

# 4

## The Player and the Game

### Moral Culprits and the Wrong of Structural Injustice

David Estlund

#### I. Introduction

The colloquial phrase, “don’t hate the player, hate the game,” expresses the now familiar idea “that instead of blaming someone who is simply participating in a flawed or unfair system, the blame should be directed towards the system itself.”<sup>1</sup> The idea is hardly new, and derogatory references to “The System” have long had a similar meaning.<sup>2</sup> But in blaming the system rather than participants, is that the same kind of blame in both cases?<sup>3</sup> It’s clear what it would mean to blame the game or the social structure in the way we might blame loose brakes for an accident. But what is meant by blaming the player seems to involve us in attitudes such as resentment, indignation, or righteous anger. It isn’t seeing the player or their conduct as bad as a virus can be bad, but as morally wrong and with no adequate excuse. The idea that social structure itself could be wrong in a similar way, morally wrong and blameworthy,<sup>4</sup> is harder to understand. In this chapter,

<sup>1</sup> For the apparent roots of the phrase in Hip-Hop culture in the late 1990’s, see “Don’t Hate the Player, Hate the Game,” on the website Digitalcultures.net, <https://digitalcultures.net/slang/pop-culture/dont-hate-the-player-hate-the-game/>.

<sup>2</sup> That usage seems to have gained currency in the early 1960’s, as shown in a chart at CollinsDictionary.com, <http://www.collinsdictionary.com/us/dictionary/english/the-system>.

<sup>3</sup> I return to this slogan at the end. Thanks to Matthew Adams for first mentioning and discussing it in relation to the ideas in this chapter.

<sup>4</sup> Iris Marion Young speaks of “a specific kind of moral wrong, structural injustice, which is distinct from wrongs traceable to specific individual actions or policies.” *Responsibility for Justice* (Oxford: Oxford University Press, 2011), p. 44. Likewise, Haslanger clearly states the view that structural injustice—which she interchangeably also calls “oppression” and “institutional injustice”—is a wrong, though “not an individual wrong but a social/political wrong.” See Sally Haslanger, “Oppressions,” lightly revised as Ch. 11 of *Resisting Reality: Social Construction and Social Critique* (Oxford: Oxford University Press, 2012), p. 314. Robin Zheng, too, offers “a structuralist approach that locates the wrongs of structural injustice in structures, rather than individual agents,” in “What Is My Role in Changing the System? A New Model of Responsibility for Structural Injustice,” *Ethical Theory and Moral Practice* 21 (2018): 869–885.

I want to motivate and sketch an account of a society-wide kind of structural injustice that doesn't depend on individuals wrongfully contributing to or failing to remedy structural conditions but which does warrant the grievance attitudes. The wrongdoers are elsewhere.

Here, in simplified form, is the account I will begin to explore in this chapter: Unlike games, which are joined freely, the rules of social life—a society's prescriptive norms—are wrong to enforce without some further justification. Those wrongs are not violations of the rules but their wrongful enforcement. Law is only one category of social norm, so norm enforcers (or imposers, as I will say in the case of non-legal norms) are not limited to police or other agents of the state. Instead, they are, all or most, participants in the social system. Just as in many games the rules of social life are enforced by the players. To render the imposition of norms permissible—to legitimate them, as I'll put it—the basic social structure, which consists of some of those norms, must meet principles or standards that would suffice to procedurally legitimate them. The structure of the game, so to speak, would be what permits the enforcement or imposition of the rules. I begin by motivating the approach. I then proceed to elaborate on it a little more thoroughly and address a few of the questions it raises.

## II. The Culprit Problem

Structural injustice seems to be all around us, yet it's not clear that we know what it is.<sup>5</sup> Partly, this is because the idea is used in different ways, some more puzzling than others. It has become a term of art, often used to mean wholly structural wrongs that, in some cases, needn't be anyone's fault, not even in the past. How is that something that would warrant grievance attitudes such as resentment, indignation, or righteous anger?<sup>6</sup> Without that familiar

<sup>5</sup> The ideas in this section draw on my paper, "What's Unjust About Structural Injustice?" *Ethics* 134, no. 3 (April 2024): 333–359.

<sup>6</sup> There is controversy about anger and resentment, including whether they are ever really warranted. I will be assuming only that in some form, resentment and even anger, or *close cousins*, are sometimes warranted against agents—meaning that their representational content (not necessarily believed) is correct, as responses to injury, insult, or other mistreatment. To illustrate what I mean: Martha Nussbaum argues that anger presents retributive harm as appropriate, so it is not fitting when that is not so—and, she believes, it is never so. *Anger and Forgiveness: Resentment, Generosity, Justice* (New York: Oxford University Press, 2016), Ch. 2. But, as she points out, no such objection applies to what she calls "transition anger," surely a close cousin of what she takes to be anger proper. Derk Pereboom argues that moral anger in particular (which is a large part of all anger) is almost always misplaced because it typically presupposes that the agent could have done otherwise. On metaphysical grounds, Pereboom thinks

correlate of wrong, is there some other way of indicating why it should be understood as wrong? Or is structural injustice only bad rather than wrong, perhaps in a way that generates duties but does not warrant grievance any more than unpreventable damage from a hurricane does?

For two cases that are not puzzling at all, as a result of long histories of individual racism and sexism (often highly organized, of course), racial and sexual biases of a kind are now baked into many of our practices and institutions. Black households, on average, hold only a small fraction of the wealth of non-Black households in the U.S.<sup>7</sup> Women at work receive only 82 cents in pay for every dollar of hourly wage that men are paid.<sup>8</sup> It seems to many that even though individual anti-Black racism<sup>9</sup> and sexism have diminished dramatically over centuries and decades, society's operations remain racially and sexually biased far beyond the individual bias that remains. That is a troubling observation about the impact of wrongdoing on social structure. This, rather than the idea of a wrong without wrongdoing, is often what is meant, especially in non-academic uses of the idea of a wrong of structural injustice. In these two cases the harms, while structural in important ways rather than (only) perpetrated by individuals, are at least in large measure traceable to the wrongful conduct of individuals, including many who are now dead. The Jim Crow form of racial Apartheid in much of the U.S., which wrought deep, persisting structural patterns, was part of the legacy of slavery, and both were the doing of malicious and complacent individuals.<sup>10</sup> Women, too, have long been subjected to disgraceful repression and marginalization,

that is never the case. Like Nussbaum, though, he has no such objection to a close cousin to moral anger: a "stance of moral protest." *Wrongdoing and the Moral Emotions* (Oxford: Oxford University Press, 2021). Such similarly close cousins would suffice for BSP's idea of anger and other grievance attitudes.

<sup>7</sup> Kriston McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, "Examining the Black-White Wealth Gap," Brookings.edu, February 27, 2020.

<sup>8</sup> Carolina Aragão, "Gender Pay Gap in U.S. Hasn't Changed Much in Two Decades," Pew Research Center, March 1, 2023, <https://www.pewresearch.org/short-reads/2023/03/01/gender-pay-gap-facts/>.

<sup>9</sup> Notwithstanding a troubling rise in its visibility if not also its reality, the widespread perception that there is far less racism than there was several decades ago is supported by many studies. For discussion of some of them, see "America Is Becoming Less Racist but More Divided by Racism," *The Economist*, online May 22, 2021; Marian L. Tupy and Ronald Bailey, "Declining Racist Attitudes," *Human Progress*, March 1, 2023; John Wihbey, "White Racial Attitudes over Time: Data from the General Social Survey," *The Journalist's Resource*, August 14, 2014.

<sup>10</sup> The roots of mass incarceration in prior and ongoing individual racial bigotry and bias are prominent in, e.g., Elizabeth Hinton, LeShae Henderson, and Cindy Reed, "An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System," Vera Institute of Justice, May 2018.

and social structures extend those wrongs into the present. There's even a clear sense in which these harms can be regarded as ongoing wrongs, even irrespective of ongoing wrongdoing.<sup>11</sup> Call agents, living or dead, present or absent, who have inexcusably contributed to the production of a given case of structural disadvantage *legacy culprits*.

There are still more eligible culprits even after counting all legacy culprits. For example, apart from anyone who has contributed (by action or omission) to the production of troubling social-structural conditions, many people might yet be to blame for not doing more to help prevent or remedy those conditions. These are violations of moral duties; call them duties of *superintendence*.<sup>12</sup> Additional culprits can surely be found there. However, there still appear to be cases that many would regard as wrongs of structural injustice, but which could arise and survive even without such violations. To illustrate the point, think of social structure broadly, in a way similar to Sally Haslanger when she writes, "As I am using the term here, 'social structure' is a general category of social phenomena, including, for example, social institutions, social practices and conventions, social roles, social hierarchies, social locations or geographies, and the like."<sup>13</sup> Some matters of social structure, in the broad sense in which structure can seem unjust, can be present in such a freeze-frame way, others cannot and involve the way things operate over time. Either way, we can imagine confining our view to a frame or a clip sufficient to perceive the ostensibly unjust structure without knowing whether it arose or continues due to wrongdoing. If it is, even in that short compass, infused with individual wrongdoing it will be a poor case for testing the idea that it is wrong in some way even irrespective of wrongdoing. Now, suppose

<sup>11</sup> To say there is an ongoing wrong after the wrongful act is analogous to what is sometimes called "wrongful death" in law. See <https://www.m-n-law.com/rhode-island/wrongful-death-lawyer/>. Ongoing structural harms caused in certain ways by culprits long ago are, in this sense, ongoing wrongs.

<sup>12</sup> Following Rawls, these are often called natural duties of justice, duties to help to promote, maintain, and restore just institutions. See *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971), p. 295. I avoid that name to avoid possible connotations that the things to be avoided or remedied are themselves wrongs, which is a central question in this chapter. I follow the language of superintendence with this meaning from Martha Nussbaum, "Foreword" to Iris Young, *Responsibility*, op. cit., p. xix. In the category of duties of superintendence, many authors emphasize wrongful failures to help to remedy. See, e.g., Catherine Lu, "Colonialism as Structural Injustice: Historical, "Responsibility and Contemporary Redress," *Journal of Political Philosophy* 19, no. 3 (2011): 261–281. See also Maeve McKeown's calling attention to the power differential that renders some people blameworthy for this even if (a big "if" in her view) most people are not. *With Power Comes Responsibility* (London: Bloomsbury, 2024).

<sup>13</sup> *Resisting Reality: Social Construction and Social Critique* (New York: Oxford University Press, 2012), p. 413, Chapter 15: "But Mom, Crop Tops Are Cute! Social Knowledge, Social Structure, and Ideology Critique".

we press the pause button, so to speak, when a society first exhibits a problematic structure such as class hierarchy. Looking at the frozen frame, we can't know whether there have been any blameworthy violations of duties of prevention or remedy. For one thing, it can be difficult or even impossible for people to know what avoiding or fixing it would take, and it's implausible that they are blameworthy in that case.<sup>14</sup> Second, even apart from that, moral demands have limited stringency and weight. Each person's part in what would need to be done might conflict so severely with other moral, filial, or personal reasons that it is not plausibly morally required.

It doesn't matter for purposes of this argument if real-world target cases, as I'll call them—any that you, the reader, think an adequate theory should closely associate with structural injustice—have always actually been partly due to wrongful negligence. There seem to be target cases of structural injustice that appear not to depend on the problematic structure's being anyone's fault, either by a legacy of wrongdoing or by failed duties of superintendence, and in that way, they resist counting as wrong. I'll call those *recalcitrant* target cases. For an example that we can use several times throughout of a recalcitrant target case of structural injustice, I will use the case of class hierarchy. Structural racism is a central target case of structural injustice, but not at all a recalcitrant one. There's no culprit problem because its history is so rife with wrongful individual racism, combined with indefensible inaction for other reasons.<sup>15</sup> This complication is less pronounced in the case of hierarchy of economic class. I'll refer a number of times to the idea of a society in which there are at least these two classes—working class and non-working class—whose members can expect significantly different life prospects along various dimensions. This is not the place to settle the issue of how best to define “working class,” but the following will serve our purposes:<sup>16</sup> Distinguish people who do from those who do not need to work for money to maintain a life outside of poverty.<sup>17</sup> For an individual who does need to do so, they

<sup>14</sup> This knowledge problem is one reason why allowing for the possibility of blameworthy group agents would not solve the culprit problem.

<sup>15</sup> Tommie Shelby's conception of racial structural injustice reflects this point. See *Dark Ghettos: Injustice, Dissent, and Reform* (Cambridge, MA: Belknap Press of Harvard University Press, 2016), p. 29.

<sup>16</sup> For example, Erik Olin Wright, in a classic work, offers only a definition of working class that he admits is, “an unrealistic . . . abstract, polarized description of class relations in capitalism,” though one that he thinks is nevertheless useful for certain purposes. *Understanding Class* (London: Verso, 1985), p. 189.

<sup>17</sup> This is too broad without refinement. For example, we might plausibly exclude from the working class people, such as many professionals, who are in a position, if they chose, to save enough to retire with, say, 50% of their overall life expectancy ahead of them without the

might be young adult offspring of very wealthy parents, so they shouldn't count as working class—class including some element of social immobility. As a definition, simplified in several ways, let's say that if it is far more likely than chance that a given person will remain for most of their active adult life in the group that need to work, or in the group that do not, and members of the latter face, on average, better life prospects, that person counts for our purposes as in that class: the working class or the non-working class. As for the element of hierarchy, assume that in our class-structured example those in the working class are, for this reason, disproportionately subject to social power, fortune, and broad competitive disadvantage to various degrees.

Some might yet feel that the sense of injustice still depends on whether the size of the working class is vastly larger, whether a person's prospects are tied to their family's, whether the differences in life prospects are especially stark, whether the case is accompanied by domination or unaccountable power across class lines, or by certain kinds of "relational inequality," and so on. Many variants like that will still not interfere with the main point. I conjecture that readers can find a definition of working and non-working class along these lines which allows for the possibility that a society containing such classes with starkly different prospects could, in principle, arise without anyone's contributing to its existence or continuation in any blameworthy way: neither by contributing to the advent of such a structure, nor by failing one's duty to help prevent or rectify it.<sup>18</sup> It is unclear whether this kind of hierarchy (much less capitalism itself) could in any realistic sense have arisen innocently. But if the reader finds that to be at least conceivable, that is all we need. If such a case seems still to be a wrong of structural injustice, the puzzle becomes clear: what could be wrong about it?

### III. Basic-Structural Proceduralism

Even if a social structure is not wrong in itself, it might fall short of the standards necessary for it to permit imposing certain social norms on each other. This is analogous to a familiar idea about the legitimacy of law,<sup>19</sup> namely that,

prospect of slipping into poverty. For an illuminating discussion of this sort of issue see, Lucas Stanczyk, "Free Time and Economic Class," *Law, Ethics and Philosophy* 5 (2018): 6.

<sup>18</sup> Young's discussion of the case of Sandy (op. cit., p. 40) indicates some helpful ways to see this, and her point can be extended in ways I explain in "What's Unjust," op. cit., pp. 344–350.

<sup>19</sup> "Most contemporary accounts broadly emphasise strong procedural grounds: exercising power over others is legitimate because it rests on the democratic authorisation by those the

within certain limits, laws are permissibly enforceable only if the legal/political system that produces them meets certain standards. But even there, a formal system will only have that kind of legitimating force as embedded in the broader basic social structure. Procedurally important formal features such as certain kinds of formal equality can be procedurally neutralized if there is too much inequality in the social structural overall. This point about the significance of the surrounding social structure is often acknowledged in views about the legitimating power for law of proper political—and most commonly democratic—procedures. But it isn't usually appreciated that then the proceduralist form of reasoning treats formal law and politics as only one part of the "procedure" that does the legitimating for law, with its other parts including informal and unofficial features of the social structure—the procedure in that proceduralism is a broad one. Treating the very idea of procedure as formal or official by definition would accomplish little, other than to obscure these points. Some will even say that, in part, this kind of officialism has that obscuring function and not only that obscuring effect, a point I mention not to take a view on it, but only in case this helps some readers recognize mine as a point they already endorse, if in those somewhat different terms and for other purposes.

For this and other reasons, I broaden the familiar idea of legitimating procedure from state procedures to basic social structure more generally.<sup>20</sup> Other uses of the term "procedure" might imply rigorous, public, explicit rules and steps, and so on (still often as part of a proceduralist argument as understood here). A procedure, in the broadest sense, is anything at all considered in its aspect of producing outcomes that are legitimated, authorized, or in some way justified in virtue of having a source of that type—that is, in proceduralist fashion. Which types of sources have which of these normative implications is a further question.<sup>21</sup>

power is exercised over." Matthias Brinkmann, "The Asymmetry between Domestic and Global Legitimacy," *Critical Review of International Social and Political Philosophy* (forthcoming).

<sup>20</sup> G. A. Cohen objects to Rawls's limitation of justice to the basic structure of society for not including aspects of social ethos. Since much of what he means by ethos would include informal prescriptive norms, his concerns are at least partly accommodated in the broader conception of basic structure that BSP employs. See G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), p. 16.

<sup>21</sup> Rawls, whose treatment of proceduralism of various kinds is widely regarded as authoritative, also uses the idea of procedure more broadly. This can be seen in his argument that distributions arising out of a properly arranged "social system" are cases of "pure procedural justice." *A Theory of Justice*, op. cit., especially pp. 74–76, but see the book's index for many other treatments of the idea.

On this broader formulation of proceduralism, relevant extra-legal features of social structure plausibly include such things as the relative equality or symmetry of additional kinds of power relations between certain groups, a certain non-legal as well as legal scope for the exercise of certain moral rights and liberties such as expression and association, the accommodation of histories of disadvantage manifested in various social practices, and more. Appreciating this broader formulation of what it is (the *broad procedure*) that legitimates laws, leads to a natural question about whether the extension is extensive enough. Laws are not the only regulative social norms we impose on each other. If, as is widely acknowledged at least implicitly, not only formal but also informal aspects of social structure are among the procedurally legitimating conditions of law, why would the prescriptive social norms they bear on be limited to legal norms—laws? Informal structural features such as my several examples surely influence both which prescriptive social norms and also what forms of enforcement of them (or in the informal case I'll say forms of imposition) arise and survive. The view I want to explore, Basic-Structural Proceduralism (BSP) widens the frame not only from formal to informal elements of legitimating procedure, but also from permissible enforcement of legal norms to permissible imposition of prescriptive norms more generally. This extension generally echoes John Stuart Mill's extension, as he presents it, from a standard focus on the moral limits of permissible state interference to the limits on social interference generally.<sup>22</sup> He famously argues that it is wrong except to prevent someone from harming others. However, whether Mill's view acknowledges this or not, even when it's not to prevent harm legal interference is often permissible if the law in question results from the right kind of procedure. For example, consider a duly passed law prohibiting the public performance of a song written by someone else, whether for payment or not, without permission while it is covered by copyright.<sup>23</sup> Such performance doesn't relevantly harm or wrong anyone, even if such a legal restriction helps songwriters. If the law can be enforced even in some cases where it is not to prevent harm, it would be surprising if informal norm enforcement never can. BSP follows in this direction by holding that while there is a presumption of a similar kind against

<sup>22</sup> *On Liberty*, Ch. 1.

<sup>23</sup> In the U.S., see H.R. REP. NO. 94-1476, at 63 (1976). Many countries have similar laws. Other cases of plausibly permissible legal restrictions that are not to prevent harm include zoning for commercial zones, closing a street on Sundays for the use of cyclists and pedestrians, and taxation for support of arts and (non-ameliorative) sciences.

informal norm imposition, as with law, the right procedural provenance can sometimes overcome it.

The law differs from other prescriptive and imposed norms in important ways, two of which are salient here. For one, the mode of law enforcement is generally more severe than with informal norms and harder to justify. The sanctions are sometimes imposed, and typically backed up, by the threat of overwhelming state violence if necessary. A second difference is that in the case of law the procedures that render it legitimate can be much more codified and rigorous than anything imaginable for a procedural legitimation of informal norms generally. These are significant differences, but they work together in a way favorable (not to say decisively so) to BSP: just as any sort of procedural ground of legitimation for informal norms must be morally much weaker than what's possible for law, the imposition of informal norms also tends to need less potent justification since the methods are generally less severe in relevant ways, even though they can be quite severe in their way.

It remains true that some kinds and degrees of even less severe informal norm imposition might be incapable of legitimation in any such informal broadly procedural way, and we'll return to that point. However, this only parallels the fact that some forms of legal imposition as well outstrip even the more potent ground of legitimation that more formal rigorous procedures could ever muster. Mill would be the first to agree—he pioneered the point—that many informal regulative uses of social power are so much a part of the social oxygen (often much more so than the publicly articulated formal counterparts) that their permissibility escapes scrutiny. They should be tested against standards for when such uses of regulative social power are permissible and when not, as he aimed to do with his famous “very simple principle.”<sup>24</sup>

In these ways BSP adds to Mill's extension from formal to informal interference, an extension of the standard focus on formal procedures to informal procedures of legitimation. When the standards aren't met, respective enforcement or imposition is wrong. I want to explore this sort of framework but without taking up the question of what the appropriate principles or standards are. Here is a rough, compact statement of the idea:

*Basic-Structural Proceduralism*

While basic social structure inevitably includes the imposition of legal and non-legal norms by members on each other, that imposition is morally

<sup>24</sup> Op.cit.

permissible only if the society's basic structure is a qualified legitimating procedure. Otherwise, most or all members of society wrong others by participating in that imposition. That condition of non-legitimated imposition of norms is *basic-structural injustice*.

BSP does not purport to find a wrong of injustice entirely without culprits but only to find culprits in a new place, and consistent with the social structure itself not being (in principle) anyone's fault. As distinct from blameworthiness for the deficient structure, there can be blameworthiness from it, so to speak. Is this a structural wrong in any significant way? The answer requires more than yes or no. The procedural inadequacy is plenty structural, but not wrong. The imposition is wrong but not often especially structural. The injustice this identifies is this structurally inflected wrong: imposing structurally non-legitimated norms.

Even at this schematic stage, there are two noteworthy implications: First, BSP is indifferent to whether the principles of structural adequacy came not to be met because of culprits, social phenomena, or a natural disaster. Second, BSP's brand of basic-structural injustice isn't limited to cases of social structure skewed against certain identity groups. It seems bound to cover many instances of that kind, but it is not especially about them. It is about the basic structure's meeting appropriate procedural standards, and there may well be ways of falling short other than being skewed against certain groups. For example, it might be that for a basic structure to legitimate outcomes, it must be sufficiently protective of people's interest in a culture of freedom of expression or of association. A society might fail to meet that standard even if there is no group-differential shape to the limits on free expression. If BSP's disparity-independence, as I shall call this, is initially counterintuitive, our reaction might be a relic of the prejudice-based ideas of injustice we are trying to stay independent of, such as individual racism and sexism and their group-differential structural consequences. Our very topic is what structural injustice might be if it is not grounded in such things as bigotry and prejudice. Disparity-independence is a natural consequence of seeking an especially structural kind of structural injustice—a kind that is not grounded in individual bias or bigotry in act or attitude. BSP also applies to cases involving legacy or superintendence culprits so long as they violate plausible standards of the basic structure's procedural adequacy. BSP then adds a layer of culprits who aren't otherwise legible. But BSP also covers cases where there aren't those more familiar kinds of culprit. This is its point

and value since some plausible target cases of social injustice don't fit the discrimination framework.

To see why BSP fills a vital role in normative thought, consider the consequences of doing without it. First, charges of injustice are often understandably taken to invite grievance. Indeed, if, in some given case of structural injustice, there is not meant to be any warrant for such responses as resentment or anger then the charge of injustice can be misleading unless that is made sufficiently clear. But BSP can explain how grievance is warranted even apart from whether the structural conditions are anyone's fault. Second, the very idea of social justice is rejected in some quarters on these grounds, with F. A. Hayek among the most influential, followed by Robert Nozick, Margaret Thatcher, and others.<sup>25</sup> Hayek writes,

We are of course not wrong in perceiving that the effects of a free society's processes on the different individuals' fates are not distributed according to some recognizable principle of justice [DE: which would apply to individual conduct]. Where we go wrong is in concluding from this that they are unjust and that somebody is to be blamed for this.<sup>26</sup>

Hayek long pressed our animating question: if social or structural injustice is not a wrong that an agent commits, is it any kind of wrong at all? Call this the deontic (or just as good, agentive) view of injustice: there are no wrongs, including wrongs of injustice, that are not wrongs of some agent.<sup>27</sup> In those authors, the question has a clear political valence, levied from a part of the Right against many views, especially socialist views but more broadly, on the Left. However, Elizabeth Anderson, whose views are on the Left, embraces the deontic view explicitly.<sup>28</sup>

<sup>25</sup> The deontic view is at least suggested by several passages in Nozick; see, e.g., Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 150. And, famously, Margaret Thatcher said, . . . there's no such thing as society. There are individual men and women and there are families. And no government can do anything except through people, and people must look after themselves first . . . and then, also, [their] neighbours." Margaret Thatcher, interview, *Woman's Own*, October 1, 1987.

<sup>26</sup> Hayek, Friedrich A., "Social' and Distributive Justice," *Law, Legislation and Liberty*, Volume 2: *The Mirage of Social Justice* (Chicago, IL: University of Chicago Press 1976), Ch. 9, pp. 69–70. A very slightly adjusted observation would substitute the phrase, "somebody or something is to be blamed for this."

<sup>27</sup> We can allow, as a qualification to the deontic view, that there are wrongs of an agent's attitudes rather than actions. For more on this see "What's Unjust," op. cit.

<sup>28</sup> In one of several statements of this position, she writes, "Once everyone has done everything justice requires of them, the world is just." See Elizabeth Anderson, "The Fundamental

Whatever the question's ideological source or target, it is a fair one. BSP proposes an answer. The framework of this worry itself may not have any Left/Right valence. Claims about the injustice of broad forms of social structure are found in socialist and anti-socialist writers alike,<sup>29</sup> for example, and the framework might be tried from either direction. By no means, then, are all uses of BSP's framework equally sound. The merits in the dispute would revolve around, among other things, the case for the eventually proposed normative structural principles.

I proceed, in the remaining sections, to explain and develop the general idea of BSP further. The aim is to lay out the approach broadly to probe some of its benefits and liabilities. If it proves promising, much more is owed. Before going further, here are some terminological clarifications:

- I will avoid the terms “liability” and “responsibility,” which in this context are often vague and potentially equivocal. Instead, it keeps things especially clear to instead distinguish simply between wrongful conduct, and it's being blameworthy insofar as it is not excusable. (Some think not only wrongs can be blameworthy, but I'm leaving that issue aside.)
- I will be speaking of prescriptive social norms, “norms” for short, by which I mean widespread patterns of motivation to conform to certain rules of behavior (by act or omission) so long as most others do and so long as known violators are expected often to be subjected to unfavorable treatment.<sup>30</sup> So defined, norms aren't necessarily widely complied with, but if they are not, then either known non-compliance is sometimes met with sanctioning behavior or there is no prescriptive norm

Disagreement between Luck Egalitarians and Relational Egalitarians,” *Canadian Journal of Philosophy* 40 (2010): 1–23, at 22. I discuss her position further, especially her suggestion that it is consistent with Rawls, in “What's Unjust,” op. cit.

<sup>29</sup> Such critiques from the Left are familiar. For an anti-socialist example from Thatcher: “No inefficiency of capitalism, no injustice still to be corrected, can compare with the inefficiency and injustice of Socialism as we have seen it in action for the past three years [since the Labour Party's return to power].” Margaret Thatcher, “Speech to Grantham Conservatives,” March 4, 1977, Thatcher Archive: CCOPR 270/77 (emphasis added), <https://www.margarethatcher.org/document/103329>.

<sup>30</sup> This is only slightly simplified from Bicchieri's influential definition of norms generally. Cristina Bicchieri, *Norms in the Wild* (Oxford: Oxford University Press, 2017), p. 35. It fits with both Bicchieri, op. cit., and Geoffrey Brennan, Lina Eriksson, Robert Goodin, and Nicholas Southwood, *Explaining Norms* (Oxford: Oxford University Press, 2013) in not defining norms as normally complied with (see pp. 20–21), though that point won't matter for our purposes.

present after all in the sense I define here.<sup>31</sup> It's clear that conformity to norms is sometimes motivated by standing threats, or real danger, of social punishment, and so in principle, no such punishment might ever be prompted. Still, just as a relevantly deficient social structure fails to legitimate the imposition of sanctions, it also plausibly fails to legitimate their threat. Also, to a great extent, norms can organize behavior even without sanctions even being threatened. This is because many norms are internalized, meaning that the agent holds herself to the same rule or standard that might be, or might have been in the past, imposed by other people. Various social and psychological mechanisms might explain that,<sup>32</sup> but in any case, where norms are widely internalized due to present or previous threats of imposition, BSP applies to those cases of threat and imposition. If some norms might serve their purpose as internal motivations even without any past imposition or threat, BSP can put them to the side for its purposes.

- Norms are imposed to the extent that numerous individuals meet violations with unfavorable treatment. A “moral norm” would be an empirically real social norm understood (correctly or not) as imposing the requirements of independent moral rules, which could as well be called moral principles or requirements. For example, sexual assault is morally wrong: against the moral rules in that sense, whether there is any social norm or social rule against it or not. Many social norms, but by no means all, take their prescriptive content from what are believed to be moral requirements, such as norms against bullying or selfish lying, as well as norms against sexual assault, and much more.<sup>33</sup>
- As I have argued, care is needed in calling problematic institutions “unjust” unless one either embraces the suggestion that they are an occasion for grievance attitudes due to wrongdoing or clearly explains that no such thing is meant. For this reason, but without disallowing either

<sup>31</sup> Some norms are carried out by way of rewards rather than punishments, but they don't raise the same questions of legitimation, and I put them aside.

<sup>32</sup> See Michele J. Gelfand, Sergey Gavrilets, and Nathan Nunn, “Norm Dynamics: Interdisciplinary Perspectives on Social Norm Emergence, Persistence, and Change,” *Annual Review of Psychology* 75 (2024): 341–378.

<sup>33</sup> This is, I believe, all consistent with what Brennan et. al., op. cit., say about the relation between social norms and morality at pp. 5–6. It is an important question when and how social norms ground duties to obey. For a recent theory, see Laura Valentini, *Morality and Socially Constructed Norms* (Oxford: Oxford University Press, 2023). I leave that question aside and ask instead when it is permissible to impose them. Valentini likewise leaves the question of permissible imposition aside.

a less or more moralized use of the word “unjust,”<sup>34</sup> I speak of procedurally inadequate—rather than unjust—basic structure.

- It is common to describe unjust social structure as a matter of unjust “institutions.” Care is called for here, too. One of the points of BSP is to broaden our idea of which parts of social arrangements can be part of what is unjust or inadequate about a society (or basic structure). The issue is familiar from the exchange between Susan Okin and John Rawls on the family, as well.<sup>35</sup>
- As I will use the term, for a procedure to “legitimate” a prescriptive norm is to render its imposition morally permissible. Derivatively, to say some imposition of norms is legitimate or legitimated is to say that imposition is permissible, at least owing to the norms’ procedural source.
- I shall assume that the basic social structure is constituted by social norms—*structural norms*.<sup>36</sup> In addition to structural norms, there are other *resultant norms*, which I will take to have been produced by or arisen from the basic social structure. I will understand law to fit this definition and so to be one distinctive family of social norms. Still, a great many norms are non-legal, such as a social norm in the U.S. that public lectures or performances are not to be interrupted. Doing so isn’t usually legally forbidden,<sup>37</sup> but there is palpable social pressure to conform, and often social consequences for those who don’t, such as social exclusion or spreading of an unwelcome reputation.
- In speaking of the grievance attitudes, “grievance” will not mean displeasure, suffering, or complaint generally but, roughly, “a complaint or

<sup>34</sup> Rainer Forst and others he discusses take the bolder view that there is no injustice without some agent or agents who wrongly commit it. That might be right, but I don’t need take it on board. See, *The Noumenal Republic: Critical Constructivism After Kant*, Chapter 9, “Structural Injustice with a Name, Structural Domination without a Face?” Polity Press, 2024 (first published in German in 2021).

<sup>35</sup> It will also be glimpsed in the quotation below from Fanon. On the family, see S. M. Okin, “Political Liberalism, Justice, and Gender,” *Ethics* 105 (October 1994): 23–43; and “‘Forty Acres and a Mule’ for Women: Rawls and Feminism,” *Politics, Philosophy, and Economics* 4 (2005): 233–248. For places where Rawls engages the critique, and for discussion, see, Blain Neufeld, “Coercion, the Basic Structure, and the Family,” *Journal of Social Philosophy* 40 (2009): 37–54.

<sup>36</sup> In conceiving of basic social structure as made up of norms and practices, I follow C. M. Melenovsky, “The Basic Structure as a System of Social Practices,” *Social Theory and Practice* 39, no. 4 (October 2013): 599–624. As for which ones are “basic,” my account, as described in the text, is different.

<sup>37</sup> The First Amendment to the U.S. Constitution, for example, only restricts interference by government.

a strong feeling that you have been treated unfairly.”<sup>38</sup> By making use of this subset of reactive attitudes, I don’t mean to suggest the strong view that there is nothing more to wrongness or injustice than certain attitudes being warranted.<sup>39</sup>

#### IV. A Society’s Basic Social Structure

For purposes of BSP, what is the basic social structure? It is the basic structure of a society, so first, what is a society? Society can be defined in different ways for different purposes. I define it here for the purpose of understanding basic social structure in the way needed by BSP. A society, for our purposes, is roughly and in part,

- a set of norms and practices,
- together pervading most aspects of life,
- each specifying (more or less precisely) to whom it applies,
- which, in content and effect, interlock with each other, making them, in that way, a system of norms,
- to determine (if imprecisely) a set of people who count as living within that set of norms.

Again, BSP doesn’t privilege the state-based, formal political parts of social structure, and I don’t assume that only a nation-state could be a society in the intended sense. However, in a world of states such as ours, a society of this defined kind will overwhelmingly tend to have its own state system. While, conceptually, nothing rules out the possibility of a global society, as long as people around the world do not live under a common system of laws, they will inevitably not live under a common system of norms and practices of the kinds described above, while members of a nation-state can and usually do.<sup>40</sup>

<sup>38</sup> This useful formulation is taken from the definition of grievance in the *Cambridge Advanced Learner’s Dictionary and Thesaurus* (Cambridge: Cambridge University Press), <https://dictionary.cambridge.org/us/dictionary/english/grievance>.

<sup>39</sup> For an example of a stronger view, Ewing suggested, (only) as a view worth exploring, that “he ought,” in the moral sense, might mean “if he does not do this he ought [in a non-moral sense] to be in that respect an object of the emotion of moral disapproval.” A. C. Ewing, “A Suggested Non-naturalistic Analysis of Good,” *Mind* 48, no. 189 (January 1939), pp. 1–22. Thanks to Mark Timmons for this reference.

<sup>40</sup> Not every norm in a society is among the system of norms that makes it a society. That’s partly because some social norms don’t apply to everyone covered by the others, or don’t interlock with other norms in the right ways, and so on. Much can remain rough here.

In this way, the globe is not a society, even if it could be, in principle or even in the future.<sup>41</sup>

What, then, is a society's basic structure? BSP's answer is necessarily abstract and requires some preparation. It is a proceduralist view, of course, but rather than starting with the idea of a procedure, we start with the idea of proceduralist forms of justification. The idea of a procedure is derivative. Some approaches might naturally focus on procedural fairness to individuals, and/or a tendency to lead to outcomes that are efficient or good in certain other ways. Still, we leave those questions aside at this stage of laying out a theoretical framework. A society's basic social structure then consists of those features of the society which, taken together, could in principle meet conditions by which they procedurally legitimate legal and non-legal norms that arise. That is, it consists of features figuring in some given, sound, procedural standard in question, whether or not the society and its features meet the standard. In that way, which features count as in the basic structure is relative to sound procedural standards that pick them out. We can formulate the conditions, whatever they are, as procedural principles or standards, but meaning nothing additional by that, as I have explained. The answer to what principles would have to be met will surely involve certain aspects of society and not others. There could be more than one possible solution, yet a society is not guaranteed to satisfy any of them. Which aspects are involved will be determined by what would suffice for the relevant procedural kind of legitimation of norms.

It is obviously an important question for BSP which norms count as part of the basic structure. Even though, as just explained, this is relative to whatever the appropriate procedural standard turns out to be, I assume it will include many prescriptive social norms of a non-legal kind, and not only those playing even an informal role in the political process. They may include norms that give shape to the range of forms taken by the family, norms of informal association, norms that shape the social roles of the arts (if they are imposed), and much more. However, not all social norms are plausibly counted as part of the basic social structure, where this is determined by the procedural principles, as I have described. Some are structure-constituting (structural norms), while others are only produced by that basic structure (resultant norms), as pointed out earlier. (Structural norms may be both.)

<sup>41</sup> McKeown, *op. cit.*, is surely correct that much injustice is both global and structural in various ways. But BSP is only one kind of structural injustice, meant to capture cases that don't depend on culprits of the usual legacy or superintendence kind.

Without foisting BSP on Frantz Fanon, the following passage places a certain lived reality of social norms in an instructive light.

In capitalist societies, education, whether secular or religious, the teaching of moral reflexes handed down from father to son, the exemplary integrity of workers decorated after fifty years of loyal and faithful service, the fostering of love for harmony and wisdom, those aesthetic forms of respect for the status quo, instill in the exploited a mood of submission and inhibition which considerably eases the task of the agents of law and order.<sup>42</sup>

Fanon describes a system of practices which, in capitalist societies, serves the “exploit[ative]” status quo. We see authority figures training all people, even as children, to conform to and encourage in each other conduct that is appropriate to good workers, and which is not disruptive of the existing capitalism-friendly way of doing things. This is in the space of social norms. The ones he alludes to are not, for the most part, constitutive of capitalism as an economic system but arise or flourish in capitalist societies. As described, they or others that are similar could also occur elsewhere, but the implication is that in capitalist society they serve to maintain that economic system, which he believed to be oppressive. His alignment of this kind of socialization with the “task of the agents of law and order” fits with BSP’s analogy between the enforcement of law and the imposition of social norms more generally. Different social systems will have different norms serving different functions. Since, as we have seen, BSP does not include a particular account of the principles of a just or qualified basic social structure, it holds no brief for Fanon’s own political convictions. However, his description of socialization under what is considered an oppressive social structure is one way that life might be breathed into the schematic theory of BSP.

## V. Principles, Postponed

A critical question for any developed version of BSP, obviously, is: What are the principles of procedural adequacy, principles that must be met for the basic social structure to ground duties of superintendence and to procedurally legitimate norms? As I have said, I won’t try to answer that here, but only

<sup>42</sup> Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963), p. 3. (English translation by Richard Philcox. Originally published in French in 1961.)

to explain and clarify their role in order to understand BSP's form. That's because BSP's merits as a framework don't entirely depend on what the correct principles are, so long as it can be established at some point that there are such principles. If only because of their familiarity, it can be helpful to think of one illustrative candidate as something like Rawls's familiar set of principles of justice. In Rawls, the principles are said to be standards of the justice of the basic structure, but here they are the standards that must be met in order for the basic structure to legitimate resultant norms. So, for illustrative purposes only, I shall suppose that for a basic social structure to legitimate the imposition of norms legal and otherwise it must protect certain basic liberties equally for all (with or without a strong Rawlsian priority), it must manifest rough equality of opportunity of some kind across social origins, and it must aim at constraining inequality in some ways, to some extent. The reader is welcome to substitute whatever principles they believe might count a basic social structure as capable of legitimating the imposition of norms.

Again, in BSP it's not that they make the structure good or right in itself. Those ideas, while not necessarily rejected, are done without in BSP. Consider a different view. Suppose it is held that a society's basic structure legitimates outcomes when and because by meeting certain principles it is just in a substantive—that is, non-procedural—sense. That would be a mixed case. Apart from special exceptions, outcomes (such as norms) would still be legitimated irrespective, within limits, of what they are (of, say, their content in the case of norms), on the ground that they had that source—they are procedurally legitimated. However, the procedure would have that legitimating force not because of any distinctively procedural virtues of the system but based on its substantive justice, which is something prior to any procedural force it might have.<sup>43</sup> That would be a substantive kind of proceduralism, as opposed to BSP's more wholly procedural proceduralism.

That's a possible view, and very similar to BSP, but it has an important weakness. The suggestion is that laws and norms that emerge in a substantively just system are, on that ground, procedurally legitimated. But what is meant to be the connection? Prior to any consideration of what would be a legitimating procedure, suppose that for a society to be just in the sense prior to questions about legitimation, it must be equal in, say, wealth and

<sup>43</sup> Thanks to Jacob Barrett for encouraging me to tease these elements apart more clearly. Substituting “justified” for “legitimated,” this form of view is a possible, and I think common, reading of Rawls's view that distributions of primary goods that arise from a just basic structure are cases of pure procedural justice. See *A Theory of Justice*, op. cit., section 14.

status. But suppose that a less equal society would lead to far better outcomes by any measure. It involves no logical or conceptual confusion to wonder whether for that society to legitimate its outcomes it must have the less equal, less just form. Substantive justice and procedural adequacy would be in tension. Maybe it's so or maybe not, but it isn't gibberish. Substantive justice and procedural legitimation are independent ideas. These examples show that there is no evident entailment from an arrangement's substantive justice to its adequacy for procedural legitimation. If it is replied that whether a social system would legitimate its outcomes is simply part and parcel of its substantive justice, then its being legitimating is not being derived from its substantive justice after all, which is the position I am scrutinizing.<sup>44</sup>

Even if substantive justice of that independent kind wouldn't be somehow automatically procedurally legitimating, that doesn't mean there is no such thing. It would be parsimonious if justice of a basic social structure (which is not to say the justice of everything about the society) could be said to be nothing but its having what it takes to procedurally legitimate resultant social norms. However, BSP neither takes that step nor rules it out. Since a guiding aim is to avoid the culprit problem, BSP's account of wrongful norm imposition naturally doesn't make any use of the idea that lacking a procedurally adequate basic structure (or anything else about the social structure) is somehow wrong in itself. What's more, it doesn't even use the idea that it is bad. That said, if it is, that might ground duties of superintendence to help avoid or remedy such a thing. I return to the question in passing toward the end, but for the moment I mean only to emphasize the independence of the two questions.

## VI. From Legal Compliance to Social Imposition

According to a familiar kind of theory, which I'll call *political proceduralism*, compliance with a law is morally binding on a person in virtue of the law's

<sup>44</sup> For example, in Rawls, the parties to the Original Position must consider, in part, what sort of political procedure they would accept. *Op. cit.*, p. 76. So, the resulting principles for the basic structure are partly justified based on their procedural implications, and not only their pre- or non-procedural aspects. Indeed, Rawls argues that procedural considerations restrict both permissible inequality (in addition to, and possibly more strongly than, the Difference Principle's egalitarian implications), and count against a constitution that protects free expression in such a way that unequal wealth easily translates into unequal political power. See *Political Liberalism* (New York: Columbia University Press, 1993), Lecture VIII, "The Basic Liberties and Their Priority."

source in a certain political procedure—that is, the institutional form by which it is determined what the law is, what the uses of state power are to be, and so on.<sup>45</sup> It might need to be a procedure that gives all an equal say or equal chance to affect the outcome, or that is proficient at yielding substantively good laws, or that gets this authority from some prior procedure, or somehow from nature itself.

BSP, too, obviously takes a proceduralist form but it is not a case of political proceduralism in that sense, differing in three ways: First, it is an account of when imposition is permitted, not of when obedience is obligatory (whether or not it could also have served that purpose if so desired). Second, the rules it addresses are non-legal as well as legal norms, the latter having no special priority. Third, accordingly, it takes the relevant procedure not to be a society's legal/political system considered alone, but the overall basic social structure; it is a kind of social proceduralism rather than a narrower political proceduralism.

*Political Proceduralism:*

What must be true of a *political procedure* in order for it to render the *laws* that are its outcomes morally *obligatory to obey*?

*Basic-Structural Proceduralism:*

What must be true of a society's *basic structure* in order for it to render (some of) the *legal and non-legal norms* that are its outcomes as morally *permissible to impose*.

A notable hybrid view still focuses on the basic social structure, as does BSP, rather than merely the political system, but then still only on laws in particular rather than a broader range of norms, and an obligation to obey rather than the permission to enforce.<sup>46</sup> This has an important limitation for our purposes. By pointing to an absence of obligation when the basic structure is unjust, no wrongful conduct is identified—no warrant for the grievance attitudes.

<sup>45</sup> For discussion of some examples of such theories, see section 4.2 of Fabienne Peter, "Political Legitimacy," *The Stanford Encyclopedia of Philosophy* (Winter 2023 Edition), Edward N. Zalta and Uri Nodelman (eds.), plato.stanford.edu/archives/win2023/entries/legitimacy/.

<sup>46</sup> For example, many have focused on the fairness of the overall basic structure—its justice in that respect—as the basis of an obligation to obey the law. See George Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice," *Ratio Juris* 33, no. 4 (December 2020): 335–350. Klosko critically discusses important earlier treatments by H. L. A. Hart, John Rawls, and John Simmons.

Might a similar and not incompatible view—now a legal imposition (rather than obligation) account—avoid this culprit problem by saying that the injustice consists partly in wrongful enforcement of laws when the background structure is unjust? Obviously, this points in a direction similar to BSP.<sup>47</sup> In both cases the culprits would be the imposers of certain norms, but in this case they are only the formal enforcers of legal norms such as police and other officials. Since it identifies culprits—namely, the enforcers of law—this legal imposition view, like BSP, could now do without the idea that the social structure itself is wrong. Rather, it would be held only to fail to legitimate law enforcement. Such an approach has several of the main virtues of BSP. It locates culprits, thus grounding grievance attitudes, and in a similar structurally inflected way: again, the wrong is that of enforcement that is illegitimate due to social-structure features. The remaining difference is that by limiting itself to law the legal imposition approach cabins the targets of warranted grievance quite severely. It may strike many as false to the normative phenomenology of structural injustice that the wrong turns out to be wrongdoing by those few individuals involved in imposing the law. The problem is not that the wrong of structural injustice directly strikes people as involving a lot of culprits. It's rather that it may strike them (or at least you, the reader) that members of society more generally are somehow implicated in structural injustice, and not only a small subset of government officials.<sup>48</sup> If so, it is an advantage of BSP that it expands the purview of social justice beyond law to a broader set of imposed social norms: pervasive imposition of certain other norms by all or most members would also be wrong, and for the same reason: background conditions are insufficient to legitimate it. This expansion is not justified simply on this intuitive basis, but must rest on the other grounds I have suggested.

<sup>47</sup> Shelby influentially develops the implications of a similar approach to permissible enforcement of and obligation to obey the law (which BSP does not address), as applied to people living in urban ghettos in the U.S. The present account does not conflict with his view in any way but extends such an approach to imposition of non-legal and legal norms alike. See *op. cit.*, especially Chs. VII and VIII.

<sup>48</sup> That many or most people are implicated is a major theme of Young's. See, e.g., Young, *op. cit.*, p. 17.

## VII. Structural Deficiency as Procedural

This may be a helpful point at which to take stock before pressing ahead a bit more, and doing so will also allow us to mark an important distinction between two versions of proceduralism about justice. The following are BSP's main elements:

### *Imposition*

The wrong (yielding the relevant culprits) is that of impermissible imposition of norms rather than (and in addition to) wrongful contribution to or failure to prevent or remedy anything, such as problematic social structure. The focus on wrongful imposition is also contrasted with a focus on wrongful disobedience to legal or other norms.

### *Structural ground of the wrong*

Imposition is wrong because of certain deficiencies (procedural, but we'll come to that below) in social structure and would otherwise be permissible.

### *Basic-structural*

The relevant structure whose justice is at issue is the overall basic social structure rather than, say, specifically the legal/political process.

### *Structural legitimation*

The norms whose permissible imposition is at stake are not only laws—that is, legal norms—but certain social norms more broadly (though not all norms, as explained in the next section). In the first instance, it affects structural norms—those constituting the basic social structure imposed against groups differentially burdened by the structural deficiency.

### *Procedural legitimation*

Social norms are products of the basic social structure.<sup>49</sup> When that basic structure is procedurally adequate, rendering imposition permissible, norms (with exceptions to be explained) are procedurally legitimated (permissibly imposable) on, and only on, this basis.

<sup>49</sup> Saying so is compatible with the fact just noted that the basic social structure itself consists of certain norms. Similarly, in living organisms new cells are the product of the organism itself, even though the organism consists wholly of cells.

### VIII. More and Less Central Cases

It's natural to wonder whether according to BSP, in a structurally deficient society all imposition of social norms is morally wrong. It is difficult to conceive of orderly social life at all without quite a lot of norm imposition, but that is not some direct route to its being morally permissible. A kind of philosophical norm-anarchist position remains a possibility. But as I now explain, BSP does not have any such implication, for several reasons.

The need for justification of norm imposition is especially clear for legal norms and the state-sponsored coercion by which they're imposed, as noted earlier. Still, plausibly, at least some laws can be permissibly enforced even without a social structure that legitimates them.<sup>50</sup> The clearest cases are where the imposition is to prevent conduct that is itself a serious moral wrong—either *malum in se*, as in violent assault, or *malum prohibitum*, as in wanton theft according to legally or socially constructed (rather than, “natural”) property rights. Moving beyond law, the same will be true of certain non-legal norms, with some being permissibly enforceable regardless of any prior procedural legitimation.

For one category of cases, in contexts where it is socially thought to be too invasive to punish certain undesirable behavior by law, its regulation by prescriptive social norms may sometimes be reasonable. Suppose one partner in a marriage is socially known to insult and demean the other with some severity, but not in ways or to such a degree that you believe state-imposed fines or jail time would be permissible. In those cases, imposition of a non-legal prescriptive social norm against such conduct is likely to be more defensible, whereby habitual violators are subjected to informal punishments such as publicly being called out, ostracized, excluded from highly valued associations or events, and so on. There are many examples in the category of intimate relations, and other categories as well. Call these, taking legal and non-legal norms together, basic *protective norms*.

At the other end of the spectrum there are *ineligible* norms, which are wrong to impose and are beyond the power of the basic structure to legitimate, such as norms punishing homosexuality, disapproved religious practice, defiance of certain hierarchies, and much more. In the middle, there are *candidate* norms, meaning non-protective but eligible for legitimation: These can be permissibly imposable but only if legitimated by a

<sup>50</sup> See Shelby, *op. cit.*, p. 233. In these cases, and without a legitimating procedure, the state might not be unique in having this authority.

procedurally qualified basic social structure. Norms that are neither morally enforceable as basic protective norms, nor morally ineligible for legitimation, are in that sense morally detached. These are the candidate norms on which BSP operates. The common norm against nepotism may be an example, and I'll have more to say about it below (section IX).

If some social arrangement did not include any imposed non-protective norms, then there would be no imposition-culprits of the kind BSP points to. Probably anything that counts as a society is bound to have and impose many non-protective norms. Still, grant that it is conceivable. It might be objected that then the pause-button argument<sup>51</sup> seems to apply: couldn't that structure still intuitively be a wrongful case of injustice that BSP can't account for? There is indeed a parallel of this kind. Once imposition-culprits are removed from the picture along with legacy and superintendence culprits, BSP grounds no moral critique. The lesson might be that here, finally, there is no wrong of injustice. But that doesn't undo its advantage in having special resources to count many more target cases as wrongs of injustice. And it is not as if there is an alternative on the table that accounts for recalcitrant cases that BSP can't.

There are several further ways in which BSP does not prohibit the imposition of all social norms, or even all non-protective norms, in a structurally inadequate society. When the burdens of procedural deficiencies are specific to certain groups, the resulting invalidating consequence should reflect those differences and apply differently to each group. Otherwise, it could imply, for example, that in a society where the basic structure fails to ensure many civil liberties for women, child support could not be enforced even against men. This is a counterpart to the element in a view according to which obligations to obey the law can lapse when the social structure is unjust, but not (or not in every case) for everyone, including even those who especially benefit from the injustice. Rather, it lapses, at least in many cases, especially for groups burdened by the background injustice.<sup>52</sup>

There may well be several other considerations with similar effect. For examples, in a given case of norm imposition any or all of the following conditions might be satisfied:

<sup>51</sup> See above in Section VIII.

<sup>52</sup> Shelby, *op. cit.*, p. 231, formulates the lapse of obligation in an unjust society as covering everyone. But he clearly states that at least in some important respects the obligation lapses particularly for those burdened by the background injustice (pp. 232 and 235).

- a) *Structural:*  
The norm in question is a structural norm.
- b) *Differential burden of the norm:*  
The norm in question burdens members of a structurally burdened group G.
- c) *Differential burden of the imposition:*  
The instance of imposition in question itself burdens group G.

Other considerations, such as whether the imposer is in a burdened group, might also matter, and so on, but consider these three. It might be argued, as an elaboration of BSP, that for a given case of non-protective norm imposition, for each of the conditions that it satisfies, in this case (a)–(c), there is a *pro tanto* prohibiting reason against that instance of imposing that norm. The most central kind of case, which would then have the strongest *pro tanto* prohibiting moral reasons against imposition, is obviously one that meets all three conditions. Call those *hardcore* cases, cases that satisfy only two conditions *core* cases, and cases that satisfy only one condition *near-core* cases, the three *degrees of centrality* from the standpoint of BSP. Whether an instance of norm imposition turns out to be forbidden will depend on what other considerations are in play.

Seeing that BSP's power to forbid norm imposition is discriminating (so to speak) shows it to be less extreme than it might seem at first. It is also helpful in addressing this important point: when the basic social structure is procedurally inadequate, it may be that reliance on some prescriptive norms would be needed if that is to be remedied.<sup>53</sup> Would those norms also fail to be legitimate in that case, and is that problematic for BSP? One point in response is that while fixing the defects may require concerted behavior there's no inconsistency in saying that under the prevailing defective conditions participation is not formally or informally enforceable. But an important second point is that the need to fix the defects might engage the individual moral duties of remedy (one side of superintendence). A prescriptive social norm grounded on that prior moral requirement might then count as what I'm calling a protective norm, and as I say, these do not depend on the procedural source for legitimation.

<sup>53</sup> Thanks to Lucas Stanczyk for discussion of this issue.

## IX. Examples of the Implications

Now that the outlines of BSP are more fully laid out, we can consider several examples. One purpose this serves is simply to make more concrete some of the implications of the view. Another is to introduce the following distinction between two modes of norm imposition or enforcement: direct and indirect. As with legal norms, prescriptive non-legal norms prescribe and proscribe certain conduct, and they are imposed in direct and indirect ways. They are directly imposed when they motivate individuals to make and carry out threats to hold violators accountable with punitive measures. A second and less familiar idea is indirect imposition, whereby abiding by a norm one person burdens another person. Indirect imposition significantly increases the number of cases whose permissibility can fall into question.

For a non-legal example, consider the social norm in many societies proscribing nepotism in hiring and admission practices, backed up by the risk for violators of social exclusion or punitively withheld professional advancement or other opportunities. The threat and actuality of those punitive measures is direct imposition of the norm against the nepotist. Indirect imposition would be where a person burdens their brother by refusing to hire or admit him because it would violate a social norm against nepotism.<sup>54</sup> For an example of indirect imposition in law, a liquor store clerk might refuse to serve alcohol to a customer knocking on the door after the 9 PM legal closing time, thus burdening them, but not by punishing any norm violation by the customer.

Now for cases that pertain to structural injustice: It's important to recall our earlier observation that structural racism, as paradigmatic as it is for some purposes, is not the best example around which to motivate an account of the wrong of structural injustice. That's because so much of racially burdensome social structure is due to culprits, living and dead. It is hard to believe that anything much like it could have existed otherwise, even if some other kinds of racialized social structure could have. And I should emphasize that such culprit-produced social structure is eligible to undermine the procedural adequacy of the social structure every bit as much as the target cases

<sup>54</sup> This seems to be a morally detached norm, as we want, in the sense that nepotism is not *malum in se*, nor does a norm against nepotism create especially weighty moral reasons of reliance.

that are culprit-independently wrong, on which we're concentrating. Even if the cases of illegitimate norm imposition were put completely aside, BSP has much to say about how unjust social structure can delegitimize the normative structure of a society at a fundamental level. In any case, though, here is less of that kind of masking of the possibility of more structural wrong in the case of economic class. So, returning to that example, suppose that the social system pervasively allows fewer opportunities in health, wealth, education, employment, and expression to those in the working class (or some other criterion of class the reader might prefer) than to those in the non-working class. For the clearest case, suppose that the class disparities are severe, and members of the working class beleaguered and often identifiable. Here are examples illustrating direct and indirect imposition in cases of legal and non-legal norm imposition. BSP's implications can only be sketched in outline here, since in any actual case they are also affected by the earlier distinctions between cases of relative centrality (i.e., hardcore, core, and near-core cases, discussed above).

- *A legal case about direct imposition:*  
It may be (depending on what the right theory of the relevant procedural standards is) that some jail sentences and fines are not permissible to enforce, at least against members of the (beleaguered) working class.
- *A legal case about indirect imposition:*  
The liquor store clerk might lack any moral permission for refusing to sell to the late customer, at least if they are working class.
- *A non-legal case about direct imposition:*  
In that same society, direct imposition of a norm against nepotism, by, say, withdrawing professional opportunities from the nepotist, may be impermissible against nepotists who are members of the working class.
- *A non-legal case about indirect imposition:*  
Where complying with the anti-nepotism norm would burden certain others who are from the working class, it may be required to ignore that social rule and hire the friend or family member despite the social norm forbidding it when doing so is not too costly or risky.

Those distinctions turn on group-differential structural deficiencies. I turn next to an example where the inadequacy in the basic social structure is group-neutral. Suppose that the following sort of unequal power over public discourse violates principles of adequate social structure:

*The case of TheftCo*

The social power of a certain society's largest business interests, including power over mass media, leads to a skewing of political discourse in a way that is favorable to big business. (To keep our point clear, suppose that this skewing is not also itself due to blameworthy business advocates.) Among the corporations at the heights of economic power is one called *HeftCo*, which has availed itself of the "naming opportunity" to have its logo displayed on all municipal fire trucks in Missouri. Activists have managed, illegally, to neatly change the logo to read, "Theftco."<sup>55</sup> Suppose that there is a prevailing social norm against such "tagging," and this is also reinforced by laws against defacing property that is not one's own. (Again, to keep things clear, put aside whether that act of defacement is morally wrong in itself.)

We are here mainly interested in assessing the particular norm and its imposition, not the basic social structure itself. That arises next, but only for its procedural importance. Recall the three dimensions of centrality to BSP. First, is the norm that forbids such defacement a structural norm? As a part of the society's understanding of legal and moral property, let's suppose that it is. Second, does the norm in question and/or (third) a particular instance of the norm's imposition burden members of a differentially structurally burdened group? No, because there is no such group; the structurally deficient feature is roughly group-neutral. If the case had been a hardcore or core case of imposition, then BSP might well imply that imposition of the relevant laws or other norms would be morally wrong. Being less central than if it were also group-differential, there are weaker reasons to think imposition or enforcement would be wrong, but more than if it also did not concern structural norms such as property rules.<sup>56</sup>

## X. Conclusion

I anticipate being asked, "Isn't the *real* problem the operations of inequitable social structure rather than any wrongness of individual misconduct of norm imposition?" They are both problems, but in fact BSP agrees that

<sup>55</sup> For an Arizona legal case related to this fictional one, see "Should fire departments sell ad space on fire trucks?" on the industry information website *FireRescue* 1. [[tinyurl.com/heftcoexample](https://tinyurl.com/heftcoexample)].

<sup>56</sup> That no more determinacy than this can be derived from the schematic example is not a product of BSP, but would presumably be present even in reflection simply on the case itself.

structural deficiency is the more fundamental problem, at least in the following sense: There is no clarion call from BSP to stop imposing all candidate norms or prevent others from imposing them in a structurally unjust society. In that respect it is not culprit-centered in practice. That's because whether a case of imposition is permitted often depends on such things as the group identity of whomever it is to be imposed upon, and other aspects of the centrality of the case (hardcore, near-core, etc.) that will sometimes be difficult to know.<sup>57</sup> Moreover, even if all impermissible imposition could somehow be stopped, that would leave us with, at best, a dismal even if not wrongful social setting—maybe not even a society at all—in which many valuable social norms have gone missing. A better and deeper solution would be to remedy the underlying structural deficiencies, in which case many of those norms and their imposition would be not only useful but justified. Procedural adequacy of the basic structure, then, is plausibly an important good (even though this is no part of BSP's account of the wrong of basic-structural injustice), and one that would ground duties of superintendence: duties to help prevent, or if necessary to remedy, its absence or failure.<sup>58</sup>

The evocative trope about the player and the game is never really about games. It is about living in a system of social rules, and it should raise our very question: how can that or any “game,” which is not a person, itself be to blame and so to warrant such attitudes as indignation? The game-like thing in this case—life in a society—is pervaded by a great number of prescriptive social norms. Individuals as “players,” whose conformity to the norms may sometimes lead to wrongful conduct (say, by maximizing their own material condition at the expense of other values) may have some excuse in the cost-environment this puts them in.<sup>59</sup> In that case, don't blame the player.

In addition, though, the game is also made up of a different category of conduct, which is also up for moral evaluation. It is a system of threatening or carrying out the imposition of prescriptive norms. When imposition is not legitimated by an appropriate basic social structure, much of it—and so, in that sense, much of the game itself—is wrong and often to blame. In games played without judges, referees, etc., the players and the imposers are the same people, as in most games of chess, the basketball game *Horse*, or sandlot soccer. Each person can be considered in their aspect as player—someone

<sup>57</sup> This will often be excusing, but plausibly a significant fraction of people will not have this excuse. And there are very many people, and so many blameworthy norm imposers.

<sup>58</sup> This observation picks up the thread introduced at the end of section V.

<sup>59</sup> This resonates with some things Shelby suggests in *Dark Ghettos*, op. cit., Ch. 7.

living under (if not always by) the game's rules—and in their aspect as imposer: one ready to call out violators for censure or other consequences, such as taking one's ball and going home, or discouraging others from including them in the future. That is surely true of participating in society. Participants in the game of social life operate as imposers of the rules as well as players. In case the slogan suggests otherwise, blaming the game does not preclude also blaming the player, since the excuses availed them by the constraining background structure might not be sufficient. Either way, where the underlying social structure can't legitimate it, the imposing, carried out by the same people, is often wrong. "Blaming the game" is simply a special case of blaming individuals, and so no more mysterious. In that way, Basic-Structural Proceduralism can explain, in some part, what is otherwise hard to explain: how the operation of a basic social structure, even if that structure isn't anyone's fault, can be something to be mad about.<sup>60</sup>

<sup>60</sup> Versions of this chapter or its central ideas were presented and helpfully discussed at NYU's Political Philosophy Workshop, UC-Berkeley Workshop in Law, Philosophy, & Political Theory, Vanderbilt University philosophy colloquium, the Oxford Studies in Political Philosophy Workshop, a workshop at The Edmond & Lily Safra Center for Ethics at Harvard, and at the University of Amsterdam Political Theory Workshop. I benefitted from comments and discussion from many, including especially Matthew Adams, Nomy Arpaly, Jacob Barrett, Corey Brettschneider, Cynthia Estlund, Alex Gourevitch, Erin Kelly, Charles Larmore, Michael McKenna, Alexander Motchoulski, Martha Nussbaum, Kirun Sankaran, Melissa Schwartzberg, Sam Scheffler, Bob Talisse, Amadeus Ulrich, Daniel Viehoff, Leif Wenar, Cesar Valenzuela, Nicholas Vrousalis, Steve Wall, and Nathan Witkin. I'm also grateful to Brown University for a sabbatical in 2023–24, and for other crucial research support.