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RACE, GENDER, and RAWLS’ A *THEORY OF JUSTICE*

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Abstract

Should we use the concepts developed by John Rawls in his *A Theory of Justice* to guide research questions relevant to issues concerning race and gender? This paper argues not only that the concepts from *A Theory of Justice* should not be used as the primary tool in any debate concerning race and gender, but it also challenges the abstract thinking of 21st Century Western Philosophers to develop a theory of justice that acknowledges the fact that people have their own interests and depending on what race and/or gender they identify with, might not have equal rights protected under the law that White Americans take for granted.

Thesis Statement

We should not use John Rawls’ *A Theory of Justice* to guide research questions relevant to debates involving race and gender issues because Rawls’ theory is based upon the hypothetical and erroneous premise that everyone will be treated as equals at the bargaining table, prior to becoming a party to any social contract. These assumptions have never applied to race and gender inequality issues, and Rawls’ assumption that everyone will be treated equally in his original position, although an idealistic assumption, is simply not true.

Background, Rawls

John Rawls was born on February 21, 1921, and raised in Baltimore Maryland.¹ Rawls is the second oldest of five children. William Rawls, Rawls’ father was a renowned lawyer, and his mother, Anna Abell Stump, served as President of the League of Women Voters in the 1920s.

After attending Kent School, an elite Episcopalian preparatory school located in Connecticut, he was admitted to Princeton University in 1939. Rawls earned a bachelor’s degree in 1943 and joined the army that same year serving in the South Pacific.\(^2\) Despite Rawls’s consideration to study for the priesthood, and despite writing a lengthy religious thesis in college, Rawls lost his religious faith serving in World War II “on seeing the capriciousness of death in combat and learning of the horrors of the Holocaust.”\(^3\)

After being discharged in 1945, Rawls returned to Princeton and earned a Ph.D. in moral philosophy in 1950. After obtaining his Ph.D., Rawls began teaching at Princeton University and after two years of teaching at Princeton, he began teaching at Cornell University. After serving professional appointments at Cornell and the Massachusetts Institute of Technology (MIT), Rawls became a faculty member at Harvard University in 1962.\(^4\) In 1966, during his early tenure as a faculty member at Harvard, Rawls posed questions during a meeting at the Faculty of Arts and Science about the war in Vietnam and the antiwar movement back in the United States.

In a memo he prepared, Rawls specifically thought that the draft during Vietnam “exposed the systematic racial injustice of American society as a whole and that it operated in a racially exploitative way.”\(^5\) In so doing, Rawls highlights the fact that the military in the 1960s was composed mostly of poor, working-class citizens and that 80 percent of Vietnam veterans only had a high school education or less, while more than half the Americans back home in the same age

\(^2\) Id.
\(^4\) Stanford Encyclopedia of Philosophy, 1. Life and Work.
group attended college.\textsuperscript{6} Rawls believed that the Vietnam War draft was racially unjust because “it exposed ‘background’ structural racial injustice within the broader society, while disproportionately and unfairly burdening [B]lack Americans in ways that violate the norms of fair cooperation.”\textsuperscript{7} Rawls, in his earlier drafts of the memo, explicitly describes Black Americans as “a ‘severely deprived’ group,”\textsuperscript{8} and goes on to further suggest that African Americans have not only suffered injustices for many years, they are the ones to bear “to heavily’ the burden of injustice.”\textsuperscript{9}


Although my two majors at Western Michigan University (WMU) are environment and sustainability, and public and not-for-profit administration, it is the concepts in \textit{A Theory of Justice}...
Justice, particularly the concept of the “veil of ignorance” that I have been introduced to, and reintroduced to in a race and gender class that compels me to write this thesis.

Rawls, A Theory of Justice

An important component in Rawls’ A Theory of Justice is the “original position.” Rawls, in a hypothetical, suggests that a group of people wanting to create a state would only agree upon a social contract in an “initial situation that is fair.”12 Although the people in this bargaining scenario know that they are rational and self-interested, Rawls places them under a “veil of ignorance” under which they do not know their place in society, they do not know if they are women or men, and they do not know their conception of the good, they do not know where they are from or if they are Black or White.13 The conception of the good refers to an individual's beliefs, values, and attitudes about what constitutes a good life or a good society.14

Rawls argues having agreements reached by rational people under this “veil of ignorance” is fair because everyone shares the same rights agreed upon and because they are not taking an interest in someone else’s interest.15 Furthermore, any agreement is the result of removing aspects from the social world that are arbitrary from a moral point of view.16 Anyone entering into a social contract under Rawls’ Justice of Fairness theory assumes that no one will be advantaged or disadvantaged by fortune or social circumstances when choosing principles,17 and people who are

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13 Ibid.
15 Id., 12.
16 Id., 14
17 Id., 16.
rational and have self-interests will not agree to anything that would diminish someone else’s interests, which is ultimately for self-interested reasons. In other words, no one will agree to a principle that might make someone worse off, because they might end up being the person who is worse off.

My mentor suggests, theoretically, that the starting point for Rawls’ *A Theory of Justice* and his original position was to erase all self-interests that a person might have, which would affect rational decision-making when choosing principles. As argued *infra*, people have always pursued their self-interests. Although the original position might have been a good hypothetical to achieve the desired result of a just society, it does nothing to really help us achieve a just society.

**Race and Gender Debates**

Common social factors and issues associated with racial debates are 1) Historical racism\(^{18}\) and institutional racism;\(^{19}\) 2) Police brutality and racial profiling;\(^{20}\) 3) Economic inequality;\(^{21}\) and 4) Implicit bias.\(^{22}\) Common social factors and issues associated with gender debates are 1) Gender-


constructed violence;\textsuperscript{23} 2) Gender stereotyping;\textsuperscript{24} 3) Workplace discrimination;\textsuperscript{25} and 4) Reproductive rights for women.\textsuperscript{26}

Historical and institutional racism has been in place for a long time, resulting in discrimination against and oppression of minority populations and people of color. Slavery and the plight of slaves have been well documented throughout our history from early in the Bible to the history of Ancient Greece. In America, our Union survived the Civil War which was fought over the debate of slavery,\textsuperscript{27} and the rest of the world survived World War II in which Germany exterminated millions of Jews and other minority populations.\textsuperscript{28} And it survived the turbulent 1960s civil rights movement that was unconscionably filled with police brutality against People of Color not seen before.\textsuperscript{29} Economic inequality remains directly linked to race as People of Color still have less access to education, fewer resources, and fewer opportunities than White people, and implicit bias towards People of Color exists as some people have unconscious attitudes that affect how they treat individuals of different races.\textsuperscript{30}

\textsuperscript{26} Siegel, Reva B. "Sex equality arguments for reproductive rights: their critical basis and evolving constitutional expression." Emory lj 56 (2006): 815.
\textsuperscript{29} Morris, Aldon D. The origins of the civil rights movement. Simon and Schuster, 1986.
Gender stereotypes have a very long historical context as well. We learn gender roles very early in life which are reinforced throughout our lives.\textsuperscript{31} Over years of social conditioning, gender stereotypes become embedded in our cultural beliefs about what a man and woman should look and act like.\textsuperscript{32} Gender-based violence involves sexual assault and domestic violence.\textsuperscript{33} Although most people might think that gender-based violence is only directed towards women,\textsuperscript{34} men not conforming to social norms in their culture can experience alarming rates of gender-based violence from other men.\textsuperscript{35}

Workplace discrimination and women’s reproductive rights are two more social issues that are involved in gender debates. Women for years have not been paid the same as their male counterparts despite having the same education and doing the same job.\textsuperscript{36} Women’s’ reproductive rights are again under assault as evidenced by the US Supreme Court overturning \textit{Roe v. Wade} in a landmark decision on June 24, 2022.\textsuperscript{37} Within six months of \textit{Roe v. Wade} being overturned, women in several States were further restricted from making independent decisions about their own bodies when it comes to abortion and contraception.\textsuperscript{38}

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\textsuperscript{32} Ortner, Sherry B. "Is female to male as nature is to culture?" Feminist Studies 1.2 (1972): 5-31.
\textsuperscript{38} Oduro, Georgina Yaa, and Mercy Nana Akua Otsin. ""Abortion—It Is My Own Body": Women's Narratives About Influences on Their Abortion Decisions in Ghana." Health care for women international 35.7-9 (2014): 918-936.
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Argument

I agree with Charles Mills’ *Racial Contract,* which argues that Rawls’ principles from *A Theory of Justice* should not be used in issues involving race and gender debates. However, Charles Mills, in describing a social contract that is a “racial contract,” suggests that Rawls’ social contract theory based on the veil of ignorance “has now become just a normative tool, a conceptual device to elicit our intuition about justice.” This is extremely disheartening, as this characterization of the contract is misleading. Rawls’ “hypothetical veil of ignorance” was explicitly hypothesized to lead “to a certain conception of justice.” What I will focus on in my objection, instead, is the fact that Rawls’ *A Theory of Justice* was published in 1971, during the Vietnam War and after the civil rights movement. It was obvious in 1971 that people were not being treated fairly or equally, that they had their own interests, and depending on whether you were White or in a minority group, your concept of *Justice as Fairness* could be drastically different depending on what race you were identified as belonging to.

Proponents of Rawls’ *A Theory of Justice* would argue that “Rawls maintains that the capacity for moral personality ‘is a sufficient condition for being entitled to equal justice.’” Despite Rawls acknowledging that in “a political conception of justice all persons, regardless of their racial identity, should be regarded as free and equal,” Rawls does not elaborate on racial injustices, nor does he address “the fairness of affirmative action and the enforcement of

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40 Mills, 5.
41 Rawls, 11.
43 Id., 1704.
antidiscrimination statutes.” Moreover, Rawls’ “relative silence on issues of race” can only lead to skepticism about whether his theory helps us to understand the problems associated with racial injustices. After all, why would you contemplate theories of justice in well-functioning societies? Well-functioning societies do not have populations that act under the “veil of ignorance.”

There are at least three possible reasons why Rawls elected not to write about race and gender disparities during his thirty years at Harvard. First, Rawls might not have been aware of race and gender inequality issues that have plagued the United States (US) since the inception of colonialism. Second, Rawls might not have cared about racial and gender inequalities. Third, Harvard and other elite schools might not have been a good place for philosophizing about race and gender in the moral and political science field. Although it has been suggested that Rawls might only have been concerned about the fundamental principles that would guide the rest of society when developing his theory of justice, and deal with race or gender issues later, this fundamental principle is fundamentally wrong. This is my complaint about Rawls in light of 30 years at Harvard.

Rawls knew and cared about the racial inequalities African Americans experienced in the 1960s. Furthermore, an argument can be made that Rawls was also aware of women’s rights issues prevalent in the 1920s’ as Rawls’ mother served as the President of the League of Women Voters in the 1920s. The League of Women Voters was founded in Chicago, six months before the 19th Amendment was ratified by all the States in our Union, which gave women the constitutional right to vote. Rawls’ reluctance to address racial injustice in his five books demonstrates “the

44 Id., 1697.
45 Id., 1698.
whiteness of Rawls’ [dialogical] world”\textsuperscript{47} despite his misgivings about the Vietnam War and the racial injustices associated with the war.

Given the fact that Rawls was at the one of “most prestigious philosophy departments in the country” for decades and that he was “the most celebrated political philosopher in the country” during this time, it’s fair to criticize Rawls for failing to use his “academic bully pulpit” to address racial injustice.\textsuperscript{48} Even when he was drafting his memo at Harvard about Black Americans being a “severely deprived group,”\textsuperscript{49} Rawls removed all references to race and racial injustice from the memo before submitting his final draft to the Harvard faculty.\textsuperscript{50} You might be able to argue that Rawls did not care about gender inequality from 1960-1970, but the same argument does not stand for racial injustices as Rawls was definitely aware of the plight of African Americans in the early years of the Vietnam War. Which begs the question: was Harvard and other elite schools a good place for philosophizing about race and gender in the moral and political science field?

Although Edwin C. J. Howard, George L. Ruffin, and Robert T. Freeman were all Black degree recipients in 1869, and although Richard Theodore Greener was the first Black graduate from Harvard University in 1870,\textsuperscript{51} in 1962 there were only nine Black students enrolled in the freshman class at Harvard. In 1967, one year after Rawls decided to remove all references to race and racial injustices from his Harvard memo, and three years after the passage of the Civil Rights Act, there were only 55 Black freshman students admitted to Harvard,\textsuperscript{52} out of 1362 Harvard

\textsuperscript{47} Mills, Rawls on Race/Race in Rawls, 170.
\textsuperscript{48} Id., 178.
\textsuperscript{49} Ibid.
\textsuperscript{50} Terry, 17.
\textsuperscript{51} Harvard University Archives. Who was the First Black graduate of Harvard College: https://askarc.hul.harvard.edu/faq/331822.
\textsuperscript{52} The Journal Of Blacks in Higher Education: https://www.jbhe.com/news_views/50_blackenrollments.html#:~:text=In%201962%20there%20were%20nine,In%201969%20there%20were%20121. See also, Arcidiacono,
Rawls’ “systemic omissions” about race and racial injustices suggest to me that the demography of the “overwhelmingly white” profession of philosophy “will itself be an obvious major causal factor,” in governing the prevalence and effectiveness of philosophical debates involving racial and gender issues. Out of the five major books Rawls has written, none of them “discuss the racial views of, for example, Locke, Hume, Kant, Hegel, Mill or their relation to European colonialism.”

**Conclusion**

Rawls’ *A Theory of Justice* has been instrumental in influencing debates about social justice in the US and is still being taught at leading Universities. Although Rawls’ concepts have been important in some fields of political philosophy, they are not applicable to debates involving issues about, or between race and gender. Rawls’ “veil of ignorance” does not address the existence of race and gender biases in our society, despite Rawls’ being acutely aware of the plight of the African Americans in Vietnam, and despite the suffrages women experienced during his mother’s tenure as President of the League of Women Voters. Unfortunately, despite the severe criticisms of Rawls, “Rawls’ philosophy still is treated very deferentially in the academic community,” and...
some have suggested, “John Rawls is the most significant and influential political and moral philosopher of the 20th century.”

This thesis is written to emphasize that racial justice was not one of Rawls’ “urgent priorities” despite race being a major theme in Rawls’ adult life. Rawls choose not to conduct “extensive” studies on race. It would be meaningless to turn “to Rawls for insight about the meaning and nature of race, the significance of racial identity, or optimal race-related law and public policy” because Rawls expected the “original position would reflect some sort of bias if the parties possessed racial information.” He himself witnessed racial injustice and gender inequality. More important, and directly related to my thesis statement, Rawls acknowledges that “race and gender are not explicitly included” in his theory despite reflecting on slavery, and the “inequality between men and woman.” He defends his decision to exclude race from his hypothetical by asserting that “his primary concern is ‘ideal’ theory and the well-ordered society, not ‘partial compliance theory.’”

Rawls introduces us to ideal theory and non-ideal theory in his *A Theory of Justice*, and a political philosopher’s ability to guide actions in “real-world circumstances” is known as the ideal and non-ideal theory debate. The ideal theory seeks to explain a perfectly just society and

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59 Id., 1677.
60 Ibid.
61 Id., 1693.
62 Id., 1694.
63 Id., 1695.
has often been referred to as a “realistic utopia.” It has been characterized as the best we can hope for and “taking men and laws as they might be.” Non-ideal theory, otherwise known as “realistic theory” acknowledges that structural injustices and inequalities exist and tries to address them through policies and procedures. Not only is Rawls’ original position in his *A Theory of Justice* too detached from reality to guide any kind of political action, but for Rawls, the veil of ignorance was a “desire for simplicity both in the reasoning and in the principles resulting from it.” As the author points out in *Race, Face, and Rawls*, Rawls “did not want race to matter in just societies.” Some have even suggested that Rawls’ “tailored the original position so as to yield principles which fit his own considered judgment.”

The last reason I suggest that Rawls’ *A Theory of Justice* and his “veil of ignorance” should not be used in any serious debate between race and gender is that Rawls, although he condemned racism, regards “race as natural.” Mills highlights the fact that Rawls “refers to ‘fixed natural characteristics’ that ‘cannot be changed’ and asserts: ‘distinctions based on sex are of this type, and so are those depending upon race and culture.’” Not only does Rawls’ ideology about “fixed natural characteristics” that “cannot be changed” depict a hint of racism in and of itself, but Rawls also concedes that his book titled *A Theory of Justice* does not deal with race. After three decades of writing at Harvard, Rawls did not write at least one essay on racial justice. “What does this say

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66 Id., 4.
67 Simmons, 7.
68 Id., 10-11, 17.
69 Valentini.
71 Allen, 1695.
72 Id., 164.
73 Ibid.
74 Id., 165.
about white political philosophy”76 at our elite schools? It can only be said that race and gender issues and debates have been ignored or marginalized by Western political philosophy.

To reiterate, Rawls’s concepts in *A Theory of Justice* should be kept out of issues involving race and gender debates. Not because he did not talk much about race and gender in his five books and 30 years at Harvard, or that he attended and taught at predominantly white, male schools, but because his decision to develop a theory of justice on the concept of the original position and the veil of ignorance was fundamentally wrong.

**Moving Forward**

By placing Rawls in his historical-cultural context, applying his principles of justice in which he uses the hypothetical “original position,” and the “veil of ignorance” to any debate concerning issues between race and gender would not only be misleading, it would be wrong because everyone is not, and has not been “similarly situated.”77 One of the roles of political philosophy is to discover and propose grounds “for reasoned agreement when sharp political divisions threaten to lead to violent conflict.”78 As my mentor for this thesis acknowledges he teaches *A Theory of Justice* for discussion, I challenge academia and future philosophers to adopt a different approach to hypothesizing a just society and try to effectuate a framework for a just society that takes into account the historical and systemic racial inequality, and the lived hardships of minority groups.

76 Ibid, see also, Mills, Charles W. *Racial liberalism*. Pmla 123, no. 5 (2008): 1383, Philosophy is one of the very whitest of the humanities.
77 Rawls.
78 Stanford Encyclopedia of Philosophy, 2.1 Roles of Political Philosophy.
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