

Can Conferralism Account for Systemic Racism?

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Introduction¹

This is 2021. We are in a pandemic. But we are also in a time when Black Lives Matter has thrust into the national spotlight the police brutality and inequities faced by Black people, and other racialized people, in everything from safety to housing, lending, and educational opportunities. But it isn't just the case that the spotlight is on phenomena in the world. It is accompanied by claims to the effect that what we have here is *systemic* or *structural* racism.

What is the significance of the claim that the racism we live with is structural or systemic? And what is the practical upshot? The crucial, negative, part is that that sort of racism is not about individual beliefs and the actions of individual agents such that in order to eradicate it we get rid of a few bad apples who have racist beliefs or perform racist actions. The positive part is that the racism we live with is part of the systems by which we organize our lives, be they laws and regulations, institutions and social organizations, or social practices and rituals. The details of the positive claim will depend on the theoretical framework we bring to bear to substantiate the claim of systemic racism.

In my recent book, *Categories We Live By: The Construction of Gender, Sex, Race, and Other Social Categories* (Ásta 2018), I offer a metaphysics of social categories, a theory of what they are and of the mechanism of their maintenance. There is a story as well about how we get to belong to them. This is the conferralist story. Other people confer social properties onto us.

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The exposition of the material in *Categories We Live By* draws on material in that book. The explication of my account of race was originally published as sections 5.1-5.3 of *Categories We Live By* and has been reproduced by permission of Oxford University Press <https://global.oup.com/academic/product/categories-we-live-by-9780190256807?cc=gb&lang=en&>

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And to have a social property is just to have a certain social position in a context. Social categories, in turn, are the collection of people who share that social property.

The conferralist theory of race is seemingly about the actions of individual agents. On the face of it, it seems ill-equipped to account for systemic or structural racism. Indeed the lack of attention to social structure has been a recurring worry about conferralism, brought up explicitly by Aaron Griffith and Linda Martín Alcoff (Griffith 2020, Alcoff forthcoming).

On this occasion, I want present the theory of race from *Categories* and then begin addressing if, and if so how, conferralism can account for systemic racism.

The Big Picture

Let us start by painting with broad brushes.

Consider some race properties, like being Black or Native American, White, Arian or Jew. There is a tradition in philosophy, and in the many discourse communities we are all part of, to think that you are of the race you are because of something about you, perhaps your lineage or heritage, your skin color, or other physical or even mental features. People disagree about what the feature may be, but agree on one thing: there is some feature or set of features that makes you the race you are. That same feature is often meant to explain other things about you, and even to justify the treatment you face or the opportunities you have in life.

Barbara Fields once said to me (this was probably twenty years ago): what is race? Everyone wants to understand race. That isn't the question. The question is what racism is.

This comment has sat with me. On the picture suggested, races are mere products of racism and if we only ask the question what makes someone be of a certain race, we risk merely describing, and perhaps even enforcing, racist structures. Descriptive social ontology engages in bringing to light the institutions and arrangements we live with. Critical social ontology does that, and more. Because when we do critical social ontology we also step back and ask for the function of the arrangements we have, what keeps them in place, and who benefits.

The guiding intuition in *Categories We Live By* is that social properties of individuals, of you and me, are mostly about other people, and express societal values and interests.

Conferralism offers theoretical support for this reorientation: what makes you be of the race you are is mostly not about you, but about other people. It is about individual people to

some extent, but mostly about the societal setting you are in and the values expressed in them. You are of a certain race because other people value certain features over others and treat people differently on the basis of your being taken to have those features. They enforce these values, often altogether unconsciously.

Generally speaking, when we think of social categories and features in this way, then societal values dictate which features of individuals are important and people get conferred onto them social statuses in accordance with that. This opens up yet other ways of taking a critical stance towards the world we live in. On this picture, society may value certain bodily characteristics or ancestral lineages over others and people get conferred statuses in accordance with that. We can question that these features are valued in the way that they are, we can question the content of the conferred roles that come with being taken to have those features, and we can question the associated norms for playing those roles well. This is not to say that there could not be a good justification for valuing certain features in certain contexts. In many contexts there may be reasons to value capacity to bear children, for example, or being exceptionally tall, or good at programming. But what this picture offers us is the opportunity to ask, not only for the explanation for why something is valued, but also its justification. And in many contexts the justification is missing or spurious.

Race categories are a clear case of this, where the creation and maintenance of legal race classifications has served as a justification for stripping certain humans of their property, liberty, even life and keep resources and opportunities in the hands of the groups in power. Legal race categories, whether those of Nazi Germany or part of the legal framework supporting US chattel slavery, are expressions of ideology. They are ideological state apparatuses, to use an Althusserian term (Althusser 1971) and enforcing them are repressive state apparatuses, such as the police and military.

The Conferralist Framework

I hope you have a sense of the big picture. Let's now look at the theory. The approach I take in *Categories We Live By* is to give a theory of the metaphysics of social categories by giving a theory of social features of individuals. The social category is then the set of individuals who share that social feature.

We all have various sorts of features or properties. What is it to have a social feature and how does one get it? What is a social feature? To answer these questions I say that social properties of individuals are *conferred*. What does that mean?

You may remember the moment in the *Euthyphro* where Socrates asks (Plato 1578):

is the action pious because it is loved by the gods or do the gods love the action because it is pious?

The question is the nature of the property *being pious*: is it dependent on the gods' love or not? Euthyphro initially maintains that the action is pious because it is loved by the gods although he later succumbs to Socrates' view that the action is pious independently of the gods' love, in fact, that the gods come to love the action upon detecting that it is pious.

I linger on this moment before Euthyphro succumbs to Socrates. Consider the idea that what makes an action pious is not something about the action itself, but rather about the gods, their likes and dislikes. And that's what I think about social features of individuals. Social features of individuals are first and foremost about other people, not the individuals who have them. And that is what the conferralist framework is to capture.

But there is a disanalogy with the Euthyphro case. In that case the gods are not constrained by anything in the conferral of the status of being pious. They are not trying to track anything or meet some standards. It is the pure exercise of a power. And I think that in most cases of social features of individuals, the structure is a bit more complicated.

For comparison, we might look at work on speech acts by Austin, Searle, Bach, and others (Austin 1962, Searle 1969, Bach and Harnish 1979). Austin, for example, identifies many ways we do things with words, including exercising a power and making verdicts.

The sort of actions that I think are at issue in the construction of social categories are a bit of a mix of both. People are, knowingly or unknowingly, trying to track an independent feature, but in so doing they assign the person a status, and it is that status that is the social feature.

Austin himself does not offer this. He is, of course, interested in the use of certain verbs, as opposed to types of action, but let us put that aside. But the main issue is that he has these two types, exercitives, where you are exercising a power, and verdictives, where you are attempting to track a fact and render a verdict as to that fact. Austin's exercitives are divorced from the activity of attempting to track a fact, and the verdictives are oblivious to what happens when you issue your verdict, to the fact that when you issue your verdict you are classifying or placing the individual and then that classification has a life of its own. The conferralist framework is meant to capture these. But it is also broader in scope as it concerns all actions, not just discursive actions.

There is another drawback in using the speech acts framework to capture social features. I actually think it works well enough in the case of the conferral of an institutional status, as that is often done once and for all. But many social features aren't institutional and the conferral of them not just a one time act, but more like an iteration or a standing attitude.

How does a property get conferred? That depends on which property we are talking about and the conferralist framework is an abstract schema that needs to be filled in for each property.

One can use the conferralist framework to argue for a certain sort of subject-dependency of any property but in this project I am concerned solely with social properties of individuals. The main idea is this: social properties of individuals are statuses that people have in the contexts they travel. These statuses consist in constraints and enablements on their behavior. And these statuses are connected to other properties of individuals in a particular way.

On the Euthyphronic story there are just two features: being loved by the gods and being pious. The conferralist framework complicates that picture a little bit, by adding a base property (or set of base properties) that the conferrers are trying to track, consciously or unconsciously. Not all conferred properties are associated with such base properties, but I believe that most social properties of individuals are. And, in fact, that's where things get muddled in various debates about social construction.

It is thus a two-tiered account: there is a base property or set of base properties and then the conferred property. I make a distinction between two sorts of conferred property, institutional and communal. We have institutional features in institutional contexts. Such contexts are governed by a set of rules or laws, —for example laws governing driving in California. The entities that confer an institutional status on a person in those contexts have the requisite institutional *authority*. For example, in the case of getting a license to drive in California, that status is conferred by an official of the Department of Motor Vehicles upon judging the person to meet the relevant pre-requisites. People have the status as long as they remain in the institutional context and it doesn't get revoked. The other sort of feature is what I call a "communal" one, although institutional and communal conferrals can interact in a variety of ways.

A communal feature is a social status conferred upon a person in a context on the basis of them being taken to have a feature that is socially salient in the context. The status consists in constraints and enablements, just like in the institutional context, but these constraints are not deontic. They don't concern formal rights, privileges, and obligations, but power, sway, and non-deontic restrictions. For example, being tall may be a socially important

property in a context, and people taken to be tall deferred to or allowed to speak more than others.

The profile of social properties of individuals, both individual and communal, is as follows.

The profile of *institutional* properties is like this:

- **Conferred property:** P
- **Who:** a person or entity or group in authority
- **What:** their explicit conferral by means of a speech act or other public act
- **When:** under the appropriate circumstances (in the presence of witnesses, at a particular place, etc)
- **Base property:** the property (or set of properties) the authorities are attempting to track in the conferral. The individual need not have the property; they just need to be taken to have it.

The profile for a *communal* property is the following:

- **Conferred property:** P
- **Who:** a person or entity or group with standing
- **What:** their conferral, explicit or implicit, by means of a attitudes and behavior
- **When:** in a particular context
- **Base property:** the property (or properties) the conferrers are attempting to track in the conferral, consciously or unconsciously. This property is the property that is the basis for the conferral. The individual need not have the property; they just need to be taken to have it, however consciously.

The Account of Race in *Categories*

So much for the general framework. Let's talk about its application to the case of race. I maintain that in the case of race we have institutional racial classifications and we also have deeply context-dependent communal race statuses. All of these are, I maintain, conferred social statuses that serve societal functions, most of which are deeply problematic.

Research in genetics and biology of the last few decades has to my mind completely decimated the idea that the race categories we live with and that shape our lives are biological². To my mind, people don't belong to race categories because of some genetic or biological feature about them. Our race categories are not a scientifically respectable explanatory category, as no natural phenomena can be explained by appealing to them, as opposed to some notion of a population with a shared history or a kindred notion. Some notion of a population with a shared history can be very useful in medicine, for example, but I don't think it maps onto race as we know it. A host of social phenomena can, on the other hand, be explained by reference to a person's race, ranging from statistical likelihood of becoming a prison inmate, completing a college degree, or being shot by police. Races are social categories.³

1. Institutional Race Categories

There have been times in American history when race categories have been explicit institutional categories, as I have characterized them, and encoded in law. Vestiges of that still remain, and play a larger role than it might first appear. When we fill out official documents, we are asked to identify our race. There has in fact been a shift in the last few decades, as now we are asked what race we identify with, if any. Gone are the days when some official classifies us as belonging to a race, based on documents to the effect that we had ancestors known to be of a certain race. By all appearances, nowadays we get conferred onto us an institutional race status on the basis of our self-identification. But appearances are misleading because our self-report can be trumped by other evidence.

That there are remnants of institutional racial categories should not be controversial. When we fill out official forms, we are asked to identify with one or more racial categories. For instance, when I applied for my US citizenship in 2016, I was asked to identify gender, ethnicity, race, hair color, and eye color for the purposes of a "criminal records check".⁴ Not only are racial categories used in attempts to rectify current and past injustices, such as when certain scholarships are only available to people of a certain racial category; they are also used

²UNESCO 1967; Zack 1993; Appiah 1996.

³Friends of mine at this very conference do not all agree with me on whether there is a biological notion of race that can be put to some non nefarious use; I am open to being educated about this, but that is going to be immaterial to my argument.

⁴The categories were as follows: gender (Male/Female); ethnicity (Hispanic or Latino/ Not Hispanic or Latino); race (White/ Asian/ Black or African American/ American Indian or Alaska Native/ Native Hawaiian or Other Pacific Islander); hair color (Black/Brown/Blonde/Grey/White/Red/Sandy/Bald(No Hair)); eye color (Brown/Blue/Green/Hazel/Gray/Black/Pink/Maroon/Other. Form N-400.

when classifying people accused of crimes, those needing governmental assistance, or living in certain neighborhoods, among other things. How is that information then used? It is used in the allocation of resources at local, state, and national levels, and in law enforcement. For example, will the city council have the roads in a particular neighborhood fixed? Will it put up sidewalks? Will they improve public transportation in that area? The answers to these questions may depend on how the residents get classified and how the people in power view those classifications. While the official justification for asking people to self-identify with a certain race is to monitor discrimination and injustice,⁵ that information is also used in other ways. And because racial classifications are used in official ways in the allocation of resources, and not simply for monitoring purposes, institutional racial categories are not just a thing of the past; they are alive and well.

The various governmental and non-governmental agencies and institutions confer institutional racial categories on individuals for their own purposes, but the authorities rely on our self-report. Our self-report is, however, not the actual base property, but rather evidence of it, and self reports can be trumped by other evidence.⁶

The US Census Bureau classifications:

The U.S. Census Bureau must adhere to the 1997 Office of Management and Budget (OMB) standards on race and ethnicity which guide the Census Bureau in classifying written responses to the race question:

White – A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American – A person having origins in any of the Black racial groups of Africa.

American Indian or Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

⁵From the US Census website: “Reasons for Collecting Information on Race:

Information on race is required for many Federal programs and is critical in making policy decisions, particularly for civil rights. States use these data to meet legislative redistricting principles. Race data also are used to promote equal employment opportunities and to assess racial disparities in health and environmental risks.” US Census. Retrieved 8 March 2017. <https://www.census.gov/topics/population/race/about.html>

⁶The case of Rachel Dolezal brings that out vividly.

Asian – A person having origins in any of the original peoples of the Far East, South-east Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Native Hawaiian or Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

The 1997 OMB standards permit the reporting of more than one race. An individual's response to the race question is based upon self-identification.

Your institutional race in the contemporary US for the purposes of the US census and any other purpose that relies on the OMB standard is a status conferred onto you by authorities for institutional purposes on the basis of your presumed lineage linking you to a geographic area of the world, as the OMB classifications show. There can be other institutional standards that deviate from the OMB standard, for example, those that rule out foreign born individuals or do not allow mixed race categories, but the OMB standard is a dominant one in the US. The base property is the biological ancestry linking you to a geographic region; the conferred status is your racial classification, which is a social status you have in the institutional context where the OMB standard is used.

There was a time in US history when institutional racial categories were conferred much like what my standard picture of institutional categories suggests. A person's race was recorded on their birth certificate, by officials shortly after the birth of a child. Many US states still have race recorded on the birth certificate and they are often recorded by a nurse on the basis of a cursory look at the mother.⁷ Many states, however, avowedly only record race for statistical purposes and rely on people's own self-identification. Yet, this information is not only used for monitoring, as I mentioned before, but for other purposes, such as resource allocation, and law enforcement. For this reason, we have functioning institutional racial categories in the United States. But the paradigm conferralist story of institutional status needs to be modified slightly to allow for what I call the "latent" conferral by authorities to capture how the current institutional racial categories in the US get constructed.

2. Communal racial categories.

Apart from the institutional racial categories that get conferred and used for various official purposes, there are also context-dependent communal race categories. What the base properties are in each context can vary. Sometimes, it is biological genealogy with ancestry in

⁷Sink 1997.

sub-Saharan Africa, or Europe, or East Asia, as is in the institutional case, but sometimes that isn't enough, or not relevant. Consider this scenario from *Categories*:

Two young men look similar enough in terms of skin color, bone structure and physique, that one could take them for brothers. Mike was born and raised in the US, Emmanuel in Togo, but the latter has recently moved to the US. They are sitting by their fire on Ocean Beach in San Francisco when they see a police car pulling in. Mike says "Come on, let's go! The police are here". Emmanuel doesn't see a problem: "But, we are not doing anything illegal. We are just hanging out!" Mike then replies, "You don't get it, Emmanuel. You aren't black the way I am black".

Mike wasn't talking about the color of Emmanuel's skin and he wasn't talking about his ancestry. He was talking about that Emmanuel had just moved to the US from Togo and he doesn't yet know how to navigate this new environment as a young African-American man, including what sorts of scenarios to avoid. The concepts he uses to make sense of himself, others, and the environment, as well as his body language and the way he is embodied in space, have not yet been adapted to the new reality that is his new home in the US. He does not share in the collected memory of past treatment and hasn't developed the navigational and coping skills to deal with that treatment. In this context, Mike does not afford Emmanuel status as black, for the purposes of judging the danger in the situation correctly, because Emmanuel doesn't have the navigational skills of one who understands the dangers of sitting by the fire on a beach while appearing male and of African ancestry. The base property in this context is having the navigational skills of a black young man.

Communal race status can change with context. When Mike and Emmanuel are handcuffed by the police for sitting on a beach eating hot dogs, they are both young black men. Awareness of history, navigational skill, or identification does not matter. Accent does not matter. Only the color of their skin does.

Charles Mills (1998) discusses seven different possible criteria for racial self-identification and identification by others: bodily appearance, ancestry, self-awareness of ancestry, public awareness of ancestry, culture, experience, subjective identification. It is the identification by others that is relevant to the communal status and all of the features Mills mentions can serve as base properties (there may also be others). Here is the schema for the communal racial statuses:

Conferred property: being of communal race R, for example, Black, White, Asian, Native American, etc. The number and specificity of options varies with context. For example, in one context Asian may be an option, in another, Korean or Hmong.

Who: the subjects with communal standing in the particular context

What: the perception of the subject S that the person have the base property P

When: in some particular context

Base property: the base property P, for example, bodily appearance, ancestry, self-awareness of ancestry, public awareness of ancestry, culture, experience, subjective identification.

Mike may be Black in one context, but not in another, because in different contexts different features are the basis for the conferral. There may be contexts where self-identification is a base property but those contexts seem not as prevalent as the context in which gender self-identification is the basis. There is a sharp contrast between gender and race in the US in that regard.⁸

3. Race in other contexts

Our discussion about race has been US focussed. Generally speaking, the conferralist model can be used to cast light on institutional and communal social categories, but the specifics will vary with contexts.

The conferralist model can be used to illuminate the construction of proper ethnic categories as well, whether institutional or communal. The key idea is simply that social categories are constructed and maintained when a feature of an individual has social significance in a context such that individuals taken to have the feature get conferred onto them a social status in the context.

Criticism by Linda Martín Alcoff and Aaron Griffith

There are details about the conferralist account of race that need attending to, but the issue that I wanted to discuss in this paper is whether the conferralist framework can make sense of racism that is systemic or structural and what a conferralist account of systemic or structural racism would look like.

To approach that question, which is part of a larger project, I would like to start with the very helpful criticism of conferralism by Aaron Griffith and Linda Martín Alcoff. Both of

⁸Compare the Dolezal case to that of a transwoman who identifies as a woman. I note the explosive discussion in wake of the “*Hypatia* affair”.

them have questioned conferralism's ability to explain certain phenomena that explicitly concern race in America.

Alcoff maintains that the conferralist story is too weak to explain the historical development of the base properties that brought Whiteness into kind existence (Alcoff forthcoming). Similarly, Griffith (2020) draws on work by Elizabeth Anderson, Sally Haslanger, Ronald Sundstrom, and Ron Mallon to argue that the constraints and enablements faced by those with the status being Black is just as much due to the arrangement of space as through the actions of individuals and in asserting that race is kept in existence less by our cognitive activities, and more by the consequences of those. For Griffith, people are kept in their place by structures, not individual thought and action.

The conferralist offers a story of what makes you be subject to certain constraints and enablements in a context. And to be of a certain race is to have a certain social status in a context. The individuals and groups that confer statuses on you are the enforcers of the societal values you live with.

The objections point to different things that are missing in the conferralist story.

1. Alcoff

Alcoff's point shows well that conferralism does not answer the question why these are the base properties for the conferral and what the history of these categories is. It also does not offer a story of what the supposed justification is. What it does is to focus our attention to the places where a normative argument needs to be made: why value these base properties at all and confer statuses on its basis? If conferring a race status is justified at all, should these be the base properties? And if valuing these features is justified at all, is the way that is expressed, that is, the specific constraints and enablements of the conferred status, appropriate? You will not be surprised to know that I don't think there is any normative justification for any of these things, just historical explanation.

In *Categories*, I offer the conferralist framework, which I maintain is in operation in all cases of the creation and maintenance of social categories of individuals. Then I offer accounts of how the framework is operating in a particular case, such as race. People might think the conferralist framework is useful but disagree with me about the application of it to a particular case. It is largely an empirical matter how well my particular suggestions fare. It is an empirical matter what the base properties for the conferral of certain categories are, and what the content of the constraint and enablements are. The explanation why the base properties are as they are is also an empirical matter. I find it plausible that the explanation for why the base properties for the conferral of race status in the US are as they are lie in

the role racial ideology played in the accumulation of wealth by European powers and European colonists and their descendants in America. But others are in a better position to tell that story, and have done so, for example Barbara Fields and Karen Fields in *Racecraft* (Fields and Fields 2012).

When you couple conferralism with the claim that races are products of racism, then the conferralist story becomes a story of how racial ideology gets enforced through the actions of individual agents, acting on behalf of institutions or as private individuals enforcing the values of their social setting. This racist ideology supports the distribution of resources and opportunities and individual agents, and groups thereof, are the foot soldiers of that ideology.

When we make sense of structural racism on this kind of picture then the mechanism of the conferral of race status is only a part of the picture. For it is coupled with a story where race categories are ideological creations and where the appearance of their natural basis plays an ideological role ⁹.

Racism is expressed on multiple fronts: racist laws and regulations set parameters for people in different racial categories; social practices and norms guide people in ideologically appropriate behavior given the racial station in life of themselves and others. The enforcers of all of this are individual people, whether or not they are acting on behalf of a group or institution, or just enforcing the ideology as private individuals.

With these broad strokes behind us, let us see how we can account for the cases Griffith mentions.

2. Griffith

Two sorts of case are the example from Ronald Sundstrom (Sundstrom 2003) where the constraints and enablements faced by the black man are just as much due to the space as to the actions of individuals; and the Mallon point (Mallon 2018) where the racial categories are kept in place less by the cognitive activities of individuals and more by the material consequences of those.

In response to Griffith's points it is important to highlight the scope of conferralism. It does not explain all constraints and enablements a certain person is facing in virtue of being a certain category. The "in virtue of" locution is appropriately vague here because it can en-

⁹This is, in my estimation, akin to the ideological role sex categories play in the enforcement of gender on Judith Butler's view (Butler 1990, 1993).

compass the constraints and enablements directly involved in a certain institutional or legal status or those directly involved in a communal status in a context. But it can also encompass material or social consequences of such. And there can be feedback loops. The conferralist story focuses on a certain type of social construction which is that certain features of individuals are valued, rightly or wrongly, and people treated differently if they are taken to have those features. There is a structural dimension to that valuing in the case of racism, because it is really an expression of the racial ideology that supports an unjust societal arrangement. But there are other dimensions to the claim that racism is structural or systemic, and to make sense of that we have to look at the causal consequences of that valuing, both material and social, and we have to look at the various possible feedback loops.

In *Categories We Live By* I talk about various other conceptions of social construction, for example, where social forces cause a certain phenomenon or where there are institutional or communal consequences of a social practice. All of these various forms of social construction are involved in the structural racism that we live with in the US today, and we need to call on all of them to give a good theoretical picture of it. I think the conferralist component is an important component. It shows how the ideology is enforced by individual agents of institutions and communities, consciously or unconsciously, but the whole story will involve the interplay between the material and social consequences of that and the various feedback loops that form.

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