facts, then I could not appeal to a mismatch between moral and institutional facts to explain the wrong of ontic injustice.

[26] A similar idea has also been discussed under the labels 'dignitary harm' (Anderson 2010; Waldron 2012) and 'moral injury' (Hampton 2007).

The idea of recognition respect is further developed in Darwall's later work on dignity (Darwall 2004). Darwall argues that dignity consists not only in an entitlement to be treated in a certain way, but the authority to object to treatment that falls short of this entitlement. Part of what being a person gets you, morally speaking, is not just that others ought to respond appropriately to morally relevant properties that you instantiate, but that you have the standing to demand that they do so. As Darwall puts it, 'Dignity is not just a set of requirements with respect to persons; it is also the authority or standing *to require* that we comply with these by holding one another to account for doing so.' (44).

Ontic injustice involves both a failure of recognition respect and a denial of dignity. In being deprived of deontic powers, one is deprived of certain entitlements or prerogatives that one ought, morally speaking, to have. Moreover, one is at the same time deprived of the status or standing required to object to or protest certain forms of bad treatment. Lacking a conventional right not to be enslaved means that in objecting to enslavement one will not be seen as protesting against a moral wrong, or as issuing a legitimate moral demand. Instead, one may be seen as unreasonable, irrational, or even mentally ill, as when escaping slaves in the antebellum South were thought to suffer from a psychological disorder, 'drapetomania', the principal symptom of which was a persistent desire to escape from slavery (Jackson 2002; see also the discussion of women's anger in Frye 1983). The victim of ontic injustice therefore suffers a failure of recognition respect *and* a violation of her dignity, in Darwall's sense, because she is deprived of the standing to object to the failure of respect.

There is an important distinction that must be introduced before we proceed further. On Darwall's account, recognition respect seems to be an attitude one person can have towards another. Now, as explained in Chapter 2, it is possible for members of a group to lack certain deontic powers even if no-one explicitly thinks of them as lacking those entitlements and prerogatives: if the entitlements in question are routinely violated and members of the group are systematically prevented from obtaining appropriate redress, then the deontic powers are lacking. However, it is not clear how such cases can be accounted for if we are restricted to thinking of recognition respect in terms of individual attitudes.

Elizabeth Anderson draws a distinction between transactional and structural theories of justice that is helpful in this connection (Anderson 2012). The former concerns one-off interactions at the individual level, whilst the latter concerns the structural conditions under which such transactions take place. The motivation for looking at the structural aspect of justice is the fact that even if transactions are just at a local level, their cumulative effects may be very bad for some individuals. In such cases, these effects can be avoided through intervening at a structural level. According to Anderson, '[a] structural theory [of justice] supplies criteria for assessing global properties of a system of rules that governs transactions, and imposes constraints on permissible rules with an eye toward controlling the cumulative effects of individual transactions that may be innocent from a local point of view.' (2012, 164)

I propose to apply this distinction to failures of recognition respect. Darwall is concerned with what I shall call transactional failures of recognition respect, where one person is inattentive to (and unmotivated by) morally relevant properties of another. In a parallel fashion, I suggest that a *structural failure of recognition respect* occurs when a structure, such as an institution, is insensitive and unresponsive to morally relevant features of some person or group of people. This is importantly different from Darwall's sense, since in the structural case there is not, or at least need not be, an agent who would be capable of 'recognizing' anything. Structural failures of recognition respect can therefore be understood by analogy with transactional failures, but are not exactly the same. The important point for my purposes is that in both the transactional and the structural case there is a failure to respond appropriately to morally relevant properties of some individual or individuals.

Ontic injustice always involves some failure of recognition respect, whether transactional, structural, or a blend of the two. An example of a transactional failure of recognition respect that is implicated in ontic injustice is a person who believes that a wife is not entitled to refuse to have sex with her husband. An example of a structural failure of recognition respect is a legal system that features a marital rape exemption (i.e. that does not classify non-consensual sex between a husband and wife as rape). Structural failures of recognition respect can be overt or subtle; for example, a legal system that lacks effective measures for disrupting

the effects of widely held rape myths on trials also counts as a structural failure of recognition respect. This case illustrates that structural and transactional failures of recognition respect can be intertwined. An individual discrediting a victim of rape using rape myths commits a transactional failure of recognition respect; if the individual in question is on a jury in a rape trial, and no procedures are in place to prevent their rape-myth-acceptance from influencing their verdict on the case, this may be part of a structural failure of recognition respect as well. To further grasp the distinction, imagine a context in which the legal system features a marital rape exemption, but this exemption is universally believed to be wrong. Married women in such a context would not suffer any transactional failures of recognition respect, but they would still suffer a structural failure of recognition respect because the legal system is failing to take into account and respond to their moral entitlement to control sexual access to their own bodies. In the case of current gender relations, the ontic injustice suffered by f-women involves both transactional and structural failures of recognition respect, as does the ontic injustice suffered by people of colour.

To illustrate the understanding of the moral wrong of ontic injustice I am proposing, consider the following exchange from Anne Bronte's novel, *The Tenant of Wildfell Hall*. Helen, the heroine of the novel, has seen Mr Hattersley physically and verbally abusing his wife, Millicent, and tries to remonstrate with him. He responds:

> '... How can I help playing the deuce when I see it's all one to her whether I behave like a Christian or like a scoundrel such as nature made me? – and how can I help teazing her when she's so invitingly meek and mim – when she lies down like a spaniel at my feet and never so much as squeaks to tell me that's enough?'
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> 'If you are a tyrant by nature, the temptation is strong, I allow; but no generous mind delights to oppress the weak, but rather to cherish and protect.'
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> 'I *don't* oppress her; but it's so confounded flat to be always cherishing and protecting – and then how can I tell that I *am* oppressing her when she "melts away and makes no sign?" I sometimes think she has no feeling at all; and then I go on till she cries – and that satisfies me.'
>
> 'Then you *do* delight to oppress her.'
>
> 'I don't, I tell you! – only when I'm in a bad humour – or a particularly good one, and want to afflict for the pleasure of comforting; or when she looks flat and wants shaking up a bit. And sometimes, she provokes me by crying for nothing, and won't tell me what it's for; and

then, I allow, it enrages me past bearing – especially when I'm not my own man.' (Bronte 2008, 245-246)

In the space of this short exchange, Mr. Hattersley oscillates between admitting that he torments Millicent and denying that he does so. He likewise alternates between blaming his actions on his own bad character, on the boredom inherent in good behaviour, and on faults on his wife's part (variously that she is too calm or too emotional). His floundering attempts to justify his abusive behaviour gives the strong impression that he lacks a clear sense of Millicent as a person with a moral entitlement to be treated with respect. Particularly striking is his description of Millicent as frequently 'crying for nothing' shortly after he has confessed to behaving abusively towards her in just about any circumstance, including deliberately trying to make her cry. His perception of her distress as unmotivated or random indicates a failure to perceive his behaviour towards her as genuinely injurious. Here we see a striking example of a transactional failure of recognition respect, with the accompanying loss of dignity to the victim. Not only is Millicent abused by Hattersley, but she is not perceived by him as having the standing to complain about the way he treats her, meaning that her distress is rendered unintelligible to him and does not register as a rebuke. There is also a concurrent structural failure of recognition respect in the background of this picture, given that the law at the time granted wives no legal protection against domestic abuse (a point that is significant in the overall plot of the novel). This structural failure of recognition respect provides a context in which various transactional failures of recognition respect – in this case Hattersley's verbal and physical abuse of Millicent – can take place unchecked.

Having established the kind of wrong involved in ontic injustice, we can consider the question of whether or not ontic injustice is perpetrated by identifiable wrongdoers. When an ontic injustice involves transactional failures of recognition respect, the agents who enact those failures constitute identifiable wrongdoers who jointly bring about the construction that constitutes the ontic injustice. If the ontic injustice also involves structural failures of recognition respect, then the wrong done by these individuals will not exhaust the wrong suffered by the victims of ontic injustice. If the structural failures can be traced to the agency of some individual(s) or group(s), these agents will also be perpetrators of ontic injustice. For example, we might be able to identify the legislative body that introduced a

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law that constitutes a structural failure of recognition respect. In cases of ontic injustice where this is not possible, not all of the wrong suffered by the victims will be traceable to particular wrongdoers. In fact, it is possible in principle for there to be a case of ontic injustice that is purely sustained by structural failures of recognition respect, in which case there would be no identifiable wrongdoers.

It is a further question whether the perpetrators of ontic injustice, in cases where they exist, are culpable or blameworthy for the wrong done to victims, either as individuals or as groups. There are various factors that might prevent a perpetrator of ontic injustice from being morally blameworthy for the relevant failure of recognition respect, such as lack of relevant knowledge of the relationship between their attitude and that ontic injustice. Exploring issues of responsibility is beyond the scope of the present discussion, but let me caution against one avenue of thought that might seem superficially appealing. One might think that since institutional reality is maintained by collective intentionality, all those who participate in that collective intentionality are automatically culpable *as a group* for ontic injustice. However, the level of collective intentionality required for institutional reality to exist is much less demanding than the level of collective intentionality that is usually understood to be required for group moral responsibility, by those who grant that such a thing is possible (Smiley 2011). With race and gender, for example, although many people participate in forms of collective intentionality that maintain the current institutional reality, these people do not constitute a group agent that could be considered culpable for ontic injustices. A case in which group responsibility for ontic injustice seems much more likely is the construction of Jews by the Nazi regime as a legally-defined group lacking basic human rights– an obvious ontic injustice. If one grants that collective responsibility is possible, it seems plausible to say that those who voluntarily became members of the Nazi party might fulfil the conditions for group responsibility for the laws passed depriving Jews of their human rights, and hence for the ontic injustice, and other grave injustices, suffered by Jews at that time.

In identifying the wrong of ontic injustice, I have sought to avoid tying the notion of ontic injustice too tightly to any particular approach to moral philosophy. Admittedly, Darwall's work on recognition respect and dignity is Kantian in flavour. However, one does not have to hold that persons are 'ends in themselves'

in order to accept the understanding of the wrong of ontic injustice that I have articulated. All one need believe is that there are *some morally required ways of treating certain sorts of individuals*, such as persons, human beings, or sentient individuals. For example, this might be taking their interests into account in particular ways. The account of the wrong of ontic injustice I have given can easily be re-cast in these terms: the victim of ontic injustice does not have their interests taken into account in the way that they ought to be taken into account, given the sort of being that they are.

Note, also, that I have not tied ontic injustice specifically to the property of being a person or the property of being human, though these seem particularly relevant to the cases I have been concerned with. This is because I want to leave room for the possibility that the social construction of non-human animals is a case of ontic injustice. To say that non-human animals suffer an ontic injustice would be to say (1) that the categories of 'human being' and 'non-human animal' are, inter alia, institutional categories, and (2) that the deontic powers of which the members of the category 'non-human animal' are deprived, such as the power not to be killed or made to suffer for the pleasure of human beings, are things to which they are morally entitled. I am not here arguing that these claims are correct, although I am sympathetic to both of them, but I do want to define ontic injustice in such a way that if (1) and (2) were true, then non-human animals would count as victims of ontic injustice. By defining ontic injustice itself without reference to personhood or humanity, I allow for this possibility. This case highlights the fact that the detail of what you think constitutes ontic injustice will vary depending on your view of what moral entitlements different sorts of individuals actually have. Since settling these moral entitlements is well beyond the scope of this thesis, it is appropriate that my definition of ontic injustice does not presuppose any particular stance on this matter.

To sum up this section, I have argued that the wrong of ontic injustice consists of a failure of recognition respect and a denial of dignity, in the sense defined by Darwall. This failure can be either transactional or structural, and a given form of ontic injustice can involve both transactional and structural failures of recognition respect which will tend to be mutually reinforcing. Depending on the case, it may or may not be possible to identify particular perpetrators of ontic injustice, and any

perpetrators may or may not be culpable. Although it may be possible for a group agent to be morally responsible for ontic injustice, such cases are not the norm; we certainly should not assume that all those involved in collective recognition of the relevant status-functions automatically constitute a culpable group agent. Finally, I have noted that this account of the wrong of ontic injustice is not tied specifically to Kantianism, nor to the concept of personhood or humanity.

4. Ontic Injustice, Equality, and Freedom

I have chosen the term ontic injustice, rather than, for example, ontic injury or ontic wrong. This indicates that the phenomenon I have in mind has a political as well as a moral aspect. In this section, I situate ontic injustice in relation to two of the most important concepts in political philosophy: equality and freedom. I will argue that ontic injustice is typically a violation of equality, understood in a relational sense, and that ontic injustice is typically a violation of freedom, understood as non-domination.

4.1. Equality

One common approach to questions of equality is to adopt a distributive paradigm. Within this approach, egalitarian justice is understood as an appropriate distribution of goods of some kind. The question of which goods these are – the question of the currency of egalitarian justice – has been much debated; candidates include resources, welfare, and capabilities (see, for example, Daniels 1990). The distributive paradigm can be understood as applying to non-material 'goods' such as rights and opportunities (Rawls 1971; Miller 1976; Galston 1980; all cited in Young 1990, 24). In contrast to this approach, relational theories of justice emphasize equality as a value that should govern relations between individuals. The main commitment of egalitarianism, on this view, is to a society in which people relate to each other as equals. Whilst an equal distribution of some goods may be required to achieve equal relationships, or may flow naturally from them, egalitarian justice, on a relational conception, does not have an equal distribution of some good as its ultimate goal. Importantly, relational egalitarians see equality as placing constraints on many aspects of social life that have nothing to do with distribution. As Christian Schemmel (2012) argues, a relational view of equality

requires that the treatment of individuals by social and political institutions must *express* affirmation of their equal moral status – clearly not a distributive matter.

Ontic injustice fits much more naturally into a relational conception of justice than a distributive one. It is a stretch to think of ontic injustice as a distributive matter; deontic powers are not a finite commodity that can be parcelled out to individuals in different ways. Moreover, there is something forced about treating deontic powers as a good to be distributed. As Iris Marion Young argues, when the logic of distribution is applied to such non-material "goods" as rights or opportunities it reifies them, falsely representing them as 'static things' when in fact they are 'a function of social relations and processes' (Young 1990, 16, 33). By contrast, the relational conception of equality draws our attention to matters of social meaning, including the need for social arrangements to express respect for everyone, including those experiencing practical hardship (Anderson 1999). On the relational conception of equality, therefore, it is easy to see how ontic injustice can constitute a form of inequality, since in cases of ontic injustice the very nature of the category disavows the equal moral status of its members. Moreover, members of categories that are sites of ontic injustice do not stand in an equal relationship with members of more privileged categories. Even if there is respect on an individual level between a man and a woman, or a White person and a person of colour, category membership invests the individuals with different deontic powers. This means that even if the person who has the deontic powers would never use them, the fact is that the two parties are not equally situated; for instance, one of them may have options for resolving an unsatisfactory exchange that the other lacks. As an example, consider John Stuart Mill and Harriet Taylor. When Mill and Taylor married in 1851, Mill declared his wish to 'disclaim and repudiate' all powers that he would acquire over Taylor in virtue of their marriage. He acknowledged that since he had 'no means of legally divesting [him]self of these odious powers', the most he could do was to 'put on record a formal protest against the existing law of marriage, in so far as conferring such powers; and a solemn promise never in any case or under any circumstances to use them' (Mill 1984, 99). Meaningful as this declaration may have been to both parties, Taylor would have had no way of holding Mill to account if he were to have contravened it. Their institutional position thus placed them on an unequal footing despite their mutual desire for equality.

In the cases that are my main focus, race and gender, ontic injustice is certainly a violation of relational equality. However, this is not necessarily the case. It is in principle possible for ontic injustice to affect *all* the members of a given society, with *everyone* being wrongfully deprived of a deontic power, such that ontic injustice does not place members of the society on an unequal footing. Let us grant, for the sake of argument, that people have a moral entitlement to some degree of privacy. Now let us imagine a society of total surveillance: everyone is constantly monitored, perhaps by some rotating system of mutual monitoring, and no-one is exempt. (Unlike in Orwell's *Nineteen Eighty-Four* [2013], there are no Inner Party Members who can "turn off the telescreen".) Let us further suppose that this monitoring is justified by reference to some conception of what it is to be a citizen; a citizen is understood as someone with substantial and important duties to co-citizens, and hence with an (enforceable) obligation to submit to monitoring to ensure that these duties are met. Qua citizen, one loses the deontic power to maintain privacy; but since everyone is a citizen, no inequality results. We have ontic injustice, but no violation of (relational) equality. Now, of course this case is rather far-fetched; we can say with confidence that ontic injustice is overwhelmingly likely to constitute a violation of equality whenever it actually occurs. We must, however, allow that ontic injustice is not *necessarily* a violation of equality.

4.2. Freedom

A similarly close relationship holds between ontic injustice and at least one conception of freedom, that of freedom as non-domination. This conception of freedom has been advanced by Philip Petit and others in the neo-republican tradition (Petit 1996; Lovett 2014). Though I am sympathetic to this view, I shall not here seek to defend it. I shall rather focus on showing that ontic injustice is very often a form of domination, on the assumption that even those who do not equate unfreedom with domination are nonetheless concerned about the latter.

On Petit's view, A dominates B when A has the power to interfere on an arbitrary basis with B's choices. 'Interference' here includes both physical and psychological methods of force, coercion and manipulation aimed at making B's choice-situation worse in some way. This must be 'more or less intentional'; accidental worsening of someone's choice-situation is not interference. To be able to interfere on an

arbitrary basis means that there is no mechanism for holding the dominator accountable for their interferences. The dominator can interfere at will and with impunity, suffering no penalty for their interference (Petit 1996, 579-580). For an agent to be free from domination, it is not enough that she not be subject to actual interference; it must also be the case that she is protected from potential interference. In other words, she must not be at the mercy of someone who, for the present, is refraining from interfering with her choices, but who could easily do so if he chose. A slave whose master is benevolent or disinterested may be in an important sense better off than a slave whose master delights in frequent acts of cruelty, but she is equally subject to domination.

With this definition of domination in mind, let us return to deontic powers. To be deprived of the deontic power to do P is to lack a substantive right to do P: if one tries to do P, one has no assurance that one will not meet with interference, and no assurance that such interference would incur penalties or correction. In other words, one has no institutional protection from arbitrary interferences with one's choices in relation to P. Putting the point this way highlights the close connection between ontic injustice and Petit's definition of domination as the power to interfere with another's choices on an arbitrary basis. In many – perhaps most – cases, then, ontic injustice constitutes domination: B lacks a deontic power to be protected against arbitrary interference from A, meaning that A has the power to interfere on an arbitrary basis with B's choices.

It is, however, possible for someone to experience ontic injustice without experiencing domination. Suppose, for example, that B lacks the deontic power to be protected from A's wrongful interference, but B is sufficiently physically strong that if A tried to interfere with B, B would simply fight A off, and would certainly be successful. In this situation, B suffers an ontic injustice due to being wrongfully deprived of deontic powers. However, B is not dominated by A, for B can use a non-institutional form of power, brute physical power, to resist A's interference. Cases like this one notwithstanding, structures of institutional power tend to function in such a way that ontic injustice usually does constitute domination. If A could return with the police, for example, and enlist their support to carry out interference with B, then B would be dominated after all, despite B's physical strength. The same applies if A were able to return with a gang of cronies, or even

a mob, confident in the knowledge that the actions of the gang or mob against B would be ignored by the judicial system. Cases like this are common, because those who are deprived of the deontic power to be protected from the arbitrary interference of other individuals are often also deprived of deontic powers to be protected against arbitrary interference more generally, including at the hands of law enforcement agencies and other groups that wield considerable brute physical power. So although not all cases of ontic injustice are cases of domination, the vast majority are.

There can also be cases of domination that are not cases of ontic injustice. For a case of domination to constitute ontic injustice, the domination must be effected via the construction of the dominated individual as a member of an institutional kind, where that institutional kind is characterized by the wrongful withholding of deontic powers. Although many familiar cases of domination operate via social categories (such as the master-slave case), this need not always be the case; for example, one person can be in a position to dominate another due to having superior physical power. Cases of domination that do not constitute ontic injustice are perhaps more common that cases of ontic injustice that do not constitute domination.

We can see the connection between domination and ontic injustice particularly clearly in one case that Petit makes use of to illustrate this account of domination: the relationship between Thorvald Helmer and his wife Nora in Ibsen's play *A Doll's House*. Thorvald adopts an overbearing and patronizing attitude towards Nora, but sincerely believes himself to be acting in her own interests. He sees nothing amiss in the situation, and is utterly amazed by the idea that Nora herself could object to the dynamic of their relationship. Nora, for her part, uses small acts of subterfuge to reduce the amount of actual interference that occurs, before moving to a fuller awareness of the limitation of her situation and, eventually, to a repudiation of it. Nora, according to Petit, is dominated because Thorvald has the power to interfere with her choices on an arbitrary basis. Although Thorvald intends that any interferences he makes should track Nora's interests, there is no mechanism in place to ensure this, and Nora cannot hold Thorvald accountable for his interferences.

Nora is clearly a victim of ontic injustice. It is in virtue of her membership of an important institutional category, that of *wife,* that she is subject to Thorvald's domination. Moreover, this is also a facet of gender-based ontic injustice in general, since it is because Nora is an f-woman that marriage transforms her into a wife rather than into a husband. As a wife, Nora lacks the deontic power to order her own life, including (importantly for the plot of the play) the ability to borrow money in her own name. It is the lack of this deontic power that, in itself, constitutes an ontic injustice, not the actual interferences with Nora's choices. And of course, it is this same lack of deontic power that renders Nora's situation one of domination.

Interestingly, the language Nora chooses when she expresses her determination to leave her husband can be read as gesturing towards the idea of ontic injustice:

> **HELMER.** This is outrageous! You are betraying your most sacred duty.
>
> **NORA.** And what do you consider to be my most sacred duty?
>
> **HELMER.** Does it take me to tell you that? Isn't it your duty to your husband and your children?
>
> **NORA.** I have another duty equally sacred.
>
> **HELMER.** You have not. What duty might *that* be?
>
> **NORA.** My duty to myself.
>
> **HELMER.** First and foremost, you are a wife and mother.
>
> **NORA.** I don't believe that any more. I believe that first and foremost I am an individual, just as much as you are – or at least I'm going to try to be.
>
> (Ibsen 1961, 282)

Nora's rejection of Thorvald's domination over her is linked with an affirmation of her moral status as an individual 'first and foremost', rather than as a wife and mother. The fact that Nora feels the need to reject the duties associated with being a wife and mother in order to affirm her status as an individual highlights a conflict: the demands placed on Nora as a wife and mother have undermined her in her status as an individual.[27] In being constructed as a wife and mother, Nora has been deprived of important deontic powers to which she is entitled as the sort

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[27] Some translations have 'as a reasonable human being' instead of 'as an individual' (Ibsen 2008); I might prefer to say 'as a person'.

of individual that she is. Moreover, Thorvald's insistence on viewing Nora as a wife and mother first and foremost has prevented him from recognizing these moral entitlements – such as her right to exercise autonomy – and responding to them appropriately.

Nora's claim that she must 'try to become' an individual first and foremost is especially telling, and can serve to draw out two relevant aspects of ontic injustice. On one level, it can be interpreted in terms of the change in identity (in my technical sense) that Nora has realized that she must undergo. Previously, she accepted her role as a wife subject to her husband's domination; her identity has been fashioned in a way that is compatible with her assigned role and functioning. As she comes to criticize and reject her situation, she begins the process of developing a new, resistant identity, one that is at odds with the role of wife. She realizes, however, that this process will be a lengthy and difficult one – hence the qualification that she 'is going to try to be'. On another level, the remark can be read as expressing the fact that a change in identity alone will not remove the injustice Nora suffers. Important though her eventual decision to leave Thorvald is, it does not remove the domination and ontic injustice she suffers. In leaving the marital home, Nora can lessen Thorvald's capacity to interfere with her choices, and she can also express her rejection of his construction of her as a woman/wife/mother. However, insofar as Thorvald would be legally entitled to seek her out and compel her to return, and insofar as there are many things she will still be unable to do without his consent, she remains subject to his domination and a victim of ontic injustice. Although she has begun the very significant process of fashioning an identity for herself that is not shaped by the ontic injustice she has suffered, and although she registers a protest against that injustice, she has not thereby escaped from that injustice. The moral fact of Nora's personhood is still belied by the institutional fact that she counts as a woman and a wife, and this construction is not one from which she can fully escape by choice whilst institutional reality remains as it is.

We have seen, then, that ontic injustice has both a strong tendency to constitute a violation of equality (understood in a relational sense), and a strong tendency to constitute a form of domination (and hence a violation of freedom on the republican conception). Moreover, the example of Nora, used by Petit, has

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provided further illustration of the way ontic injustice impacts on identity, and of the fact that it cannot be overcome by a change in identity alone.

5. Distinguishing Ontic Injustices

In introducing the concept of ontic injustice, I have been focussing on race and gender. I believe that there are many other cases of ontic injustice; for example, I believe that in many contexts, LGBQ people, disabled people, and impoverished people suffer ontic injustice qua members of these groups. Discussion of these cases is, unfortunately, beyond the scope of this thesis. I do, however, wish to say something more about the way that different kinds of ontic injustice exist at the site of gender. I will suggest that there are two forms of ontic injustice that concern gender besides the ontic injustice suffered by f-women qua f-women. This will serve to illustrate the way in which one set of categories can be the site of multiple forms of ontic injustice.

Both of the forms of gender-related ontic injustice that I have in mind come into view when we consider the situation of trans people. Some trans people experience the form of gender-based ontic injustice that I have already outlined, namely, those trans people – whether they are trans women, trans men, or non-binary trans people – who are perceived as and treated as women by those around them (in other words, who are f-women).[28] Yet the categories of gender as currently arranged seem to make life very difficult for all trans people, whether or not they are f-women. Moreover, the harms suffered by trans people, including those trans people who are also f-women, seem to involve aspects that are distinct from the harms suffered by f-women who are cis women. For example, many trans people experience explicit transphobic abuse, harassment and discrimination. Moreover, the psychological distress that can be caused by misgendering (being treated as a member of a gender with which one does not identify) seems to be distinctive in nature, and cannot be readily compared with other experiences that are also

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[28] Recall that on my account, all trans women are women because the term 'women' is to be used to refer to the identity sense of gender, rather than to functioning or assigned role.

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shared by cis women. This suggests that trans people may suffer ontic injustice qua trans people.

If this is so, it will be helpful to locate when the injustice takes place so we can examine it in more detail. Some language used by trans rights activists, such as 'coercively assigned male at birth', seeks to position the initial assignment of gender to infants as being in itself oppressive. I will take this claim as a hypothesis, and begin by considering whether gender assignment to infants is a site of ontic injustice. There are two ways that this could be so. Either such assignments only constitute an ontic injustice in the case of infants who will grow up to identify with a different gender, or they constitute an ontic injustice in the case of all infants. In the first case, we would need to say that being assigned a gender at birth violates an entitlement only in the case of infants who will grow up to identify with a different gender. In the second, we would need to say that being assigned a gender at birth violates a moral entitlement in all cases.

I do not think that the first option can be made to work. One possible approach would be to try to show that one has a right to be treated as the *appropriate* gender, and then establish that there is a fact about *which* gender is appropriate that is already fixed at birth, even if it cannot be discerned. But this seems problematic; there is at present no conclusive scientific evidence that gender identity is fixed at birth. Making the account of ontic injustice in gender assignment conditional on this point eventually being established seems unwise.

The second option seems considerably more promising. If we take this option, we can simply say that there is a general moral entitlement to determine one's own gender, and that assigning a gender to an infant violates this entitlement because it limits their deontic power to assert that they are a different gender in the future. This is to say that *at present*, in our cissexist society in which gender norms are strongly enforced and in which social, medical and legal obstacles are placed in the way of gender transition, that deontic power is limited by the assignment of gender at birth. For example, an individual who was assigned male at birth but who wished to wear clothing considered feminine would face serious obstacles in doing so, including in the form of school and workplace rules, social norms, and even risk of violence. In other words, limitations on what a person may do, socially speaking, form an intrinsic part of what a gender assignment in our present social

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situation consists of. This seems to me to be a rather serious moral problem. Restrictions on self-presentation and behaviour as strong as those involved in gender norms would require significant justification, and none is available in this case. It follows that the compulsory assignment of gender at birth constitutes an ontic injustice under present circumstances. This would not be so in all social situations; if gender assignments were seen as provisional, subject to revision by the individual at will, and did not foreclose any forms of social activity including self-presentation, they would cease to be a form of ontic injustice. I take it that parents who encourage children to do and be whatever they want, regardless of gender, are already fighting back against this ontic injustice. It is worth stressing that the ontic injustice of coercive gender assignment is, at least for the most part, not a transactional one committed by parents, but a structural one mandated by state institutions as well as more informal social factors. Refusing to assign a gender to one's child is not necessarily a workable option for parents, nor is it clear that doing so would provide an escape from this form of ontic injustice.

A concern may arise at this point: it might seem that it follows from what I have said so far that someone would stop experiencing this type of ontic injustice when they transition. However, this is not the case. People who undertake a gender transition may not be reliably gendered correctly, or they may need to do lots of things they would rather not do in order to be correctly gendered (Levitt and Ippolito 2014). This shows that for trans people, being correctly gendered is highly conditional. In mainstream contexts currently, no-one, regardless of whether or not they have ever transitioned, has the deontic power to determine how their gender is perceived reliably and without hindrance. I conclude, therefore, that everyone who is assigned a gender at birth currently suffers an ontic injustice. It is worth noting that this ontic injustice does not follow the same pattern as the two forms of ontic injustice that have occupied my attention for most of this thesis, where a denigrated group is distinguished from a privileged group; rather, it affects almost everyone. Nevertheless, it meets the definition of ontic injustice: people are wrongfully deprived of important deontic powers through being made into members of social categories.

This point highlights that our account of ontic injustice in relation to gender is as yet incomplete, for we were looking for a form of ontic injustice suffered by trans

people qua trans people. The ontic injustice of coercive gender assignment, it turns out, does not fit the bill, since trans and cis people alike suffer this form of ontic injustice, although it is likely to *harm* trans people more than cis people. In other words, both trans and cis people are deprived of deontic powers of which they ought not to be deprived, which is the actual ontic injustice, though it is also the case that the bad consequences of this wrongful deprivation are likely to be much more severe for trans people than for cis people. Moreover, the ontic injustice of compulsory gender assignment does not capture the stigmatization of trans identities and the denigration of trans people that is currently commonplace.

One obvious possibility, then, is that the category of 'trans' is defined hierarchically in a way that is similar to the category of 'Black', or of 'woman'. This strikes me as extremely plausible. Trans people experience disproportionate levels of violence, poverty, unemployment and homelessness compared to cis people, and direct transphobic motivation is a factor in many cases (Levitt and Ippolito 2014). Trans people are also routinely mocked, monstered, and stereotyped in the media. Since the vast majority of anti-trans discrimination takes place unchecked, trans people are thereby deprived of various important deontic powers. The notion of 'subpersonhood' is therefore appropriate here, as it is in the case of gender and of race. I suggest, then, the following outline status function for trans people currently in mainstream contexts: 'For any person x, if x meets the condition "x's gender presentation is not normative for the gender they were assigned at birth", then x counts as having the status "trans/transgender/transsexual/freak" and functions as a subperson around here'. [29] Since gender assignments at birth are carried out on the basis of genitals, this status function explains the frequent use of trans people's genital status as a means of undermining their gender identifications (Bettcher 2007).[30]

There are, then, three different forms of ontic injustice that concern gender. First, there is the ontic injustice suffered by f-women qua f-women; second, there is the

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[29] I include 'freak' as a possible status to allow for cases where there is almost no knowledge about trans people and negative reactions are channelled through a general hostility rather than a specific designation; see Millbank (2011). The use of 'it' to refer to trans people is perhaps one indicator that a status of 'freak' is at work.

[30] In some cases this may include appeals to the ideal of 'moral genitals', i.e. the genitals a person 'should' have that may be used to discount genitals created or altered through surgery (Bettcher 2007).

ontic injustice suffered by trans people qua trans people; third, there is the ontic injustice suffered by everyone who is coercively assigned a gender – which, at the moment, is everyone in Western society. Let us consider how these might interact in the case of a particular individual. Maya suffers an ontic injustice in being assigned male on the basis of her genitals when born: this places limitations on the ways in which she is permitted to present herself socially that are not legitimate. Later she comes to identify as a woman. She alters her gender presentation and begins to be perceived as a woman. Among her friends, and in trans communities, she tends to be perceived both as a woman and as a trans person, where these are not considered to be in tension. By strangers, however, she is usually perceived as either a woman or a trans person: many of the people who perceive her as a woman believe she is a cis woman, and many of the people who perceive her as trans believe that her trans status means that she is "really" a man, or that she is neither a man nor a woman. Both of these latter two modes of perception lead to her being deprived of deontic powers to which she is entitled, such as the deontic power to be protected from harassment. When perceived as an f-woman, Maya experiences one ontic injustice, and when perceived as a trans person she experiences another. In different contexts, as Maya's functioning shifts between that of a woman and that of a trans person, one or the other ontic injustice will be manifesting more keenly. What about the original ontic injustice? Insofar as Maya's gender identity is at constant risk of being invalidated, either through specific misgendering of her personally, through gatekeeping regarding her transition, or through a general cissexist atmosphere that prioritizes the gender she was assigned at birth over her identified gender, she continues to experience ontic injustice qua non-consensually-gendered person.

Considering the example of gender with references to the oppression of trans people has shown that one type of social category can be the site of multiple different forms of ontic injustice. This should be borne in mind when considering other potential cases of ontic injustice beyond those of gender and race.

6. Alternative Ontological Frameworks

Most of what I have had to say about ontic injustice so far in this chapter has been presented in terms of the institutionalist realist account of social categories developed in chapters 1-3. However, recall that I gave both a general and a specific definition of ontic injustice at the start of this chapter:

> **OI General:** Ontic injustice occurs when an individual is wronged by being socially constructed as a member of a certain social kind.

> **OI Specific:** Ontic injustice consists of an individual being constructed as a member of an institutional category where this involves a wrongful deprivation of deontic powers.

The purpose of supplementing the specific definition with a general one is that I do not wish to tie the concept of ontic injustice too tightly to institutionalist realism. In other words, I want it to be possible for someone who rejects the ontology for which I have argued in chapters 1-3 nevertheless to take up the idea of ontic injustice. However, it is not possible to fully explain the idea of ontic injustice without reference to *some* specific account of the ontology of relevant social categories. Having done this in the preceding sections of this chapter, I now turn to the question of how ontic injustice can be brought together with alternative accounts of the ontology of social kinds.

Need such an account be a constructionist realist one in order to be compatible with ontic injustice? It certainly could not be a biological realist view, since according to biological realism the person's instantiating the property in question would be determined by biological factors and hence could not be a potential site of injustice. I am less sure about whether it could be a nominalist view. On the one hand, nominalism can easily accommodate the general story about the removal of deontic powers through category membership, and the way in which this can constitute a violation of recognition respect. On the other hand, for the nominalist, this injustice would merely consist of the application of the denigrating label, which would render the term '*ontic* injustice' somewhat inapt. I will leave it to nominalists to decide whether or not ontic injustice is compatible with a nominalist ontology. Here, my concern will be with other varieties of

constructionist realism. In particular, I will focus on Ásta Sveinsdóttir's conferralist account, which was introduced in Chapter 1. The aim of this exercise is to show that ontic injustice can be separated from the institutionalist realist framework, and to illustrate how the central notion may vary depending on which account of the ontology of social kinds it is tied to.

As explained in Chapter 1, Ásta (2013) advocates a conferralist account of the ontology of human social kinds, according to which these kinds are unified by properties that are conferred upon them by some subject or subjects. In order to understand a conferred property, she argues, we need to establish five pieces of information:

> **Conferred property** : what property is conferred, e.g. being pious, being hip, being a strike
> **Who** : who the subjects are, e.g. the Greek gods or the baseball umpire, the in group, "society"
> **What** : what attitude, state, or action of the subjects matter, e.g., the gods' love or the umpire's judgment. It can be a particular speech act, a particular occurring mental state, or an underlying state best characterized by a disposition. It can be a one-time conferral or, which is perhaps more common, an iterative phenomenon stretching over a long period of time.
> **When** : under what conditions the conferral takes place, e.g., normal, ideal, or some specified conditions or context.
> **Grounding property** : what the subjects are attempting to track (consciously or not), if anything. The grounding property being tracked can play a very important role and often gets confused with the conferred property. (2013, 720)

In the case of gender, Ásta puts forward a context-sensitive conferralist proposal: gender properties (such as being a woman or being a man) are conferred properties that vary in different contexts. Some perception on the part of some social subjects confers this property, but what perception this is and what property it is supposed to track depends on the context. Thus, on this view, a person's gender may change as they move through different social spaces. Importantly, unlike a baseball umpire, the conferring subjects do not have any special authority; rather, they perform the conferral by 'citing' or invoking certain pre-existing social structures. These social structures, or 'gender maps', constitute a systemic or structural aspect to gender, although Ásta emphasizes that 'the enforcers of that structure are always individual agents in contexts' (2013, 724).

On this model ontic injustice would consist in the conferral of a property that is wrongful. But what features of the property, precisely, would be wrongful? Deontic powers do not feature explicitly in Ásta's account. However, she states that conferred properties can 'come with' certain 'privileges, burdens and the like' (729). This sounds very similar to the understanding of deontic powers I am working with. The difference is that, for Ásta, the deontic powers seem to accompany the conferral of the property, whereas on the institutionalist realist account an institutional role is defined by the deontic powers. Nevertheless, the fact that deontic powers feature in Ásta's picture allows us to carry over much of the explanation of the wrong of ontic injustice given above. On the conferralist reading of ontic injustice, the wrong of ontic injustice consists of having a property conferred upon one that brings with it a set of deontic powers that are at odds with one's moral entitlements. As in the institutionalist version of the story, the wrong consists of the mismatch between the deontic powers to which one's moral status entitles one, and the deontic powers one is actually allocated.

How would ontic injustice be different if we spelled out the general definition using conferralism rather than institutionalist realism? The first thing to note is that the number of instances of ontic injustice would be substantially multiplied. According to Ásta's context-dependent conferralist account of gender, a person has different gender properties conferred upon them as they move through different social spaces. Presumably if one leaves a social space in which an objectionable property is conferred upon one, and then re-enters it later, the property is conferred all over again. Whilst the institutionalist realist account does allow that institutions are tied to particular contexts, these contexts are broader (e.g. 'mainstream society') than in conferralism, so there will be substantially fewer instances in which people move in and out of an institution's perimeter.

The next point of difference would be that ontic injustice could be seen as more of a transactional injustice than on the institutional version, because in a given context we can more easily identify the specific individuals who are conferring the property and thereby committing the injustice. On the institutionalist view, categories are imposed via recognition of a general status function. Importantly, the status function recognition determines an individual's category membership by means of a general rule: people who meet criteria X count as Y. Everyone who

recognizes the status function in question contributes to a particular individual counting as a member of that category. On the conferralist view, by contrast, category membership is conferred by particular agents in a specific context, such as the guests at a party. On this account, we can immediately isolate a specific individual or group of individuals who confer the property in this particular case, which we cannot usually do on the institutionalist realist account. This is not to say that the conferralist view cannot account for structural failures of recognition respect, for the structural dimension of ontic injustice could be identified with the scripts or 'gender maps'. It seems, though, that on a conferralist reading, ontic injustice would have a greater element of transactional injustice than it has on the institutionalist reading.

In sum, then, the essential core of ontic injustice, including the nature of the wrong involved, carries over when a conferralist ontological framework is used in place of an institutionalist one, although some other elements of the account do alter.

7. Conclusion

This chapter has set out the notion of ontic injustice. First, I gave both a general and a specific definition of ontic injustice:

> **OI General:** Ontic injustice occurs when an individual is wronged by being socially constructed as a member of a certain social kind.

> **OI Specific:** Ontic injustice consists of an individual being constructed as a member of an institutional category where this involves a wrongful deprivation of deontic powers.

The specific definition uses institutionalist realism to specify in more detail the basic idea captured by the general definition. Next, I defined the wrong of ontic injustice as a failure of recognition respect – which can be transactional, structural, or a blend of the two – together with an associated denial of dignity.

I then looked at the relationship between ontic injustice and equality, on the one hand, and freedom, on the other. I argued that ontic injustice typically constitutes a violation of equality, understood in a relational sense, and typically constitutes a form of domination, or freedom in the republican sense. Next, I used the case of gender to show how different forms of ontic injustice can cluster around the same

set of social categories. I identified three distinct forms of ontic injustice that concern gender: the ontic injustice suffered by f-women qua f-woman; the ontic injustice suffered by trans people qua trans people, and the ontic injustice suffered by everyone who is subject to the current practice of compulsory gender assignment.

Finally, I considered the relationship between ontic injustice and institutionalist realism, showing that different forms of constructionist realism, such as Ásta Sveinsdóttir's conferralism, could be used to spell out the general definition of ontic injustice. Using this alternative ontological framework changes some details, but the general idea of ontic injustice remains unchanged. This shows that it is possible for the general concept of ontic injustice to be detached from the institutionalist realist ontology of social kinds and coupled with an alternative ontological framework. Nevertheless, combining ontic injustice with conferralism required us to borrow certain key notions from institutionalist realism, such as the notion of a deontic power. This indicates that institutionalist realism is an especially apt ontological framework for developing a detailed account of ontic injustice.

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Applications of Ontic Injustice

1. Introduction

So far in this thesis, I have set out and defended an institutionalist realist account of the ontology of race and gender. Races and genders, I have argued, are institutional categories defined by status functions that allocate subperson status to people of colour and to women. I have also set out my account of ontic injustice as the wrong a person suffers when they are harmed by the social construction of categories. Race and gender, on my analysis, are both sites of ontic injustice, because individuals constructed as people of colour and individuals constructed as women are deprived of deontic powers to which they have a moral entitlement. The wrong of ontic injustice consists of a failure of recognition respect and associated denial of dignity; moreover, ontic injustice typically constitutes a form of domination and a violation of relational equality. In this final chapter, my aim is to connect the notion of ontic injustice with ongoing conversations both within and outside of academic literature.

In the first part of the chapter (sections 2-4), I apply the concept of ontic injustice to the long-running debate within feminist philosophy about pornography. I will begin by showing that the concept of ontic injustice offers a novel interpretation of Catharine MacKinnon's claims that pornography subordinates women and, in some sense to be defined, wrongly constructs their natures. These claims can be interpreted as the claim that pornography is a key mechanism by which ontic injustice against women is enacted. In developing this interpretation, I use as a backdrop MacKinnon's own account of the ontology of gender. That account, however, is too narrowly focussed on sexuality to be plausible. I therefore go on to reinterpret the claims in light of the broader institutionalist realist account of gender defended in chapters 2 and 3. In this revised form, the claims apply to all forms of misogynistic representation, not only to pornography. They also serve to

highlight the importance of denigrating representations as a factor in the perpetuation of ontic injustice.

In the second part of the chapter (section 5), I will apply the concept of ontic injustice to the contemporary 'Black Lives Matter' movement for racial justice in the US, suggesting that this movement is aptly seen as a response to ontic injustice. The observations I wish to make in relation to this case can be articulated more concisely than the claims I make about pornography. The relative lengths of these sections should not, however, be taken to imply that I consider the application of ontic injustice to academic debates to be more important than its application in broader contexts. On the contrary, my primary motivation for developing the concept of ontic injustice is the hope that it may prove practically useful to those engaged in emancipatory struggles, wherever these are taking place.

2. Pornography: Definitions and Claims

In this section, I lay some necessary groundwork for the application of the concept of ontic injustice to the academic debate about pornography. First, I will offer a working definition of pornography. Second, I will introduce the two claims about pornography made by MacKinnon that will be the main focus of my discussion.

2.1. Defining Pornography

MacKinnon defines pornography in a distinctive way, as '[T]he graphic, sexually explicit subordination of women in pictures or words' (MacKinnon and Dworkin 1988).[31] On this definition, graphic sexually explicit material that does not subordinate women would not constitute pornography. This is clearly a departure from ordinary use of the term, although MacKinnon seems to think that the vast majority of pornography in the colloquial sense also constitutes pornography in her specialist sense. This definition is problematic for my purposes, however: I am aiming in part to assess the claim that pornography *does* subordinate women, and this claim would be rendered tautological if pornography were defined as that which subordinates. I also believe that MacKinnon's definition of pornography is

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[31] The definition also requires that the material instantiate one of a list of features that I shall not detail here, since it is not relevant.

so far removed from standard usage of the term as to be unhelpful and confusing in most ordinary contexts. For these reasons, I will adopt Mari Mikkola's artefactual definition of pornography (forthcoming). According to this definition,

> some x is of the kind 'pornographic artefact' only if it is the product of a largely successful intention to create pornography, where the maker intends that the artefact is an instance of pornography only if their substantive concept of the nature of pornography largely matches the concept held by some prior pornographers, and the maker intends to realize that concept by imposing pornography-relevant features on the object. (Mikkola forthcoming)

Mikkola's definition treats pornography as a deliberately produced social artefact, thereby keeping us in close contact both with the material reality of pornography as it currently exists and with ordinary users of language. Drawing on Helen Longino's (1995) characterisation of pornography, I will further understand 'misogynistic pornography' as pornography (in the above sense) that represents the abuse or degradation of women in such a way as to endorse, condone, or encourage it. For example, I take it that pornography that shows women being raped and finding the experience enjoyable in the end is a paradigmatic example of misogynistic pornography.[32] For the purposes of this chapter I will interpret MacKinnon's arguments as concerning misogynistic pornography only, which I will abbreviate to m-pornography.[33] Accordingly, the arguments considered in this chapter will be more interesting and urgent if one thinks that m-pornography makes up a substantial proportion of pornography as such, though I will not undertake to show that it does.[34]

2.2. The Subordination and Constructionist Claims

The discussion that follows will focus on two claims made about m-pornography by MacKinnon: that m-pornography subordinates women, and that it constructs

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[32] There will, of course, be considerable room for disagreement about whether a specific piece of pornography qualifies as misogynistic. Nothing in my argument depends on there being a hard-and-fast boundary between misogynistic and non-misogynistic pornography.

[33] My arguments about the harms of m-pornography are compatible with the claim that some other forms of pornography have neutral or positive implications.

[34] For some evidence that suggests that it does, see Bridges et al. 2010; Dines 2011.

women's natures in a way that is somehow wrong.[35] These claims are made in a body of work leading up to and surrounding the Antipornography Civil Rights Ordinance, jointly authored by MacKinnon and Andrea Dworkin, which aimed to make m-pornography actionable as a civil rights violation. Under the ordinance, people harmed by m-pornography would have been able to bring a civil suit against the producers and distributors of the m-pornography (Dworkin 1981, 2006; MacKinnon 1989, 1996; MacKinnon and Dworkin 1988). The ordinance was passed in 1984 in Indianapolis, but was later struck down on First Amendment grounds.

Call the claim that m-pornography subordinates women the *subordination claim*. I take it that to subordinate some group is to rank that group as inferior, to deprive them of rights, and/or to mark them as legitimate targets for discriminatory violence or disadvantage. The subordination claim can be found in MacKinnon's writing in two forms. In one form, the claim is that m-pornography *causes* women to be subordinated, for example by causing people to commit acts of sexual violence against women (MacKinnon 1989, 196; see also Eaton 2007). In its other form, the claim is rather that m-pornography itself *constitutes* the subordination of women (MacKinnon 1996, 29-31; see also her definition of pornography cited above). It is the causal version of the subordination claim that will concern me in this chapter.

This focus might appear rather unusual, for two reasons. First, the constitutive subordination claim has been seen as conceptually puzzling (Dworkin 1993, 1995), and hence as standing in need of philosophical explanation before its veracity can be assessed. It might therefore be thought a more worthwhile object of philosophical investigation than the causal subordination claim. However, the interpretation I will offer of the causal claim is a rather unusual one which also holds significant philosophical interest (or so I shall argue). Second, the constitutive subordination claim has been seen as holding particular argumentative significance that the causal subordination claim lacks. Briefly, some liberals contend that the principle of free speech is so important that a limitation on speech can only be justified if that speech is shown to constitute harm (or

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[35] MacKinnon also famously claims that pornography silences women, but I will not discuss this claim here; see MacKinnon 1989, 1996; for discussion, see Langton 1993.

discrimination), rather than solely to cause it (Dworkin 1993; 1995). Vindicating the constitutive subordination claim offers a route to defending limitations on the availability of pornography that is compatible with this form of liberalism, whereas vindicating the causal claim does not offer such a route (Langton 1993). The constitutive claim might therefore be seen as a more useful argumentative tool than the causal claim.

I do not deny that this is a genuine difference between the constitutive and causal versions of the subordination claims, nor that the constitutive subordination claim has a special tactical utility within the context of certain debates, such as debates focused on jurisprudence within states which have strong free speech laws. I do not, however, think that this special utility renders the causal claim irrelevant in the context of general philosophical inquiry. When faced with liberal free speech arguments of the kind outlined above, committing ourselves to establishing that m-pornography constitutes harm rather than 'merely' causing it is not the only response available to feminists concerned about m-pornography and harm. We could equally well challenge the view that prioritizes the free speech of (mainly) men over the human dignity and equality of women, regardless of whether the subordination of women is causally or constitutively actualized. The absolute prioritization of free speech is presented by some as a mainstay of liberalism. Assessing whether or not this presentation is accurate would take me too far afield, so I will say simply this: *if* liberalism leaves us with nothing to do in the face of this level of injustice – *if* liberalism's response to half of the members of society being subordinated to the other half is a regretful shrug ("sorry, nothing to be done - it's only causal, not constitutive, you see") – then so much the worse for liberalism. On the other hand, if liberalism does *not* require that the harms of misogynistic representations be shown to be constitutive before anything can be done by the state to prevent them, then it would turn out not to matter if the harms of these representations were discovered to be causal rather than constitutive.[36] For this

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[36] Note that I am not saying that state-enacted remedies would necessarily have to take the form of legal measures aimed at restricting access to misogynistic material; indeed, I think that there are practical reasons why this would be the wrong approach to take.

reason, I do not see the tactical significance of the constitutive subordination claim as a decisive reason to focus on it in preference to the causal subordination claim.[37]

The *constructionist claim*, which has received considerably less philosophical attention than the subordination claim, is the claim that m-pornography constructs women's natures in a way that is, in some sense, wrong. The constructionist claim has two parts. The first part asserts that m-pornography constructs women's natures. As MacKinnon puts it:

> Pornography makes the world a pornographic place through its making and use, establishing what women are said to exist as, are seen as, are treated as, constructing the social reality of what a woman is and can be in terms of what can be done to her, and what a man is in terms of doing it. (1996, 25)

The second part asserts that the way that m-pornography constructs women's natures is somehow defective or wrong. At times, MacKinnon appears to suggest that the construction is actually false, a 'lie' (1987, 154). This, however, seems to conflict with the idea that m-pornography is successful in constructing women's natures, placing the second part of the constructionist claim in tension with the first. As Mary Kate McGowan notes, then, a plausible reading of the constructionist claim will not interpret the wrongness in question as straightforward falsity, but will instead offer some account of the way in which this construction is defective in a manner that is *akin* to falsity (McGowan 2005, 34).

The majority of discussions of the subordination and constructionist claims have drawn on speech act theory. I will consider speech act approaches in 3.2 below, and show how they relate to my proposed analysis of the subordination and constructionist claims. Before that, however, I will offer an interpretation of the claims that makes use of the notion of ontic injustice.

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[37] This is not to say that my account of the causal version of the subordination claim is incompatible with accounts of, and arguments for, the constitutive version. Indeed, I believe it to be compatible with at least some such accounts and arguments; see section 3.2 below.

3. Interpreting MacKinnon's Claims

3.1. Subordination, Construction, and Ontic Injustice

My investigation into the subordination and constructionist claims begins with the ontology of gender. MacKinnon's own account of this ontology was among those which influenced the institutionalist realist account of gender set out in Chapters 2 and 3. According to MacKinnon, gender is socially constructed as a hierarchical system that functions to the detriment of women. With this, I concur. MacKinnon, however, sees hierarchical sexuality as the central dynamic of this construction (MacKinnon 1989, esp. ch. 7), whereas the institutionalist realist account I have developed is broader. On my account, women are deprived of various important deontic powers – deontic powers to which they are morally entitled – and this deprivation is accomplished via a range of different social arrangements, not all of which centre on sexuality. This disagreement is an important one, and I will come back to it in section 4 below. For now, though, I will work with MacKinnon's ontology of gender rather than my own in order to assess her views on the role m-pornography plays in this social construction, and to relate them to the idea of ontic injustice. Simply put, I think MacKinnon's criticism of m-pornography can be understood as the charge that it is the central mechanism in the social construction of certain people as objects for male sexual use, where this construction creates an institutional category of women.

Let us begin by considering the role played by speech in the creation of institutional reality. Consider the following claim made by MacKinnon:

> Together with all its material supports, authoritatively *saying* someone is inferior is largely how structures of states and differential treatment are demarcated and actualized. Words and images are how people are placed in hierarchies, how social stratification is made to seem inevitable and right, how feelings of inferiority and superiority are engendered, and how indifference to violence against those on the bottom is rationalized and normalized. (1996, 31)

There is a strong parallel here with Searle's claim that institutional reality is created by a special kind of speech act. As explained in Chapters 1-3, these speech acts are called 'status function declarations', and they involve a type of entity, X, being represented as Y in such a way as to generate collective recognition entities of type

X as having the status Y. Status functions can be expressed by means of the formula, 'entities of type X count as Y (in C)', or, more precisely, 'We make it the case by Declaration that for any x that satisfies condition p, x has the status Y and performs the function F in C'. Status function declarations have what is called 'a double direction of fit': they purport to represent the world, but they also (if successful) change the world by creating new institutional facts. An example of a status function declaration is the creation of a nation through the signing of a constitution. Sometimes status function declarations take the form of standing rules, such as when the law states that any two individuals who go through a certain ceremony and meet certain conditions count as being a married couple. In some cases, however, no explicit status function declaration is ever made, but instead Xs are simply represented as if they already are Y. These representations have the same double direction of fit as do status function declarations (Searle 2010, 13). Importantly for our purposes, ongoing representations of this kind are necessary even if an initial status function declaration did occur:

> [T]he continued existence of status functions requires representations that work like S[tatus] F[unction] Declarations. Why? The institution and the institutional facts within the institution require continued recognition or acceptance because they exist only as long as they are so recognized or accepted. (Searle 2010, 103)

In other words, any institutional reality will only endure for as long as it is recognized, and shared representations play a crucial role in supporting this recognition. The centrality of representations to Searle's account of institutional reality mirrors MacKinnon's claims about the centrality of m-pornography to the social reality of women's subordination.[38] My suggestion, then, is that we might read MacKinnon as asserting that m-pornography plays a central role in maintaining collective intentional recognition of an institutional reality in which women are defined as subordinate.

With this in mind, let us now consider some key features of MacKinnon's assessment of the *content* of m-pornography. MacKinnon argues that m-pornography represents women as lacking in human worth, dignity, and

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[38] One significant difference between MacKinnon and Searle is that MacKinnon is careful to keep the 'material supports' of authoritative representations in the picture, whereas Searle often fails to do so. This omission on Searle's part has, however, been remedied in my re-working of his view for the institutionalist realist account developed in Chapters 2 and 3.

subjectivity; as beings whose pain is unimportant, who have no desires of their own; as objects, in other words, whose sole reason for existing is to be used sexually by men (MacKinnon 1989, 211-2). In this sense, m-pornography can be said to have a very definite idea of *what women are for*, which is signified through language as well as through visual depictions and actions. M-pornography, according to MacKinnon, represents women as *objects for male sexual use*. Moreover, the people who are considered to be women in the context of m-pornography are typically identified via their genital anatomy. Based on the above understanding of the role of representation in the construction of institutional reality, the next step is to claim that when m-pornography represents people with vulvas and vaginas as objects for male sexual use, it generates collective recognition of those people *as* objects for male sexual use. The assignment of this institutionalized status constitutes the creation of women as institutional entities. Thus, when MacKinnon talks of 'the power of pornography to create women in its image of their use' (MacKinnon 1989, 212), I propose that we think of this as the claim that m-pornography has the power to maintain collective-intentional recognition of a status function that defines people with a certain anatomy as *being for* the sexual use of certain others – thereby making them into women as a matter of epistemically objective institutional reality.[39]

This interpretation of MacKinnon can ground the subordination and constructionist claims by way of the following steps:

1. Institutional entities are constructed through the collective intentional recognition of status functions.
2. Gendered individuals (e.g. women and men) are institutional entities.
3. The representation of women in m-pornography plays a crucial role in maintaining collective intentional recognition of a status function that defines women as institutional entities thus: 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as an object for male sexual use around here'.

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[39] Remember, I am here working with MacKinnon's ontology of gender, in which sexuality is foundational to women's subordinate social position; I will relate this argument back to my own view in section 4 below.

4. (From 1-3) M-pornography constructs women as objects for male sexual use.

This is the core of the argument for both the subordination and constructionist claims. In order to get from (4) to the subordination claim, we can add:

5. When a person is constructed as an object for the use of others they are thereby subordinated.
6. (From 4, 5) Subordination claim: M-pornography subordinates women.

This argument establishes a causal version of the subordination claim, not a constitutive version: the claim is that m-pornography plays a crucial role in *causing* people to continue to participate in a collective intentional recognition of a status function that defines women as subordinate. This is a departure from standard interpretations of the causal claim, which posit a two-stage causal process: m-pornography acts on its consumers, and its consumers then act in ways that are injurious towards women (Eaton 2007, 685). By contrast, the interpretation proposed here posits a one-stage process: m-pornography acts on its consumers to produce a particular form of collective intentionality, where that collective intentionality defines women as subordinate and so constitutes the subordination of women. Understanding the causal harm of m-pornography as operating via collective intentionality and social construction thus yields a philosophically distinctive version of the causal subordination claim that is more direct than the standard interpretation.

Turning to the constructionist claim, (4) establishes the first element of the claim, which is the assertion that m-pornography constructs women's natures via the collective intentional imposition of a status function. What about the second element, the assertion that this construction is wrong or defective? As previously established, the challenge with the constructionist claim is to spell out a way in which the construction is wrong or defective that is compatible with the claim that the construction is successful (i.e. that m-pornography really does *construct* women rather than just *misrepresent* them).

Without invoking the idea of ontic injustice, there are two ways in which this second part of the constructionist claim could be understood. The first emerges in particular from MacKinnon's discussion of the feminist technique of

consciousness raising. This is the idea that we can criticize the subordinating status function based on an affirmation by women of our own humanity. This approach does not claim a particular epistemic privilege for women's experience, in any objective sense; rather, the claim is that a feminist consciousness is one that carries out an act of resistance in rejecting dominant (i.e. male-centred) perspectives. Faced with an institutional reality that reduces women to objects for the sexual use of men, we simply insist on a *different* institutional reality, one in which women are accorded full personhood. This is to say that we collectively refuse to accept the subordinating status function, and, in doing so, we begin to weaken the grip of that institutional reality. As MacKinnon writes, 'The point [of consciousness raising] was, and is, that this process moved the reference point for truth and thereby the definition of reality as such' (1989, 87). On this interpretation of the constructionist claim, describing the dominant misogynistic construction of women as 'wrong' or even 'false' is simply an expression of our collective refusal to accept it, our insistence on crafting a different social reality.

The second way of framing a critique of the subordinating status function is by means of what Sally Haslanger has called a 'debunking' move (Haslanger 2012a). Taking this approach, we can say that the 'wrongness' of the construction consists in the fact that the status of women as objects for male sexual use is presented as a brute fact, when in fact it is an institutional fact. In other words, women are falsely viewed as *naturally subordinate*, when in fact what is happening is that we are *being rendered subordinate* through the operations of social institutions. Correctly recognizing the institutional reality of women's situation for what it is – a social construction maintained through male power – alerts one to this wrongness.

Ontic injustice offers a third way of understanding the wrongness of the construction of women as objects for male sexual use: as a moral wrong. On this understanding, the construction of women accomplished through m-pornography is defective or wrong in the sense of being wrong*ful*, because it deprives those constructed as women of deontic powers to which they have a moral right. Women suffer a failure of recognition respect when they are constructed as objects for male sexual use, because those who are constructed as women instantiate morally

relevant properties, and responding appropriately to these properties is incompatible with treating someone as an object for sexual use.

All three of these analyses of the way in which m-pornography's construction of women is wrong are compatible. We can recognize this construction as a form of naturalizing ideology, see that it is morally wrongful, and refuse to accept it, all at the same time. Nevertheless, I believe that the analysis of the wrongness of m-pornography's construction of women is lacking without a moral critique of this institutional reality, such as that offered by the charge of ontic injustice. Without some such moral critique, the force of the other two claims of wrongness is limited.[40] Whilst it is good to identify social construction where it is taking place, not every instance of concealed social construction is cause for alarm, and not every instance of de-bunking is as important as the next. Moreover, the need for metaphysical accuracy is not sufficient to account for the urgency of the need to combat m-pornography's purported construction of women. Would the construction of women as objects for male sexual use be preferable if it were accomplished more blatantly, wearing its status as construction on its sleeve, so to speak? Perhaps a little, since we might think it would be less stable; but clearly this would still be a grievous state of affairs. Similarly, whilst it is well and good to collectively reject m-pornography's construction of women, surely it is better still to be able to give a *reason* for this rejection? One can perform a rejection of all kinds of social constructions, but the fact that rejection is possible does not show that rejection is warranted or required. I therefore take the charge of ontic injustice to offer the most powerful way of explaining the second part of the constructionist claim, and to be an important complement to the other two explanations.

On this analysis, then, the subordination claim and the constructionist claim are intimately interwoven. I am proposing that we interpret these claims together as the complex claim that m-pornography subordinates women precisely by making a crucial causal contribution to their continued construction as social beings who

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[40] Of course, a moral critique could be added to the account by means other than an appeal to ontic injustice. My claim is simply that the 'rejection' interpretation of wrongness and the 'debunking' interpretation of wrongness described above do not, as they stand, include such a critique.

lack important deontic powers, where the deprivation of these powers is morally wrongful in virtue of constituting a failure of recognition respect.

3.2. Speech Act Analyses

A large proportion of philosophical commentary on MacKinnon's subordination and constructionist claims has focussed on interpreting them in light of speech act theory, particularly that of J. L. Austin. Although I cannot offer a full discussion of this substantial literature, I do want to show how the interpretation of the two claims by way of ontic injustice given above compares to some of the most prominent speech act interpretations. The most important point of contrast is that both of the speech act accounts I shall discuss focus on the constitutive version of the subordination claim, whereas my own account, as I stated earlier above, is directed at the causal version.

Rae Langton (1993) argues that the constitutive version of the subordination claim should be understood as the claim that m-pornography constitutes an illocutionary act of subordination. The notion of an illocutionary act comes from Austin's work on speech acts (Austin 1962, cited in Langton 1993). Austin distinguishes between three kinds of speech act: locutionary, illocutionary, and perlocutionary. A locutionary act (or locution) is the act of uttering certain words with certain meanings, for example, 'I now pronounce you husband and wife'. An illocutionary act (or illocution) is the act done in uttering those words, for example, that of marrying a couple. A perlocutionary act (or perlocution) is the act of uttering words that have a particular effect, for example, that of greatly annoying the groom's mother. Illocutionary acts depend upon certain conditions for their success; these are termed 'felicity conditions'. For example, the felicity conditions for performing the illocution of marrying include that the speaker is an authorized marriage celebrant, that both of the marrying parties meet the local requirements for getting married (such as being of a certain age, not already being married, and so forth), and that the context is that of a marriage ceremony. If any of these conditions is not met – for example, if the speaker is not properly authorized – then the illocution will fail, or 'misfire': the words will have been said, but the couple will not have been married.

According to Langton, illocutionary acts of subordination do three things: they rank some people as inferior, they legitimate discriminatory behaviour against those people, and they deprive them of important powers. One example of an illocutionary act of subordination used by Langton is a legislator in South Africa enacting apartheid legislation by saying, 'Blacks are not permitted to vote' (Langton 1993, 302). In uttering these words, the legislator makes it the case that Black South Africans cannot vote; he thereby deprives them of an important power, ranks them as inferior to White South Africans, and legitimates anti-Black discriminatory behaviour on the part of White South Africans. Although m-pornography does not perfectly match the paradigm case of illocutionary subordination, in that it may not satisfy all of the felicity conditions, the thought is that it satisfies enough of the felicity conditions to function in the same sort of way.

Illocutions can be further divided into different types. One type of illocution that is relevant to subordination is a 'verdictive', an 'authoritative delivery of a finding about some matters of fact or value' (Langton 1993, 304). Another is an 'exercitive', an action that 'confer[s] powers and rights on people, or removes powers and rights from people' (304). According to Langton (1993), m-pornography has both exercitive and verdictive force, although in some work she places greater emphasis on its verdictive force (2009a, b). In Langton's example of the legislator saying 'Blacks are not permitted to vote', the exercitive dimension is perhaps more obviously apparent than the verdictive dimension. Let us therefore consider instead a very similar case in which the verdictive dimension is easier to discern: a Supreme Court judge in the antebellum US ruling in favour of the continuation of slavery by saying, 'Black people have no rights that White people are bound to respect'.[41] In saying this, the judge is purporting to track a pre-existing fact, the inferior moral status of Black people relative to White people (word-to-world direction of fit). At the same time, he is enacting an institutional fact, the fact that Black people do not count as having rights against interference by White people (world-to-word direction of fit). The judge succeeds in enacting an institutional fact even though his utterance absolutely fails to track the pre-existing facts that it purports to track.

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[41] Cf. *Scott v. Sandford,* 60 U.S. 393 (1857).

Mary Kate McGowan (2005) describes verdictives of this kind, where the utterance fails to track the antecedent facts it purports to track, as 'erroneous verdictives'. For example, if a tennis umpire calls a ball 'out' when in fact the ball bounced inside the baseline, the umpire has failed to accurately track the ball's location, but has nevertheless succeeded in making the ball *count* as out for the purposes of the tennis match; this is an erroneous verdictive. Whilst erroneous verdictives are not strictly speaking false, they are defective in a manner that is akin to falsity. McGowan suggests that we interpret MacKinnon's constructionist claim as the claim that m-pornography is an erroneous verdictive: it purports to describe women's actual natures; it does so inaccurately; and, in doing so, it enacts an institutional fact about what women's natures count as being (2005, 43).

It should be apparent that there is some overlap between speech acts that are erroneous verdictives, and speech acts that are status function declarations. Status function declarations, like verdictives, have a double direction of fit. When a speech act purports to track a pre-existing fact but fails to do so, and at the same time allocates deontic powers that define an institutional category, it is both an erroneous verdictive and a status function declaration.[42] Moreover, there is also some overlap between the category of subordinating exercitives and the category of status function declarations. If an exercitive unfairly deprives a certain set of people of deontic powers, then it is both an illocution of subordination and a status function declaration.

This might seem like a point of contact between my interpretation of the subordination and constructionist claims and the speech act interpretations proposed; however, caution is required here. The argument that I am suggesting as an interpretation of MacKinnon does not claim that works of m-pornography are themselves status function declarations, but rather that they are representations that function causally to maintain collective intentional recognition of status functions. This is an important distinction: status function declarations are, by definition, speech acts, whereas representations need not be,

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[42] Some status function declarations create brand new institutional categories; others alter the deontic powers associated with an existing category. For example, if a law is passed that creates civil partnerships, this is a status function declaration that brings into existence a new kind of institutional entity, a civil partnership; if a new law is passed that authorizes same-sex marriage, this is a status function that alters the already existing institutional category of marriage.

and there is some debate over whether works of pornography are indeed speech acts. For example, Jennifer Saul (2006) argues that works of pornography cannot be speech acts because speech acts are utterances in contexts, and a work of pornography, in and of itself, is not an utterance in context. According to Saul, only particular viewings of pornography can be speech acts, and so the most that can be claimed within a speech act account is that some particular viewings of m-pornography are illocutions of subordination (or indeed construction). If this is correct, it limits the scope of the speech act interpretation. However, the issue of whether or not works of m-pornography are speech acts does not arise for my interpretation of the subordination and constructionist claims: although my argument is compatible with the claim that works of m-pornography are speech acts, it does not rely on their being so. This is a significant contrast with the alternative claim that works of pornography are status function declarations, for the latter claim does indeed require it to be the case that works of pornography are speech acts.

Another issue that arises for speech act accounts but does not arise for my account is what has been termed 'the authority problem'. The authority problem is the difficulty of explaining how m-pornography manages to be a successful illocution of subordination or construction given that both exercitives and verdictives require authority as one of their felicity conditions, and it is not obvious that pornographers have such authority (see, for example, Langton 2009a). My argument for the subordination and constructionist claims does not require us to suppose that m-pornography is authoritative, merely that it is causally efficacious in maintaining a particular form of collective intentionality.

As I have said, the argument I am suggesting does not claim that works of m-pornography are status function declarations. It is nevertheless interesting to note that the felicity conditions for status functions, in contrast to those for exercitives and verdictives, do not include authority. Making a speech act of declaration requires only that the utterance represents the world both as being a certain way and as having a certain deontology. If this deontology is then recognized by others as giving desire-independent reasons for action, the declaration has been successful in creating institutional reality (Searle 2010, 85-86). Thus, whether a status function declaration creates a new institutional fact depends on whether it

garners recognition after the fact, not on whether the speaker has prior authority. Of course, these two things are connected. It may be that people recognize the status function articulated in the declaration precisely *because* the speaker has authority. Such is the case with the judge we considered earlier: it is in virtue of his authority that people collectively recognize this status function, because they already collectively recognize a network of status functions involving the state and the legal system that commits them to recognizing the pronouncements of someone situated as the judge is situated. But it is the fact that his pronouncement garners recognition, not the fact that he enjoys authority, which determines whether his declaration is successful in creating an institutional fact. To put the point differently, the authority of the speaker is only one reason why someone might be inclined to recognize a status function. An alternative possibility is that the status function itself is attractive to her in virtue of furthering her interests or appealing to other values she already holds. For example, suppose that A says, of a building, 'This is my house'. B does not perceive A as especially authoritative; however, she thinks that if A is recognized as having property rights over the building in question, it will be easier for her, B, to gain recognition of similar rights over another building. Since B would like to obtain these rights, she chooses to recognize the status function declaration made by A.

Typically, those status function declarations that are aimed at altering formalized institutional structures require more authority in order to secure recognition, and those aimed at less formalized patches of institutional reality require less. For example, in a social situation where there is a highly formalized institution of private property enmeshed with a system of state power that upholds property rights through force, simply saying 'this is my house' is very unlikely to generate recognition. In a society with no formalized property institutions and no mechanisms of state enforcement, though, there is a much greater chance that by saying 'this is my house' one can bring others to recognize a deontology whereby they ought not to go in that house without your permission, and so on. Note that in the first, formalized case, it is not impossible that one's utterance could secure recognition; it is just that in order to recognize the relevant deontology, people would need to *stop* recognizing other deontologies they currently do recognize. For example, imagine a revolutionary in a feudal society speaking to a group of serfs and saying, in impassioned tones: 'This is *our* land!'. Imagine, further, that this

utterance instigates a successful revolution against the feudal powers. In order to recognize the deontology implied by the utterance, thereby bringing that deontology into existence, the serfs have to cease to recognize the legitimacy of the feudal state and all its associated legal and political apparatus. Cases like this, although possible, are few and far between.

I have said that status function declarations do not require authority, only recognition; but one might hold that this recognition amounts to a form of authority. In that case, it would turn out that status function declarations *do* require authority in order to be successful, but this authority can be of an ex post variety, deriving from people's responses to the utterance. An account of authority along these lines is given by Ishani Maitra (2012) in relation to hate speech. According to Maitra, a hate speaker can gain authority as a result of bystanders failing to intervene and challenge the hate speech. The inaction of the bystander authorizes or 'licenses' the hate speech. The possibility of licensing means that someone's speech can be authoritative even if they do not occupy any particularly authoritative social position. Whether we conclude that status function declarations do not require authority as one of their felicity conditions, or that authority is required but can be established ex post via licensing, what is noteworthy is that special, antecedent authority is not always required for a successful status function declaration.

This brief discussion of speech act accounts of the subordination and constructionist claims has clarified their relationship to the account I have offered in terms of ontic injustice. The primary difference between my account and speech act accounts is that I am offering an account of the causal version of the subordination claims, whereas speech act accounts tend to focus on the constitutive version. I have identified a degree of overlap between the illocutionary acts that concern Langton and McGowan, and status function declarations. I have also identified two issues which arise for speech act accounts but not for my account, namely the question of whether works of pornography are speech acts, and the authority problem.

4. The Revised Argument

Up to this point, I have been working with the ontology of gender found in MacKinnon's work, which differs from the institutionalist realist account I have argued for in this thesis. In this section, I consider the implications of substituting my institutionalist realist account of gender for that of MacKinnon.

MacKinnon, as I have been interpreting her, takes women's subordinate social position to be primarily defined by way of a socially constructed hierarchical sexuality that eroticizes male dominance and female subordination. By contrast, my institutionalist realist account of gender holds that women's position is maintained by a wide variety of social arrangements, not all of which concern sexuality.[43] For example, I argued in Chapter 3 that employment practices and family arrangements play a crucial role. Similarly, whereas MacKinnon takes women's social position to be principally defined in terms of sexual subordination, I hold that women are deprived of a wide range of deontic powers, not all of which concern or can be related to sexual subordination.

Since MacKinnon takes women's subordination to be primarily sexual in nature, it would be plausible for her to claim that m-pornography plays a uniquely powerful causal role in generating collective intentional recognition of a status function that subordinates women. If the institutionalist realist account is substituted for MacKinnon's ontology of gender, however, this changes. If women's subordinate social status is not defined solely by sexual subordination, but by other forms of subordination too, then representations of women as subpersons performing non-sexual functions are surely also relevant.[44] This necessitates revised versions of the subordination and constructionist claims

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[43] Although I think it is natural to read MacKinnon as claiming that women's subordinate status is principally constructed by way of sexuality, there are portions of her work that seem to allow that other modes of use are also significant (1989, 93-94).

[44] Although even within the sexual context, I cannot see any reason why m-pornography, and m-pornography alone, would be thought to generate collective-intentional acceptance of the subordinating status function. Plenty of non-pornographic representations – many romance novels aimed at women and girls, for example – also approvingly depict women as lacking in sexual agency, as having a sexuality that consists only of a desire to please men, and as appropriate targets of non-consensual sexual violence. Even if one focusses on sexuality alone, it seems arbitrary to suppose that only *sexually graphic* misogynistic depictions of women as being for male sexual use have the power to feed into institutional reality.

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which apply to m-pornography together with other misogynistic forms of representation. Such revised versions must charge m-pornography *in conjunction with other misogynistic representations* with playing a crucial role in the continued collective-intentional acceptance of the status function, 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as a subperson around here'.

This brings me to a re-statement of the argument set out in the previous section, aimed at the modified claims.

1. Institutional entities are constructed through the collective intentional recognition of status functions.
2. Gendered individuals (e.g. women and men) are institutional entities.
3. The representation of women in m-pornography and in other misogynistic representations plays a crucial role in maintaining the collective intentional recognition of a status function that defines women as institutional entities thus: 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as a subperson around here'.
4. (From 1-3) M-pornography, in conjunction with other misogynistic representations, constructs women as subpersons for male use.
5. When a person is constructed as a subperson for the use of others they are thereby subordinated.
6. (From 4, 5) M-pornography, in conjunction with other misogynistic representations, subordinates women.

Again, I propose to account for the wrongness of this construction primarily via ontic injustice: the construction is wrongful because it violates the recognition respect owed to those constructed as women by depriving them of deontic powers to which they are entitled. On this view, then, the suggestion is that m-pornography is a major causal mechanism for the perpetuation of the ontic injustice suffered by women, and that other forms of misogynistic representation also function causally in the same way. Although this account of the wrongs of m-pornography is structurally equivalent to that of MacKinnon, it has the advantage

of not depending on such an ambitious account of the role of sexuality in women's subordination. I therefore take the revised subordination and constructionist claims to be significantly more defensible than the originals.

I have not shown that the revised claims are true; that is an empirical matter which I cannot settle here. But if these claims were true, what implications would they have? The debate around pornography is often framed in terms of censorship, particularly the question of whether the liberal state is justified in censoring pornography. It is important to remember that MacKinnon and Dworkin's proposed ordinance was not aimed at state censorship. Rather, it sought to give parties harmed by m-pornography the means to sue for civil damages. The publication and dissemination of material would not have been prohibited by the state. However, the ordinance was obviously aimed at reducing the availability of m-pornography, and the state would have been required to co-operate in this by upholding the claims for damages. Therefore, the question of whether the liberal state can justifiably restrict access to certain types of material does have some relevance to the ordinance, as well as figuring prominently in the broader debate.

Adopting the revised versions of the subordination and constructionist claims as I have advocated means that m-pornography is no longer singled out as uniquely harmful. On the contrary, a broad selection of material is implicated in the subordination and wrongful construction of women. Misogynistic representations of women and girls in advertising, in film, in literary fiction, in children's stories, in religious texts – the list is a long one. This move therefore necessitates a shift away from the question of what the liberal state may permissibly restrict, for the idea of the state restricting access to all misogynistic material is clearly deeply unappealing as well as highly impractical. However, the fact that state-enacted restriction is not appropriate with regard to a certain kind of material does not undermine the claim that the material in question is problematic. All this fact establishes is that responses other than state-enacted restrictions are called for.

In previous chapters, I have argued that gender and race are sites of ontic injustice. In considering how the concept of ontic injustice can be applied to the debate on pornography, I have suggested that misogynistic representations play a major role in perpetuating ontic injustice against women – and I take the equivalent claim about racist representations to be equally true. If I am right, then misogynistic and

racist representations are not merely epiphenomenal effects of ontic injustice, but a key mechanism for its perpetuation: by representing women and people of colour as less than full persons, they operate to maintain collective intentional recognition of subordinating status functions. It follows that such representations are a good target for intervention by those seeking to combat ontic injustice; to borrow Haslanger's phrase, they are one of the 'levers for change' (2012c, 215).

I do not wish to overstate my case regarding this point. It is possible for ontic injustice against women and ontic injustice against people of colour to exist without misogynistic or racist representations. Such representations help to maintain forms of collective intentionality that designate women and people of colour as subpersons. However, on my account, members of social groups can be constructed as subpersons even in the absence of explicit denigrating representations. What matters is that members of the group are wrongfully deprived of key deontic powers, and this can happen through complex interactions of various social factors, as well as through explicit designation.[45] Eradicating subordinating representations is by no means a guarantee of ending ontic injustice, then, because such representations are not a necessary condition for the existence of unjust institutional realities.[46] Ontic injustice concerning gender and race can exist without misogynistic or racist representations, but where such representations *do* exist they provide a particularly direct way of generating status function recognition. My suggestion is that combatting misogynistic and racist representations is one way to undermine ontic injustice. There are many ways to combat misogynistic and racist representations other than state limitations. For example, we can use education strategies to try to encourage critical responses to such material in order to reduce recognition of the status functions. We can use positive representations to try to counteract the negative ones and generate

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[45] See Chapter 2 (sections 4 and 5).

[46] It is worth mentioning that *some* representations *are* strictly necessary to the existence of institutional entities. If there are no representations of a group *as a distinctive group* then that group cannot be an institutional kind. If there were no representations of people as gendered or race, there would be no genders or races, on my account. However, this fact does not help us much in combatting ontic injustice. Whilst ontic injustice exists, there is little point in those who seek to eradicate it refusing to discuss the groups who suffer ontic injustice: since those groups would still exist, this would accomplish nothing but to make it harder for us to point out the wrongs they suffer.

recognition of different status functions. We can call for a consumer boycott of such representations. Some of these tactics could usefully be supported by the state, for example in the context of state education, or in terms of funding positive artistic representations. Such state support would need to be argued for, although it is worth noting that the argument would not turn on the issue of free speech in any interesting sense.

In suggesting that sexist and racist representations are good targets for intervention, I do not intend to divert attention away from misogynist and racist acts more broadly. In fact, my account offers a way of understanding the continuity between such acts and misogynistic and racist cultural productions such as m-pornography. Although not all misogynistic and racist acts are 'representations' in the sense that we usually conceive of them, they can have representational aspects.[47] It is easy to see how this is true in cases of hate speech, but I think it is also true in case where no speech at all is used. For example, consider the following case: Adam, a teenage boy, harasses a female classmate by grabbing her buttocks when she walks past, and is seen doing so by Ben, another boy, who later behaves in a similar way towards several different girls. It seems that in order to make sense of this case, we need to think of Adam's action as, in a loose sense, representing girls in general as the sort of beings who are the appropriate object of this type of harassment. Otherwise, we have no reason for thinking that the story above is more likely to happen than a story in which Ben starts to grab the buttocks of male classmates after witnessing Adam's action (such a story is of course also possible, but I think we would be much more surprised by it than by the first story). In other words, all social actions can be understood as having the potential to function as representations for those who witness them, and indeed those who are (willing or unwilling) participants in them. In virtue of this, these acts contribute causally to collective intentionality and are implicated in ontic injustice in the same way as that which I have outlined here in relation to m-pornography.

To sum up the argument of this chapter so far, I have shown that the concept of ontic injustice can be used to interpret MacKinnon's claims that m-pornography subordinates women and wrongly constructs their nature. On my analysis, the

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[47] I take it that some sexist and racist acts are obviously representations – some hate speech, for example.

claim is that m-pornography makes a crucial causal contribution to the collective-intentional acceptance of the status function, 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as an object for male sexual use around here'. I then substituted my own ontology of gender for MacKinnon's, which has the result of broadening the subordination and constructionist claims so that they apply to other misogynistic representations, and not solely to m-pornography. On my analysis, the claim is that m-pornography, in conjunction with other misogynistic representations, makes a crucial causal contribution to the collective-intentional acceptance of the status function, 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as a subperson around here'. A further implication of the application of ontic injustice to the pornography debate has been to highlight the important role played by representations in the enactment and perpetuation of ontic injustice, and the possibility of addressing ontic injustice through combatting subordinating representations.

5. Ontic Injustice and the Black Lives Matter Movement

Having considered the application of ontic injustice to the academic debate concerning pornography, I now turn to a context outside of academia. One striking example of a claim of justice being made in relation to category membership is the Black Lives Matter movement in the US. The Black Lives Matter movement began in 2013 as a Twitter hashtag, #BlackLivesMatter, in response to the killing of Trayvon Martin, an unarmed Black teenager, and the acquittal of his killer, George Zimmerman.[48] Its founders were three Black women community organizers: Alicia Garza, Patrisse Cullors, and Opal Tometti. In 2014, the campaign organized in-person protests in Ferguson, Missouri, in response to the police shooting of Michael Brown. It has since gone on to organize numerous events as well as maintaining an online presence. According to the official website of the #BlackLivesMatter Organization, '#BlackLivesMatter is an online forum intended to build connections between Black people and our allies to fight anti-Black racism,

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[48] See also Chapter 3 (section 3.1).

to spark dialogue among Black people, and to facilitate the types of connections necessary to encourage social action and engagement' (Cullors, Tometti, and Garza 2016). In talking about 'the Black Lives Matter movement', I intend to refer more broadly to both the on-line and in-person activism associated with the hashtag.

I have argued, in the preceding chapters of this thesis, that race is one important site of ontic injustice. I take it that Black people in the US suffer a particularly acute form of ontic injustice. To analyse the situation of Black people in the US as an instance of ontic injustice is to say that within current social reality, as a matter of institutional fact, Black people lack the deontic powers associated with full personhood – in other words, that at present *Black lives do not matter*, in a social or institutional sense. It is also to say that since Black people – like all people – instantiate morally relevant features that demand recognition respect, this institutional fact is profoundly wrongful. Thinking in terms of ontic injustice shows how Black people are not only wronged by actual experiences of police violence, unfair education, unemployment and under-employment, and poverty, but are also wronged by the very fact of counting as Black in a society where to count as Black is to count for less. This analysis reveals that racial injustice involves an ontological devaluation that is constitutive of the imposed social category of Blackness as it currently exists. In doing so, it shows how specific and overt wrongs against individual Black people, such as police brutality, contribute to a distinctive wrong suffered by all Black people qua Black people.

With this analysis of the situation in place, Black Lives Matter can be seen to function as a protest against ontic injustice, among other forms of injustice. The assertion that 'Black Lives Matter' both highlights and repudiates the social devaluation of Black people. It highlights this devaluation because people do not tend to state the obvious, which means that our norms of interpretation direct us to assume that the people stating that 'Black Lives Matter' take it to be non-obvious that Black lives do in fact matter.[49] The repudiation can be interpreted in two ways:

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[49] Failure to recognize the social devaluation of Black lives is behind the notorious counter-slogan, 'All Lives Matter' (Bry 2015). Those associated with this counter-slogan seem to think that the Black Lives Matter movement is promoting the claim that *only* Black lives matter, or that Black lives matter *more* than other lives. These interpretations are, of course, absurd, unless one is profoundly ignorant of the background context of racial injustice. Judith Butler discusses this point in an interview with George Yancy (Butler 2015).

it can be read as an affirmation of the moral value of Black lives, or as a commitment to building a social world in which Black lives also matter socially ('Black lives *shall* matter *here*'). As with the constructionist claim with regard to m-pornography, I do not think we need to choose between these readings; indeed I think they support one another well.

The insistence of the Black Lives Matter movement on retaining a holistic focus on the interaction of various forms of racialized violence and various racially oppressive social arrangements, practices and structures fits with my analysis of qualitatively opaque institutional kinds, as given in Chapter 2. As I argued there, an institutional kind is qualitatively opaque when those who participate in the institutional reality are aware of its existence, but unaware of the deontic powers that characterize it. Qualitatively opaque institutional kinds exist where members of the kind are formally granted certain rights and entitlements, but these rights and entitlements are unenforceable and so do not constitute deontic powers. In cases such as this, the existence of the institutional kind depends on all of the factors that combine to render the formal rights and entitlements unenforceable, which may include material facts, facts about individual psychology, facts about socialized practices, and facts about explicit collective intentionality. Thus, if the kind in question is a site of ontic injustice, all of these factors are implicated in the injustice and are proper targets of critique and intervention. Racial categories are at present at least partly qualitatively opaque, since many people do not believe these categories to be hierarchical in nature. It follows that a wide range of factors are implicated in the ontic injustice suffered by Black people, including institutional practices such as legal regimes and economic systems, material and spatial aspects of social arrangements, collective and individual beliefs about race and racial justice, and implicit racial bias.

This analysis can assist in blocking a common and obstructive response to demands for racial justice. As noted by the Black Lives Matter movement, the devaluation of Black lives is accomplished through many different means, including policies such as drug laws and sentencing regimes, housing policies, education policies, and so on. Demands for racial justice are often met with an obstructive insistence on treating each of these means as an entirely separate issue, and then denying the relevance of race to each of them in turn. For example, with

regard to drugs it may be claimed that we ought to adopt a regime designed to strongly discourage drug use; if this law were then to result in many more convictions and longer prison sentences for Black people than for White people, so be it; there is nothing unfair about that. With regard to education, it may be claimed that universities should just accept the candidates with the highest test scores; if this results in Black applicants being less likely to secure a place, so be it – that is only fair. On housing, it may be claimed that people should be able to live where they choose and to only invest resources in their own neighbourhoods – if this leads to racial segregation and areas of extreme disadvantage that are predominantly Black, that is unfortunate, but cannot be helped. And so on.

Of course, this move is strongly resisted by those working for racial justice. The analysis of racial injustice given above in terms of ontic injustice offers an extra resource in this endeavour. The moral imperative to avoid the *outcome* of the joint operation of these various factors – namely the ontological devaluation of Black people – offers a weighty reason for retaining a holistic focus within which the implications of different policies for racial inequality is a central priority. Ontic injustice is thus a useful theoretical tool because it identifies the joint implications of different factors – institutional facts, individual intentionality, social norms, socialized practices, and brute physical facts – for the deontic powers that define a social category. In doing so, it shows those factors to be implicated in a grave injustice, and therefore to require urgent change, even if each factor, considered individually, could be made to appear innocuous.[50]

The events that have been the most prominent rallying points of the Black Lives Matter movement – killings of unarmed Black people by police or their proxies – fit with my analysis of qualitatively opaque institutional categories particularly clearly. The law guarantees Black people equal rights to life, but Black people are killed at disproportionate rates compared to White people, and their killers act with effective impunity. These events also illustrate the explanation given in section 4 above of the role that representations play in maintaining institutional reality, and of the way that events can have representational aspects. When Black people are

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[50] To be quite clear, I do not think any of the factors listed above can be made to look innocuous; but the point is that even if they could, they would still need to be addressed as a matter of justice in order to prevent their joint effect, namely ontic injustice.

shot down by police in broad daylight, when they lie bleeding without medical attention, and when their corpses are left in the street for hours, Black people as such are represented as lacking in human value. These representationally laden events contribute to forms of collective intentionality that construct Black people as subpersons, as socially devalued beings.

In short, then, the slogan 'Black Lives Matter' can be seen as a protest against the ontic injustice suffered by Black people in 21st-century US society. My account of ontic injustice fits well with salient features of the situation, and helps with maintaining a holistic analysis of racial oppression that attends to the interaction of various different aspects of social arrangements.

6. Conclusion

In this chapter, I have applied the concept of ontic injustice to two different cases – one concerning an academic debate, and one concerning a social movement. In relation to the philosophical debate about pornography, I argued that the concept of ontic injustice offers a plausible interpretation of MacKinnon's claims that m-pornography subordinates women and constructs women's natures in a way that is defective. On this analysis, the claims amount to the charge that m-pornography defines the social reality of women by maintaining collective-intentional acceptance of the status function, 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as an object for male use around here'. I also considered broadened versions of the subordination and constructionist claims, applying to other misogynistic representations besides m-pornography, that are arrived at if my account of the ontology of gender is substituted for MacKinnon's narrower account. On this broadened analysis, the claim is that m-pornography in conjunction with other misogynistic representations defines the social reality of women by generating collective-intentional acceptance of the status function, 'for any human x, if x satisfies the condition "x has a vulva and a vagina and x does not have a penis and testicles", x has the status "woman" and x functions as a subperson around here'. This shows that subordinating representations play a significant role in the enactment and perpetuation of ontic injustice, and thus have

the potential to be one 'lever for change'. I then identified several points of congruence between my account of ontic injustice and the efforts of the Black Lives Matter movement, showing how the concept of ontic injustice can help with the project of unmasking and challenging oppressive social realities. A full exploration of the scope of ontic injustice must be deferred to another occasion, but these two cases jointly serve to give some indication of its potential applications.

Concluding Remarks

My main aim in this thesis has been to give an account of ontic injustice. On the account at which I have arrived, ontic injustice is defined generally as the injustice that occurs when an individual is wronged by being socially constructed as a member of a certain social kind. More precisely, I have drawn upon the apparatus of institutionalist realism to argue that ontic injustice consists of an individual being constructed as a member of an institutional category where this involves a wrongful deprivation of deontic powers. The wrong of ontic injustice consists of a failure of recognition respect – which can be transactional, structural, or a blend of the two – together with an associated denial of dignity. I have also argued that race and gender are important sites of ontic injustice, since the nature of these categories is such that people of colour and women are wrongfully deprived of a number of important deontic powers. Finally, I have shown how the concept of ontic injustice can be applied to two cases, namely, pornography, and the Black Lives Matter movement.

In closing, let me note two limitations of the approach I have pursued in this thesis. The first concerns the status of my argument for institutionalist realism about human social kinds, and in particular about race and gender. Although I have made a case for the positive merits of institutionalist realism, and although I have defended it against a number of direct criticisms, I have not fully vindicated it against its rivals. For example, I have offered little in the way of direct criticism of alternative accounts, either within or outside of constructionist realism. Further argument would be required to establish conclusively that institutionalist realism is to be preferred to other accounts of the ontology of human social kinds. My discussion of ontic injustice offers some resources for making such an argument: insofar as the concept of ontic injustice is appealing, the significant role played by institutionalist realism in elaborating an account of ontic injustice constitutes one reason to favour institutionalist realism over its rivals.

The second limitation concerns my focus on race and gender as sites of ontic injustice. The account of ontic injustice I have developed is intended as a general one that is relevant to a range of different human social kinds. Some obvious

candidates for sites of ontic injustice include sexual orientation, disability status, religion, ethnicity, nationality, and economic status. Other candidates may seem particularly salient in specific moments. For example, the categories of 'migrant', and perhaps of 'asylum seeker', seem to me to be possible sites of ontic injustice that are especially salient at the present time. My decision to restrict the focus of this thesis to race and gender was a response to practical constraints of time and space, and it is reasonable to suppose that considering a broader range of cases beyond race and gender would highlight different aspects or features of ontic injustice. This step, I suggest, should not be thought of as a matter of simply applying a fixed account to additional cases, but as a dynamic process that will feed back into our overall understanding of ontic injustice.

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