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Ai-Thu Dang

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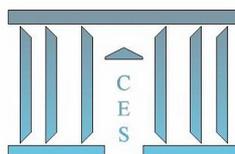
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**Eyes wide shut: John Rawls's silence on racial justice**

Ai-Thu DANG

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## Eyes wide shut: John Rawls's silence on racial justice

Ai-Thu Dang\*

### Abstract

John Rawls's remarks on race are sparse in his writings. However, three key moments in his conceptual apparatus wherein racial issues appear explicitly can be highlighted: (1) the status of race as a feature of the veil of ignorance; (2) racial minorities, the least advantaged, and the difference principle; and (3) the role of arguments made by antebellum abolitionist dissidents and Martin Luther King, Jr., in favor of racial equality in his reformulation of his notion of public reason. I show that the introduction of race poses difficulties for Rawls in his theory of justice. I also propose an explanation of why Rawls does not address issues of racial justice more explicitly and in-depth. However, because Rawls himself explained his relative silence on racial justice, I discuss its relevance. I contend that Rawls's conception of justice as fairness as a form of political liberalism is indebted to a strong principle of equal citizenship for all individuals that is blind to race and ethnicity, so his theoretical apparatus addresses the issue of legal racial discrimination or institutional racism. Nevertheless, it fails to address the problem of systemic racial discrimination.

**Keywords:** John Rawls, justice as fairness, racial (in)justice, public reason, ideal and nonideal theory

JEL Classification: A12, B41, D63

### Résumé

Il n'existe pas de développements systématiques dans les écrits de John Rawls sur la question des inégalités raciales ou fondées sur l'origine ethnique, mais seulement des remarques parcellaires et répétitives sur ce sujet. On peut toutefois repérer trois moments clés dans la construction théorique de Rawls où les questions de justice raciale sont introduites : le statut de la race et le voile d'ignorance; les minorités raciales, les plus mal lotis de la société et le principe de différence; le rôle des arguments religieux avancés par les abolitionnistes américains et par Martin Luther King en faveur de l'égalité raciale dans la reformulation par Rawls de sa conception de la raison publique. Je montre que l'introduction des questions de justice raciale déstabilise le cadre théorique de Rawls et soulève des questions dont il est lui-même conscient. Je discute de l'explication donnée par Rawls pour justifier son relatif silence et je montre que ses principes de justice permettent de lutter contre la discrimination directe mais ne permettent pas de répondre au défi de la discrimination systémique.

**Mots clés :** John Rawls, justice comme équité, (in)justice raciale, raison publique, théorie idéale et théorie non idéale

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\* Centre d'économie de la Sorbonne, 106-112, Boulevard de l'Hôpital 75647 Paris Cedex 13, France.  
Email address : dang@univ-paris1.fr

## Introduction

John Rawls's *A Theory of Justice* has revived political and moral philosophy in the English-speaking world. His seminal book and subsequent works have resulted in a large body of literature devoted to the presentation and criticism of his ideas. As noted by Robert Nozick (1974:183), "political philosophers now must either work within Rawls's theory or explain why not."

While a lively debate about gender and justice exists between Rawls and scholars who have critiqued his theory from a feminist perspective (see, for example, Okin 1989), only a few commentators have discussed the neglect of race-based inequalities in Rawls's theory. Thomas McCarthy (2004: 160) argues that the Rawlsian paradigm is profoundly defective because political theory cannot be "freestanding" insofar as "social and political inquiry has an ineliminable interpretive dimension and thus that what the general facts about social life are cannot be settled from the standpoint of a neutral observer or a reflective equilibrator." Charles W. Mills (2009, 2013) claims that the Rawlsian theoretical framework cannot address issues of racial injustice because of its intrinsic "whiteness." In other words, Rawls's discourse is conceptually shaped and ethically oriented by the interests, perspectives, and priorities of the racially privileged (i.e., Caucasians). Accordingly, Rawls's theory must be substantially revised to adequately address questions related to the rectification of racial injustice. By contrast, Tommie Shelby (2004, 2013) contends that Rawls's conception of justice as fairness eliminates racial injustice without the need to revise Rawls's theoretical framework. Shelby does, however, concede that Rawls's argument is of minimal help in debating principles of compensatory justice. Nevertheless, this aspect does not represent a weakness of Rawls's theory because compensatory justice issues demand a comprehensive theory of justice, whereas Rawls has developed a political conception of justice that is independent of a comprehensive theory. Seana V. Shrifin (2004) proposes, on the one hand, to explicitly include within Rawls's theory anti-discrimination principles that would be adopted by the parties in the original position, and on the other hand, to place the fair equality of opportunity principle on the same level of lexical priority as the basic liberty principle because "it both forbids *de jure* discrimination and also aims for conditions of *de facto* equality of opportunity. Second, it picks out access to employment and positions of power as distinctively important to parties in the original position" (Shrifin 2004: 1665). Rawls's theory, thus amended, would be more responsive to racial discrimination or racial injustice.

Anita L. Allen (2004) has used Rawls's *A Theory of Justice* to illuminate racial privacy debates. Rawls would not object to government collection of racial or ethnic data to serve, for example, affirmative action programs or purposes tied to public health. However, using racial or ethnic information for commercial purposes would clearly violate Rawlsian principles of justice.

Another paradox is that scholars of race and ethnicity have not initiated a debate with Rawls about his color-blind liberalism. Sheila Foster (2004) proposes an explanation of this lack of dialogue.<sup>1</sup> Concepts used by Rawls such as “impartiality, reason, abstract individual, original position,” which are apparently neutral concepts, are actually questioned by contemporary race scholars. Therefore, these authors and Rawls do not share a theoretical framework for addressing problems of racial subordination and injustice in modern society. Moreover, critical race scholars have turned away from classical liberalism and instead have endorsed the idea that racism is embedded in Western culture.

The final paradox is that although Rawls never writes about affirmative action, proponents of affirmative action policies often refer to Rawls's theoretical framework (Nagel 2003; Taylor 2009; Wuhl 2007).

Rawls spent his life developing and refining his *A Theory of Justice*. However, in other works published later (for example, *Political Liberalism*, *Justice as Fairness: A Restatement*), Rawls's explicit remarks regarding racial disadvantage remain sparse, and no systematic developments can be found. Why did Rawls say so little about racial justice or affirmative action, despite these being major issues in the society in which he lived? The United States is a country marked by slavery and the struggle for black civil rights.

At the end of his life, Rawls himself acknowledges: “This is indeed an omission in *Theory*; but an omission is not as such a fault, either in that work's agenda or in its conception of justice” (Rawls 2001: 66). He also explains why he has said little about matters involving racial justice. He asserts two related arguments. First, the subject of justice is the basic structure of society. According to Rawls, “the basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice” (Rawls 2001: 10). Second, issues of racial justice lie within the field of nonideal or “partial compliance theory.” Indeed, his

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<sup>1</sup> In 2004, *The Fordham Law Review* reproduced papers presented at a symposium on the implications of Rawls's work for the law. In this special issue, a section was devoted to “Equal citizenship: Race and Ethnicity.” In 2013, in *Critical Philosophy of Race*, a debate between C. W. Mills and T. Shelby transpired concerning whether Rawls's work could be a resource for addressing racial injustice.

primary concern is “ideal theory” and the well-ordered society, not “partial compliance theory.” Nonideal theory specifies how individuals should respond to or rectify injustice, whereas ideal theory “assumes strict compliance and works out the principles that characterize a well-ordered society under favorable circumstances” (Rawls 1999: 216).

In this article, I will examine the context in which racial issues appear in Rawls’s writings and underline tensions and ambiguities in Rawls’s thought. I will also propose an explanation of why Rawls does not address issues of racial justice more explicitly and in-depth. However, because Rawls himself explained his relative silence on racial justice, I will discuss its relevance. I will argue that Rawls’s conception of justice as fairness as a form of political liberalism is indebted to a strong principle of equal citizenship for all individuals that is blind to race and ethnicity, so his theoretical apparatus addresses the issue of legal racial discrimination or institutional racism. Nevertheless, it fails to address the problem of systemic racial discrimination. A complete theory of justice requires an articulation of the dynamic between ideal and nonideal theory. In what follows, basic familiarity with Rawls’s fundamental concepts is assumed.

### **1. Rawls on racial justice: turning points, tensions and ambiguities**

As noted by Shiffirin (2004: 1644), the status of race in Rawls’s theory is “central in some respects, but importantly peripheral in others.” Mills (2009) has constructed an inventory of references to race, racism, racial discrimination, slavery, American civil rights movement, Martin Luther King, Jr., and the Lincoln-Douglas debates in Rawls’s work, thereby showing that Rawls said little about race and racial justice in particular. He has also underlined the absence of racial justice as a theme in the Rawlsian secondary literature (Mills 2013: 2-4).

In his review of the “textual record” of Rawls’s five major books, while searching for references to race, racism, slavery, the civil rights movement, and related topics to highlight the paucity of questions involving race or racial (in)justice in Rawls’s work, Mills (2009) analyzes neither how Rawls introduces these questions in his analysis nor why he is motivated to do so. To disclose tensions or ambiguities in Rawls’s thought, in this section, I examine the context in which racial issues appear in Rawls’s writings.

As stated above, issues of racial justice are theoretically marginalized and are never considered as a central theme in Rawls’s work. However, these issues are explicitly addressed

at three key moments in Rawls's theoretical apparatus: the status of race as a feature of the veil of ignorance; racial minorities, the least advantaged, and the difference principle; and the role of arguments posited by antebellum abolitionist dissidents and Martin Luther King, Jr., in favor of racial equality in Rawls's reformulation of his notion of public reason.

Rawls adopts a thick veil of ignorance designed to signify a position of equality, thus representing the parties to the hypothetical social contract purely in their capacity as free and equal moral persons. People are supposed to have two moral powers, rationality (the capacity to form, to revise a rational plan of life or conception of the good, and to pursue the appropriate means for attaining this plan) and reasonableness (the capacity to have a sense of justice, that is, the capacity to understand, apply, and be motivated by fair terms of social cooperation) over a complete life. In the original position and behind the veil of ignorance, representative persons select principles of justice that will govern the basic structure of society. In *A Theory of Justice*, both original and revised editions, race is not included in the list of contingencies affecting citizens' life prospects, which only contains the following three contingencies: social class of origin, native endowments and good or bad luck over the course of one's life. This information is morally irrelevant and would influence the citizens' decisions on principles of justice. Consequently, Rawls assumes that the parties to the hypothetical contract are deprived of knowledge of the particular facts about their own lives or other persons' lives. Moreover, they do not know any particular facts about their society and its history. They only access the relevant general knowledge about human society to ensure that the chosen principles are feasible<sup>2</sup> (Rawls 1971:137-138 /1999: 118-119).

Yet, in a paper entitled "Fairness to Goodness" that was published in 1975, Rawls added racial identity to the list of personal characteristics veiled from those in the original position<sup>3</sup>:

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<sup>2</sup> The pages in the citations refer first to the 1971 edition and thereafter to the revised edition. I only cite the 1971 edition when necessary.

<sup>3</sup> At the beginning of his career, Rawls proposed another model of reasoning about justice, the competent judges model. In "Outline of a Decision procedure for Ethics" (1951), he asks if a method exists to find and to formulate reasonable principles on ethics and how to define a "class of competent judges." He rejects the selection of such principles "by means of characteristics which are the privileged possession of any race, class, or group..." (Rawls 1951: 5). The competent judges model is opposed to the thought experiment of the original position because the former belongs to what Rawls will later call imperfect procedural justice, while the latter is designed to define a fair agreement situation and is a central feature of pure procedural justice.

“The original position is framed to eliminate prejudice and self-interest, and this is one reason, for not letting people know certain facts about themselves - for example, their sex and race. But there is also another reason: we want to abstract from certain social and natural contingencies. Our social position and class, our sex and race should not influence deliberations made from a moral point of view; and on this ground, these facts should be bracketed” (Rawls 1975: 268).

Why does Rawls not explicitly mention, in his revised edition of *A Theory of Justice*, distinctions of race as factors the parties do not know about themselves behind the veil?<sup>4</sup> I propose one explanation. According to Rawls, the “primary subject of justice” is the “basic structure of society,” that is, the major social institutions such as “the political constitution and the principal economic and social arrangements.” These institutions profoundly affect people because they “distribute basic rights and duties” and determine the “division of advantages from social cooperation” (Rawls 1999: 6-7). The way in which these institutions are organized and interact with each other form a set of rules and practices central for determining how society is just. The justice of society, in Rawls’s account, is determined by the justice of its basic structure, hence, the determination of principles of justice to regulate the “basic structure of society.” His conception of “justice as fairness” and his principles of justice construe society as a fair system of cooperation between citizens as free and equal. As noted, Rawls develops a notion of justice from the perspective that persons are free and equal. Their freedom consists in their possession of the two moral powers; insofar as they have these to the degree necessary to be “fully cooperating members of society,” they are equals. Rawls (1999: 443) states that “there is no race or recognized group of human beings that lacks this attribute [the capacity for moral personality].” The members of any racial group are considered to be full members. Furthermore, the chosen principles of justice must suit our “considered judgments” of justice in a reflective equilibrium (Rawls: 18-19; 42-43).<sup>5</sup> “Considered judgments” are those judgments in which our moral capacities are likely to be displayed without distortion.<sup>6</sup> Rawls asserts that racist doctrines do not match our “considered judgments.” Moral philosophy aims to formulate principles that account for a person’s sense of justice. This sense of justice will be subject to scrutiny because the judgments based thereon will be confronted with principles building a conception of justice. Therefore, racist considerations are not part of the considered certain moral convictions that all citizens presumably share:

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<sup>4</sup> One can pose the same question about sex. On this subject, see, for example, Okin (1989).

<sup>5</sup> Here, I do not discuss Rawls’s distinction between a narrow and a wide reflective equilibrium. On this subject, see, for example, Daniels (1979).

<sup>6</sup> “Considered judgements are simply those rendered under conditions favorable to the exercise of the sense of justice, and therefore in circumstances where the common excuses and explanations for making a mistake do not obtain” (Rawls 1999: 42).

“There are questions which we feel sure must be answered in a certain way. For example, we are confident that religious intolerance and racial discrimination are unjust. We think that we have examined these things with care and have reached what we believe is an impartial judgment not likely to be distorted by an excessive attention to our own interests. These convictions are provisional fixed points which we presume any conception of justice must fit” (Rawls 1999: 17-18).

The primary position of equality, expressed by the original position, guarantees that any principle based on race will not be selected by the contractors:

“From the standpoint of persons similarly situated in an initial situation which is fair, the principles of explicit racist doctrines are not only unjust. They are irrational. For this reason we could say that they are not moral conceptions at all, but simply means of suppression. They have no place on a reasonable list of traditional conceptions of justice” (Rawls 1999: 129-130).

Another reason for why a conception of justice derived from racist doctrines is not among the main conceptions of justice drawn from the tradition of social and political philosophy is that all principles of justice seeking general agreement must satisfy certain “formal constraints”: generality, universality in application, publicity, ordering on conflicting claims, and finality (Rawls 1999: 114-117). I focus here only on the constraint of universality in application and publicity. The constraint of universality in application means that the chosen principles of justice “hold for everyone in virtue of their being moral persons” on the one hand and that everyone can use them in deliberations on the other hand. The constraint of publicity implies that the chosen principles are publicly recognizable as fundamental rules of society. It is clear that racist principles do not satisfy Rawls’s requirements.

If my reconstruction of Rawls’s reasoning is correct, *A Theory of Justice* is constructed in such a way as to automatically eliminate distinctions based on racial identity for the purpose of distinguishing between persons capable of citizenship and those incapable of citizenship. Certain facts regarding the parties are to be obscured, though implicitly, in *A Theory of Justice*.

Considering Rawls’s “political turn”<sup>7</sup> and the fact that *Political Liberalism* marks “a major change from those of *Theory*” (Rawls 2005: XV), it can be argued that racist doctrines lie beyond Rawls’s political conception of justice. Indeed, in *Political Liberalism*, and more generally, in Rawls’s post-1980s writings, Rawls adopts the public political culture of a contemporary democratic society as the deep background of his conception of justice. Racist ideas are controversial and are not part of latent and fundamental ideas in the public political

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<sup>7</sup> I borrow this expression from Paul Weithman (2011).

culture of a democratic society. These fundamental ideas are presumably shared to a large degree by fellow citizens.

In *Political Liberalism*, Rawls (2005: 24-25) mentions explicitly that the parties behind the veil of ignorance are ignorant of their racial identity. He reiterates, again in *Justice as Fairness: A Restatement*, published shortly before his death, that a person's race and ethnic group are features of the veil of ignorance and accordingly argues that "we view a democratic society as a political society that excludes a confessional or an aristocratic state, not to mention a caste, slave, or a racist one. This exclusion is a consequence of taking the moral powers as the basis of political equality" (Rawls 2001: 21; see also 15). A person's status should be independent of race (Rawls, 2001: 131). He also repeats what he stated in *Political Liberalism*: a political conception of justice is not derived from a particular comprehensive doctrine but is grounded in the fundamental ideas implicit in the public political culture of a democratic society, particularly the ideas that citizens are free and equal and that society should be a fair system of cooperation. Society is stable as long as it can gain the reasoned support of its citizens, despite their differences with respect to religious, philosophical, and moral convictions (Rawls 2001: 124-125; 184-188). The well-ordered society of justice as fairness eliminates conceptions of the good "requiring the repression or degradation of certain persons on, say, racial, or ethnic, or perfectionist grounds, for example, slavery in ancient Athens or in the Antebellum" (Rawls 2001: 154). Such conceptions directly contradict the two Rawlsian principles of justice applied to the basic structure of society.

The second moment wherein Rawls addresses racial issues is when he defines who is the least advantaged in relation to the difference principle. In *A Theory of Justice*, the least advantaged people are defined in two ways: first, they are "least favored by each of the three main kinds of contingencies" (social class of origin, native endowments, bad luck and misfortune over the course of life); second, they have the least income and wealth (Rawls 1999: 83-84). In *Justice as Fairness: A Restatement*, Rawls (2001: 59; 179) clarifies that the least advantaged are those with the lowest index of the five primary goods. In a footnote, he states that "the least advantaged are never identified as men or women, say, as whites or blacks, or Indians or British. They are not individuals identified by natural or other features (race, gender, nationality, and the like) that enable us to compare their situation under all the various schemes of social cooperation it is feasible to consider" (Rawls 2001: 59; see also 69-70). However, later, Rawls wonders whether people of color could be included as "relevant social positions" in the original position:

“Nevertheless, sometimes other positions must be taken into account. Suppose, for example, that certain fixed *natural* characteristics are used as grounds for assigning unequal basic rights, or allowing some persons only lesser opportunities; then such inequalities will single out relevant positions. Those characteristics cannot be changed, and so the positions they specify are points of view from which the basic structure must be judged. Distinctions based on gender and race are of this kind. Thus if men, say, have greater basic rights or greater opportunities than women, these inequalities can be justified only if they are to the advantage of women and acceptable from their point of view. Similarly, for unequal basic rights and opportunities founded on race”<sup>8</sup> (Rawls 2001: 65; emphasis added).

It is useful to recall that the contractors in the original position evaluate the basic structure from the viewpoints of equality and of representative citizens who occupy social positions. Not all of these positions are relevant, nor do they provide an appropriate general viewpoint for judging the social system. Rawls argues that each person must consider two perspectives: the position of “equal citizenship” and the position “defined by his place in the distribution of income and wealth” (Rawls 2001: 82). Although he suggests that other social positions must sometimes be considered, he contends, shortly thereafter in the same passage, that “historically these inequalities have arisen from inequalities in political power and the control of economic resources. Social positions do not now, and it would seem, never have been, negotiated to the advantage of women or less favored races” (Rawls 2001: 65). Therefore, in a conception of justice as fairness, neither race nor gender specifies a relevant social position.

Rawls’s arguments are problematic for several reasons. First, Rawls seems to consider race as natural. This opinion is surprising because the general belief among the scientific community is that race has no biological or natural basis.<sup>9</sup> Race is actually a social and cultural construction that shapes the way we see ourselves and others. Second, Rawls raises the question of racial inequalities as an assumption. One might argue that race cannot be a marker of inequality in a well-ordered society, a society wherein citizens recognize each other as free and equal and share an understanding of the fair terms of social cooperation. Accordingly, the conception of justice as fairness precludes racial inequalities, while class and economic inequalities would continue to exist even in a well-ordered society. The difference principle states that socioeconomic inequalities are permissible as long as they help improve the life prospects of the least advantaged members of society. Recall that Rawls tries to single out appropriate principles of justice to specify the fair terms of social cooperation between citizens regarded as free and equal. In this perspective, a theory of justice must be primarily sensitive to contingencies associated with class position in childhood, native talent, and

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<sup>8</sup> This passage is similar to another passage in *A Theory of Justice* (Rawls 1999: 84-85).

<sup>9</sup> See, for example, the 1998 Statement on “Race” by the American Anthropological Association.

fortuitous contingencies (Rawls 1999: 13-14; 2001: 40-41; 55-57). People cannot be held responsible for their natural endowments or for the social circumstances into which they are born. Rawls holds that the outcome of each person's natural endowments and social class origin is, similarly to the outcomes of ordinary lotteries, a matter of luck. Accordingly, justice as fairness seeks to mitigate "the arbitrary effects of the natural lottery itself" (Rawls 1999: 64). However, this line of argument could be criticized. This way of theorizing justice and equality neglects the fact that being talented or being born in an underprivileged class are not merely matters of chance.

The third problem in Rawls's reasoning (cf. the passage quoted above) is that the difference principle is introduced in qualifying basic rights, whereas the equality of basic rights takes precedence over the difference principle.<sup>10</sup> This ordering is somewhat puzzling. However, he hastens to add that these inequalities are seldom or never to be to the greatest benefit of the "less favored races." The problem is thus solved, and the priority rules will always be respected.

After discussing the relevant social positions to be considered in assessing the basic structure of society, a few pages later, Rawls reviews the reasons that race and sex are not initially among the contingencies affecting citizens' life prospects:

"It is natural to ask: Why are distinctions of race and gender not explicitly included among the three contingencies noted earlier? How can one ignore such historical facts as slavery (in the antebellum South) and the inequalities between men and women resulting from the absence of provisions to make good women's extra burden in the bearing, raising, and educating of children so as to secure their fair equality of opportunity? The answer is that we are mainly concerned with ideal theory: the account of the well-ordered society of justice as fairness. Within that account we need to distinguish two questions: first, what contingencies tend to generate troubling inequalities even in a well-ordered society and thus prompt us, along with other considerations, to take the basic structure as the primary subject of justice; and second, how within ideal should be least advantaged be specified?" (Rawls 2001: 64-65).

Therefore, according to Rawls, racial justice is not a matter of ideal theory. His first project is that of an ideal theory: an account of a well-ordered society corresponding to his conception of justice. In such a well-ordered society, contingencies such as race and sex would not tend to generate inequalities of life prospects. I will discuss these issues later.

The third and final moment when Rawls discusses racial issues is while reformulating his conception of public reason. The idea of public reason appears in Rawls's writings from the 1980s to address the problem of political legitimacy in modern democratic societies

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<sup>10</sup> The reference to the difference principle is implicit in the extract from *Justice as Fairness: A Restatement*, whereas it is explicit in *A Theory of Justice* (Rawls 1999: 85).

characterized by what Rawls calls “the fact of pluralism,”<sup>11</sup> i.e., the fact that people are committed to different and conflicting values, conceptions of good and ways of life.<sup>12</sup> Rawls’s views concerning public reason are complex and evolve over the course of his work.

Public reason is the reason proper to a political society, its “way of formulating its plans, of putting its ends in an order of priority and of making its decisions accordingly” (Rawls 2005: 212). Its subject is the good of the public in matters of fundamental questions, that is, those matters involving “constitutional essentials” and “questions of basic justice.” “Constitutional essentials” concern the identification and scope of rights and liberties. “Questions of basic justice” pertain to the basic structure of society and the structure’s relationship to social and economic opportunities and inequalities (Rawls 2005: 227-230). The content of public reason is specified by the ideals and principles expressed by a democratic society’s conception of political justice. In other words, justifications in terms of public reason must refer to the values of a political conception of justice—those related to the freedom and equality of citizens and the fairness of ongoing social cooperation. They also “appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (Rawls 2005: 224). An individual employing public reason does not rely on comprehensive religious and philosophical doctrines (Rawls 2005: 223). Public reason applies to citizens and public officials when they engage in political advocacy in a public forum and when the “constitutional essentials” and “questions of basic justice” are at stake.

As noted, Rawls’s views regarding public reason changed over the course of his work. Initially, Rawls adopted an “exclusive view” of public reason, thus implying that public reason should abstain from appealing to comprehensive religious or philosophical doctrines (Rawls 2005: 224-225; 247 and footnote 36). Later, he advocates an “inclusive view.” In fact, the limits of public reason depend on historical and social conditions. Rawls (2005: 248-251) theorizes three cases. His first case concerns a well-ordered society. In such a society, citizens are not required to introduce arguments referring to the comprehensive theories of the good in the political debates of society. Thus public reason may appear to abide by the “exclusive view.” Rawls’s second case relates to a “nearly well-ordered society” in which there exists no

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<sup>11</sup> The fact of pluralism is distinct from the fact of reasonable pluralism in that, whereas the former simply asserts that there are many comprehensive doctrines, the latter asserts that several of these different doctrines are reasonable but incompatible, and hence, “the aim of political liberalism is to uncover the conditions of the possibility of a reasonable public basis of justification on fundamental political questions” (Rawls 2005 : xix).

<sup>12</sup> According to Larmore (2002 : 380), however, although the idea of public reason is developed after the publication of *A Theory of Justice*, “its roots [are] in the notion of publicity employed in *A Theory of Justice*.”

consensus to apply one of the principles of justice. In this case, citizens' use of elements based on comprehensive moral theories in public debate is allowed, but only if used in a manner that reinforces the ideal of public reason itself. Public reason is thus understood according to its "inclusive view" in this case. In the third case, Rawls describes a society beset by serious disputes concerning constitutional essentials. As examples of such societies, Rawls cites America in the 1830s during the time of slavery and in the 1960s during the Civil Rights movement. He explains why he considers the religious arguments of antebellum abolitionists against slavery and by Martin Luther King, Jr., against racial segregation to be compatible with the "inclusive view" of public reason. Although they had appealed to comprehensive religious doctrines in the public forum for the abolishment of slavery on the one hand and for securing the civil rights of African Americans on the other hand, these arguments "supported the clear conclusions of public reason" (Rawls 2005: 250). Indeed, according to Rawls, both the abolitionists and King aimed to steer a deeply unjust society toward greater justice. In these cases, religious argumentation could be employed in political debate, "provided they [the abolitionists and King] thought, or on reflection would have thought (as they certainly could have thought), that the comprehensive reasons that they appealed to were required to give sufficient strength to the political conception [of justice] to be subsequently realized" (Rawls 2005: 251).

Finally, Rawls shifts from the "inclusive view" to what he calls the "wide view of public political culture," or the "wide view of public reason,"<sup>13</sup> in response to Paul Weithman's criticism.<sup>14</sup> According to Weithman (1994), Rawls's inclusive view of public reason cannot account for the instrumental role of religion in the American civil rights and abolitionist movements in the correct way because it only permits citizens to invoke their comprehensive doctrines in the public political debate if they do so in ways that further the ideal of public reason.<sup>15</sup> Weithman argues that a deeply religious man such as King is not necessarily recognized by this description. It would be more plausible to consider that King's religious beliefs are part of a broader conception of a life guided by religious faith and the implications of that faith in various areas, including in the public space. The abolitionists and

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<sup>13</sup> The "wide view of public political culture" was introduced in the 1996 new introduction to the paperback edition of *Political Liberalism* and in the more detailed article, "The Idea of Public Reason Revisited," first published in 1997, reproduced in *John Rawls: Collected Papers* and also in *Political Liberalism*, expanded edition.

<sup>14</sup> Rawls (2005: 1, footnote 27; 464, footnote 27) credits Weithman for heightening his sensitivity to the role of religious convictions in nurturing good citizenship.

<sup>15</sup> Rawls (2005: 251): "Given those historical conditions, it was not unreasonable of them to act as they did for the sake of the ideal of public reason itself."

King actually acted on behalf of various religious values that they believed would have policy implications. In “The Idea of Public Reason Revisited,” Rawls (2005: 462) formulates a proviso to accommodate the role of comprehensive reasons in political debate and adopts a wider view:

“(…) reasonable comprehensive doctrines, religious or nonreligious, may be introduced in political discussion at any time, provided that in due course proper political reasons - and not reasons given solely by comprehensive doctrines - are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. This injunction to present proper political reasons I refer to as the proviso”.

The proviso itself is not devoid of ambiguity, and Rawls is aware that his proviso invites questions (Rawls 2005: 462). I leave these notable matters aside here (for further discussion, see, for example, Larmore 2002; Neal 2008). Regarding the three moments wherein Rawls explicitly discusses racial issues, it is worth stressing that these issues destabilize Rawls’s theoretical framework. He seems to acknowledge these difficulties. First, in his discussion concerning the relevant social positions to be considered, he concedes that inequalities stemming from gender, race, or ethnicity “multiply relevant positions and complicate the application of the two principles” (Rawls 1999: 85). In *Justice as Fairness: A Restatement*, he modifies his position slightly by claiming that only the difference principle must be amended: “When used in a certain way, distinctions of gender and race give rise to further relevant positions to which a special form of the difference principle applies” (Rawls 2001: 66). However, in the first introduction to *Political Liberalism*, Rawls (2005: xxviii) confesses that “among our most basic problems are those of race, ethnicity, and gender. These may seem of an altogether different character calling for different principles of justice, which *Theory* does not discuss.” The expression “different principles of justice” suggests that Rawls’s conception of justice, justice as fairness, fails to remedy racial injustice.

Second, regarding public reason, while its guidelines apply to arguments in the public forum, its content is not invariant, but depends on the context and the divisive political issues that the theory addresses. The content of public reason is not tied to a single political conception of justice but to a family of reasonable political conceptions of justice that evolves:

“Social changes over generations also give rise to new groups with different political problems. Views raising new questions related to ethnicity, gender and race are obvious examples, and the political conceptions that result from these views will debate the current conceptions. The content of public reason is not fixed, any more than it is defined by any one reasonable political conception” (Rawls 2005: li).

Accordingly, Rawls seems to admit that race causes—as does gender—certain problems. However, it would be possible to reach an agreement concerning the basic principles of justice for a society composed of reasonable citizens who disagree on such issues. Rawls views public reason as a way to bring citizens who are embedded in their different reasonable comprehensive doctrines to a point of reconciliation.<sup>16</sup> When discussing the limits of reconciliation by public reason, race and ethnicity are cited on a list of the factors engendering “three main kinds of conflicts” among citizens:

“Those deriving from irreconcilable comprehensive doctrines; those deriving from differences in status, class position, or occupation, or from differences in ethnicity, gender, or race; and finally those deriving from the burdens of judgment” (Rawls 2005: 487).

*Political Liberalism* primarily addresses the question of how a just and stable constitution is possible among free and equal persons who hold conflicting conceptions of the good, so it responds to the first type of conflict. Rawls affirms without developing his argument that the second type of conflict “need not arise, or arise so forcefully” in a constitutional democratic society supported by a reasonable political conception of justice.

Finally, the ultimate explanation is to be found in *Justice as Fairness: A Restatement*:

“The serious problems arising from existing discrimination and distinctions based on gender and race are not on its agenda, which is to present certain principles of justice and then to check them against only a few of the classical problems of political justice as these would be settled within ideal theory. [...] Justice as fairness, and other liberal conceptions like it, would certainly be seriously defective should they lack the resources to articulate the political values essential to justify the legal and social institutions needed to secure the equality of women and minorities” (Rawls 2001: 66).

Is Rawls’s theory blind to racial injustices? Does it provide adequate grounds for supporting equality measures in light of racial injustices? I turn to this second point in the next section and also discuss the relevance of Rawls’s explication of his relative silence on racial (in)justice, namely, that “justice as fairness” is addressed in Rawls’s work as a concern with ideal theory, whereas problems of racial injustice concern nonideal theory and thus are never treated in a sustained way in his work.

## **2. Racial issues, ideal and nonideal theory in Rawls’s political philosophy**

Rawls justifies his “omission” in terms of ideal theory. The separation between ideal and nonideal theory is usually employed in the methodological debate concerning the correct way to deliberate issues of justice and, more generally, the correct characterization of the

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<sup>16</sup> Rawls assigns four roles to political philosophy, and reconciliation is one of these roles (Rawls 2001: 3-4).

relationship between philosophical theory and political practice. However, this debate is confused because there are different meanings of ideal and nonideal theory according to scholars (Stemplowska 2008, Hamlin and Stemplowska 2012, Valentini 2012).

Because the distinction between ideal and nonideal theory originates from Rawls's *A Theory of Justice*, I propose to focus on Rawls's definition. Rawls partitions the theory of justice into two parts: "the first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favorable circumstances. [...] Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions" (Rawls 1999: 216; see also 7-8; 308-309). Ideal theory is based on two assumptions: first, it is assumed that the principles chosen in the original position will be strictly complied with and obeyed by everyone (i.e., full or strict compliance); second, the expression "favorable circumstances" means that society is sufficiently economically and socially developed to realize justice. Rawls explicitly defines his work as an ideal theory. His primary concern is to identify the principles of justice that should govern the "basic structure of society." Hence, when theorizing social justice, the key question is the following: What is a perfectly just society? Ideal theory is a prerequisite for nonideal theory because "the nature and aims of a perfectly just society is the fundamental part of the theory of justice" (Rawls 1999: 8) on the one hand, and ideal theory has a guiding function for public policies and social change in addressing social injustices on the other hand (Rawls 1999: 216; 2001: 13; 2005: 285). Nonideal theory is associated with partial compliance and "less happy conditions" or unfavorable circumstances, and it includes "such topics as the theory of punishment, the doctrine of just war, and the justification of the various ways of opposing unjust regimes, ranging from civil disobedience and conscientious objection to militant resistance and revolution." It also encompasses "questions of compensatory justice and of weighing one form of institutional justice against another" (Rawls 1999: 8). In addition, Rawls suggests that nonideal theory has two separate areas of application, one area for situations wherein temporary institutional adjustments are necessary to respond to "natural limitations" or "historical contingencies" and to eventually effect full compliance and another area that concerns the "principles for meeting injustice" (Rawls 1999: 216).<sup>17</sup>

It seems that *Justice as Fairness*, as an ideal theory, provides theoretical resources to

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<sup>17</sup> Simmons (2010: 12-18) argues that there are six parts in Rawls's conception of nonideal theory, while Arvan (2014 : 97-100) identifies three domains.

eliminate legal racial discrimination or institutional racism. First, the principle of equal liberty gives institutional expression to the idea that all citizens, regardless of background and status, are free and equal moral persons. The priority of the first principle (equal rights and liberties) is largely justified by Rawls in terms of its support for citizens' self-respect. An unequal distribution of fundamental rights and liberties would undermine the self-respect of those individuals who are publicly considered to be inferior: in a well-ordered society, "the hardship arising from political and civic inequality, and from cultural and ethnic discrimination, cannot be easily accepted. When it is the position of equal citizenship that answers to the need for status, the precedence of the equal liberties becomes all the more necessary" (Rawls 1999: 478). Recall that Rawls regards self-respect as "the most important primary good" (Rawls 1999: 386; 2005: 319).<sup>18</sup> In *A Theory of Justice*, self-respect is used in a Kantian sense, namely, to signify confidence in the value of one's determinate plans and in one's capacity to pursue and to fulfill them. Rawls's conception of self-respect gradually changed during the late 1970s and the early 1980s. Self-respect thus assumes a more political sense, namely, confidence that an individual is a fully "cooperating member of society capable of pursuing a worthwhile conception of the good over a complete life" (Rawls 2005: 318). In fact, self-respect includes two aspects: first, a sense of one's equal worth rooted in the capacity to develop and to exercise the two moral powers; second, a sense of one's equal worth rooted in the belief that one's conception of the good and one's plan of life are worth realizing (Rawls 2005: 319). Rawls argues that a secure sense of self-respect is essential to the adequate development and the full and informed exercise of the two moral powers. Hence, society must provide the social basis for realizing self-respect. Rawls theorizes that self-respect in a modern democratic society must be based on the status of the democratic citizen, which is equally applied for all individuals. The institutions of society, by respecting the equal liberty principle, manifestly treat all members of society as individuals of dignity and worth, as individuals deserving respect. Suppose that voting rights are denied to racial minorities.<sup>19</sup>

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<sup>18</sup> Self-respect and self-esteem are used interchangeably in *A Theory of Justice*. However, Rawls later recognizes that these notions have different meanings (Rawls 1985: 251, footnote 33). In fact, moral philosophy distinguishes between self-respect and self-esteem. On this matter, see Sachs (1981). Thomas (1999) holds that Rawls's account of self-respect is defective because it confuses self-esteem and self-respect and explains why we cannot use the Rawlsian analysis of self-respect to understand the Black consciousness movement for the enhancement of black people's self-respect. However, Thomas bases his interpretation exclusively on Rawls's conception of self-respect developed in *A Theory of Justice* and neglects the evolution of Rawls's thought on this subject. Moreover, he has understood the Rawlsian self-respect as consisting of the conviction that one's life plan is worthwhile. The worthiness of one's life plan is one aspect of self-respect, namely, self-confidence.

<sup>19</sup> It is supposed that individuals belonging to racial minorities have not committed severe crimes and do not lack the two moral powers to the level necessary to be considered fully participating members in the system of social cooperation.

Then, the equal worth of racial minorities is not affirmed. In Rawls's view, racial minorities will not be able to maintain a secure sense of their equal worth and will have their sense of self-respect as citizens undermined. Moreover, ensuring equal political liberty and its fair value is essential to expressing an equal valuation of citizens' determinate conceptions of the good.

The fair equality opportunity principle guarantees that citizens with similar levels of talent and motivation should have the same prospects of success irrespective of their socioeconomic background. As noted, although race is not a relevant social position for Rawls and the fair equality opportunity principle aims to mitigate the effects of class of origin, his reasoning could be extended to race as a morally arbitrary contingency that can determine individuals' opportunities in life. When the fair equality opportunity principle is applied, real opportunities for education or meaningful work for citizens with the same talents and willingness to use them no longer depend on irrelevant facts such as social class, race, gender, and sexual orientation. This idea is the core of antidiscrimination legislation.

The difference principle mitigates the arbitrary effects of the combined natural and social lottery for talents and skills. This principle is grounded in a notion of reciprocity among free and equal citizens: in a democratic society structured by the difference principle, the more fortunate are allowed to enjoy further advantages, but on the condition that these advantages benefit those less fortunate (Rawls 1999: 88-90; 2001: 76-77; 122-124). The difference principle also provides an interpretation of the principle of fraternity. Fraternity expresses here "the idea of not wanting to have greater advantages unless this is for the benefit of others who are less well off" (Rawls 1999: 90). While liberty and equality have received extensive attention in the liberal tradition, fraternity has been neglected. According to Rawls, we can understand the relevance of the notion of fraternity in the democratic interpretation of the two principles. He then associates the ideas of liberty, equality and fraternity with the democratic interpretation of the two principles of justice as follows: liberty refers to the first principle; equality refers to the equality of opportunity principle as well as to the idea of equal liberties in the first principle; and fraternity refers to the difference principle (Rawls 1999: 91).

In Rawls's conceptualization of social justice, the social bases of self-respect are to be distributed equally. By the social bases of self-respect, Rawls means "those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence". They include equality in basic

rights and liberties, public recognition of the fact that citizens have equal basic rights and that everyone endorses the difference principle (Rawls 2001: 59; 60). In a well-ordered society governed by the two principles of justice, citizens' sense of respect is secured, and large group disparities in socio-economic positions would be reduced and would not be correlated with race or ethnicity. Furthermore, if we refer to the four-stage sequence<sup>20</sup>, particularly the legislative stage that concerns particularly the second principle, measures promoting education and training could be implemented. Indeed, Rawls emphasizes opportunities for training and exercising one's capacities and abilities as important elements of human flourishing and because they are connected to the conditions that support self-respect (Rawls 1999: 92; 2001: 56-57).

However, it could be objected that in a well-ordered society, racial injustice is assumed to not have occurred (McCarthy 2004; Mills 2009). Indeed, in a well-ordered society, all individuals, by definition, fully subscribe to the principles of justice and would not see racialized groups as second-class citizens. Moreover, in the original position, the representatives are not supposed to know particular facts about their own lives or other persons' lives, "to which generation they belong," and "they have no information about how often society has taken this or that form, or which kinds of societies presently exists" (Rawls 1999: 118; 175). Accordingly, the ideal society has no past history, and race does not determine social status. Everyone would have the status of being an equal citizen. The only other publicly recognized position would be one's place in the distribution of income and wealth (Rawls, 1999: 82).

As demonstrated, Rawls's theory of justice could be instrumental for deliberating questions of legal racial discrimination or institutional racism. When the administration of the institutions of the basic structure is distorted by racial prejudice or bias, Rawls regards this violation as one of "formal justice" (Rawls 1999: 51). The principles of justice are applied directly to the basic structure of society and guarantee minorities their basic rights and liberties as well as fair opportunities as citizens of the political community. In Rawls's view, citizens' sense of self-respect is diminished unless social institutions express equal respect for them. However, several questions could be posed for cases in which a society is not well-ordered or is beset by unfavorable circumstances: How can ideal theory be developed into

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<sup>20</sup> Rawls's two principles of justice are applied to the basic structure of society through a four-stage sequence: i) the selection of principles of justice; ii) the selection of a constitution subject to the constraints imposed by the principles of justice; iii) the enactment of laws and policies subject to the constraints imposed by both the principles of justice and the constitution; and iv) the adjudication of particular disputes subject to the constraints imposed by the principles of justice, constitution and laws and policies (Rawls 1999: 171-176).

nonideal theory? Could we use the resources offered by ideal theory to determine a set of principles to guide proceedings in nonideal circumstances and to resolve real-world problems? Must the ideal principles of justice be adapted when we move to nonideal worlds? Although Rawls declares that “the problems of partial compliance are the pressing and urgent matters,” they are “the things we are faced with in every day life,” and that the principles of justice in lexical order “set up an aim to guide the course of social reform” (Rawls 1999: 8; 215; see also Rawls 2001: 13), he does not provide indications regarding how to adapt and apply his conception of justice as fairness to address racial injustice in terms of nonideal theory. He only engages particular problems of nonideal theory: the deliberate noncompliance of society’s basic structure with principles of ideal justice (e.g., civil disobedience, a conscientious refusal to serve in an unjust war); the unfortunate noncompliance of society’s basic structure with principles of ideal justice (e.g., societies that experience poverty or crises); the unfortunate noncompliance with principles of ideal justice by individuals (e.g., insanity, immaturity, paternalism). Hence, he does not engage with questions of compensatory justice, which constitutes the second part of nonideal theory according to his definition of nonideal theory. In the case of unfortunate or unfavorable circumstances, Rawls advances a general conception of justice, i.e., all social primary goods are to be distributed equally unless an unequal distribution of any or all of these goods benefits the least favored. The general conception of justice is supposed to be valid at all times, while the special conception of justice (the two principles of justice lexically ordered) is valid under modern social conditions, that is, when society becomes wealthy enough so that the basic liberties can be effectively exercised. Rawls also insists that “justice as fairness is realistically utopian insofar as it ‘probes the limits of the realistically practicable’” (Rawls 2001: 13; 4).<sup>21</sup> However, he does not develop these points and merely affirms that neither of the principles of justice nor their lexical order directly applies to the problems of nonideal theory or that these principles are generally relevant but belong to ideal theory (Rawls 1999: 215-2116; 309). This lack of development is somewhat puzzling.

Some authors have tried to complete what Rawls’s arguments left unresolved, thus showing that his theory of justice is useful for deliberating questions of racial injustice. Shelby (2004) recalls that Rawls’s primary concern is ideal theory and that his aim is to identify principles of justice that are relevant to constraining the design and operation of the basic structure of society. If the institution of the basic structure were just, both the *de jure*

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<sup>21</sup> This is the fourth role of political philosophy. According to Rawls, political philosophy must describe workable political arrangements that can gain support from people.

and the *de facto* discriminatory treatment of citizens would be eliminated. Furthermore, the fair equality of opportunity principle ensures that the life prospects of racial minorities are not negatively affected by the economic legacy of racial oppression. Shiffrin (2004) argues that there are sufficient resources within Rawls's theory of justice to address problems of racial injustice on the condition of including anti-discrimination principles and imparting the same level of importance to the fair equality of opportunity principle as to the basic liberty principle. Agreeing with Rawls on the fact that non-ideal theory presupposes ideal theory because ideal theory guides our actions towards an ideally just society, Simmons (2010: 18-25) underlines that advancing toward the ideal of perfect justice requires that policies be "morally permissible," "politically possible," "likely to be effective" and consider the "relative grievousness of the injustices to be addressed." Arvan (2014) shows that Rawls's theory of justice can be extended to nonideal theory by proposing a nonideal original position and three nonideal primary goods under the assumption that circumstances of justice and reasonably favorable conditions are satisfied, but strict compliance is not necessary.

All of these works show that Rawls's theory is actually flexible and that his theoretical framework can be adapted and applied to address racial injustice. However, these authors adopt a forward-looking orientation, and questions of how to proceed to compensate for or to rectify past racial injustices remain.

It seems that Rawls's theory of justice fails to adequately engage systemic racial discrimination because it does not articulate both an ideal and nonideal theory. By systemic racial discrimination, I mean discrimination that results from value judgments, patterns of behavior, policies or practices, often informal and invisible, that have become part of the system and that create or perpetuate disadvantage for racialized persons. Under ideal conditions, legacies of racism have been overcome, and no disadvantages of race remain to be corrected. However, under non-ideal conditions, legacies of racism continue in the form of systematic discrimination sustained by hateful doctrines, stereotypes and prejudices, all of which act to further disadvantage historically burdened groups. The legacy of past discriminations keeps the affected citizens from participating as equals in society. Moreover, when engaged in a public political forum, citizens must adhere to the duty of civility and are required to use public reasons, which are reasons anchored in shared political values. Nevertheless, the meanings of these shared political values are not given, fixed or independent of societal and cultural patterns. Therefore, the norms and values framing the public political debate are likely to be discussed and interpreted differently. Conflicts of

interpretation and evaluation cannot be excluded, especially because deliberation could also be affected by social biases and problematic heuristics associated with bounded rationality, thereby reducing our capacity and willingness to revise our commitments and to give reciprocal consideration to others' concern (Smith 2014). Rawls acknowledges the difficulties associated with practical and theoretical reasoning that he refers to as the "burdens of judgment".<sup>22</sup> These include difficulties in assessing evidence, weighing values, interpreting abstract concepts and reconciling various background experiences that produce disagreement among reasonable and rational persons (Rawls 2005: 56-57). According to Rawls, the "burdens of judgment" are to be distinguished from other sources of disagreement, such as "prejudice and bias, self- and group interest, blindness and willfulness" (Rawls 2005: 58), which also play a role in actual cases of conflict. However, Rawls rules out these causes of disagreement because they account for unreasonable disagreements that fall outside the realm of ideal theory: "We want to know how reasonable disagreement is possible, for we always work at first within ideal theory" (Rawls 2005: 55).<sup>23</sup>

The "burdens of judgment" are at the center of Rawls's argument for political liberalism inasmuch as they define and limit the kinds of reasons and arguments citizens can put forward in political deliberation. Indeed, a reasonable citizen must not only accept that society should be a fair system of social cooperation, arranged for mutual benefit, he/she must also exhibit "a willingness to recognize the burdens of judgment and to accept the consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime" (Rawls 2005: 54). Recognizing the burdens of judgment entails not attempting to impose one's own conception of the good on others. Consequently, reasonable persons also agree to bracket controversial philosophical and moral doctrines in political debate. The burdens of judgment help explain the fact of reasonable pluralism. Indeed, because reasonable persons are committed to the burdens of judgment, they accept

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<sup>22</sup> Initially, Rawls (1989) calls the "burdens of judgment" the "burdens of reason".

<sup>23</sup> In the 1989 article, Rawls supposed reasonable persons to assume that others are honest. This is part of precepts governing deliberation and discussion between reasonable persons: "First, the political discussion aims to reach reasonable agreement, and hence so far as possible it should be conducted to serve that aim. We should not readily accuse one another of self- or group-interest, prejudice or bias, and of such deeply entrenched errors as ideological blindness and delusion. Such accusations arouse resentment and hostility, and block the way to reasonable agreement. The disposition to make such accusations without compelling grounds is plainly unreasonable, and often a declaration of intellectual war" (Rawls 1989: 478). According to Rawls, reasonable persons can disagree without being prejudiced, biased, excessively self- or group-interested or wilful.

that they will inevitably and reasonably disagree about moral, religious and philosophical issues. As such, we could not reasonably expect all citizens to accept justifications for constitutional essentials that drew upon any particular comprehensive doctrine or that relied upon controversial claims about the good: “[...] a public and shared basis of justification that applies to comprehensive doctrines is lacking in the public culture of a democratic society” (Rawls 2005: 60-61). The burdens of judgment concern only disagreements about the good or comprehensive doctrines and do not apply in areas where the idea of public reason is appropriate. Recall that Rawls provides a justification of the political conception of justice by drawing on certain fundamental ideas he finds implicit in the public political culture of a contemporary democratic society. However, by ruling out by decree that disagreements in public reasoning can result from biases, prejudices or false beliefs on the one hand and by not taking into account the fact that fundamental political ideas that provide the normative content of public reason are subject to different interpretations and cannot be taken for granted on the other hand, Rawls fails to see that public reason can be distorted by racial stereotypes, faulty opinion formation and racially structured group interests.

A complete theory of justice should include both ideal and nonideal theory. Rawls does not develop measures designed to compensate for or to rectify past racial injustices. Nor does he provide policy recommendations on this subject. When discussing racial injustices that lie within the realm of nonideal theory, we should examine the causes of minority groups’ oppression and the structures of power that create and sustain it. Formal equality does not prevent the existence of persistent inequalities based on race or ethnicity. By marginalising race at the level of ideal theory, Rawls gives the impression that he endorses the notion that justice requires color blindness on the one hand and is best served by a uniformity of rights on the other hand.

## **Conclusion**

Rawls’s remarks on race are sparse in his writings. I nevertheless identify three key moments in his conceptual apparatus wherein racial issues appear explicitly: (1) the status of race as a feature of the veil of ignorance; (2) racial minorities, the least advantaged, and the difference principle; (3) the role of arguments made by antebellum abolitionist dissidents and Martin Luther King, Jr., in favor of racial equality in his reformulation of his notion of public reason. It has been shown that the introduction of race poses difficulties for Rawls in his theory of justice. Finally, he explains that he does not address race because he is

fundamentally concerned with ideal theory, that is, with what would constitute a just society and why. Questions related to how to rectify past injustice lie outside the remit of his theory inasmuch as they belong to nonideal theory. The problem with this defense is that it gives the impression that Rawls seeks to avoid racial issues and to privilege ideal theory. This avoidance strategy has consequences for theorizing justice. Rawls's theory of justice fails to address systematic discrimination, which is an important issue, particularly in societies shaped by a long history of racial domination.

## References

- Allen Anita L. 2004. "Race, Face, and Rawls". *Fordham Law Review*, vol. 72 n°5, p. 1677-1696.
- American Anthropological Association. 1998. "Statement on "Race"". Available at: <http://www.aaanet.org/stmts/racepp.htm> (accessed 30 september 2014).
- Arvan Marcus. 2014. "First steps toward a nonideal theory of justice". *Ethics & Global Politics* vol. 7 n°3, p. 95-117.
- Daniels Norman. 1979. "Wide Reflective Equilibrium and Theory Acceptance in Ethics". *Journal of Philosophy* vol. 76 n°5, p. 256-82.
- McCarthy Thomas. 2004. "Political Philosophy and Racial Injustice: from Normative to Critical Theory". In S. Benhabib S and N. Fraser (eds) *Pragmatism, Critique, Judgment*. Cambridge MA: MIT Press, p. 149-70.
- Foster Sheila. 2004. "Race and Ethnicity, Rawls, Race, and Reason". *Fordham Law Review*, vol. 72 n°5, p. 1715-1719.
- Hamlin Alan and Zofia Stemplowska. 2012. "Theory, Ideal Theory and the Theory of Ideals". *Political Studies Review*, vol. 10, n°1, p. 48-62.
- Larmore Charles. 2002. "Public reason". In S. Freeman (ed.) *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, p. 368-393.
- Nagel Thomas. 2003. "John Rawls and Affirmative Action". *The Journal of Blacks in Higher Education*, n°39, p. 82-84.
- Neal Patrick. 2008. "Is public reason innocuous?". *Critical Review of International Social and Political Philosophy*, vol. 11 n°2, p. 131-152.
- Nozick Robert. 1974. *Anarchy, State, and Utopia*. Oxford: Basil Blackwell.
- Mills Charles W. 2009. "Rawls on Race/Race in Rawls". *The Southern Journal of Philosophy*. vol. XLVII, p. 161-184.
- Mills CW. 2013. "Retrieving Rawls for Racial Justice?: A Critique of Tommie Shelby". *Critical Philosophy of Race*, vol. 1 n°1, p. 1-27.
- Okin Susan Moller. 1989. *Justice, Gender and the Family*. New York: Basic Books.
- Rawls John. 1961/1999. "Outline of a Decision procedure for Ethics". In S. Freeman (ed.) *John Rawls: Collected Papers*. Cambridge, MA: Harvard University Press, p. 1-19.
- Rawls John. 1971. *A Theory of Justice* (original edition). Cambridge, MA: Harvard University Press.
- Rawls John. 1975/1999. "Fairness to Goodness". In S. Freeman (ed.) *John Rawls: Collected Papers*. Cambridge, MA: Harvard University Press, p. 267-285.
- Rawls John. 1985. "Justice as Fairness: Political not Metaphysical", *Philosophy and Public Affairs* vol. 14 n°3, p. 223-251.
- Rawls John. 1989. "The Domain of the Political and Overlapping Consensus". In S. Freeman (ed.) *John Rawls: Collected Papers*. Cambridge, MA: Harvard University Press, p. 473-496.
- Rawls John. 1999. *A Theory of Justice* (revised edition). Cambridge, MA: Harvard University Press.

- Rawls John. 2001. *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press.
- Rawls John. 2005. *Political Liberalism* (expanded edition). New York: Columbia University Press.
- Sachs David. 1981. "How to Distinguish Self-respect from Self-esteem". *Philosophy and Public Affairs* vol. 10 n°4, p. 346-360.
- Shelby Tommie. 2004. "Race and Ethnicity, Race and Social Justice: Rawlsian Considerations". *Fordham Law Review*, vol. 72 n°5, p. 1697-1714.
- Shelby Tommie. 2013. "Racial Realities and Corrective Justice: A Reply to Charles Mills". *Critical Philosophy of Race* vol. 1 n°2, p. 145-162.
- Shiffrin Seana Valentine. 2004. "Race, Labor, and the Fair Equality of Opportunity Principle". *Fordham Law Review* vol. 72, n°5, p. 1643-1675.
- Simmons John A. 2010. "Ideal and Nonideal Theory". *Philosophy & Public Affairs*, vol. 38 n°1, p. 5-36.
- Smith Andrew F. 2014. "Political deliberation and the challenge of bounded rationality". *Politics, Philosophy & Economics* vol. 13 n°3, p. 269-291.
- Stemplowska Zofia. 2008. "What's Ideal About Ideal Theory?". *Social Theory and Practice* vol. 34 n°3, p. 319-340.
- Taylor Robert S. 2009. "Rawlsian Affirmative Action". *Ethics* vol. 119 n°3, p. 476-406.
- Thomas Larry L. 1999. "Rawlsian Self-Respect and the Black Consciousness Movement". In P. Weithman (ed.) *Moral Psychology and Community*. New York: Garland Publishing, p. 37-46.
- Valentini Laura. 2012. "Ideal vs. Non-Ideal Theory: A Conceptual Map". *Philosophy Compass* vol. 7 n°9, p. 654-664.
- Weithman Paul. 1994. "Taking Rites Seriously". *Pacific Philosophical Quarterly*, vol. 75 n°3-4, p. 272-294.
- Weithman Paul. 2011. *Why Political Liberalism? On John Rawls's Political Turn*. New York: Oxford University Press.
- Wuhl Simon. 2007. *Discrimination positive et justice sociale*. PUF: Paris.