

Rawls on Race/Race in Rawls

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John Rawls's *A Theory of Justice* (1971) is widely credited with having revived post-World War II Anglo American political philosophy. This book together with his later writings are routinely judged to constitute the most important body of work in that field. Indeed, with the collapse of Second World and Third World socialist ideologico-political alternatives, liberalism in one form or another has become globally hegemonic, so that for many commentators, the qualifiers "postwar" and "Anglo American" should just be dropped. Thus the blurb on the jacket of *The Cambridge Companion to Rawls* (Freeman 2003a) simply asserts without qualification: "John Rawls is the most significant and influential political and moral philosopher of the 20th century." Translated (as of 2003) into twenty-seven languages (Freeman 2003b, 1), the subject of a vast body of secondary literature numbering literally thousands of articles, *A Theory of Justice* has long since become a canonical text.

Yet for those interested in issues of racial justice, philosophers of color in particular, it has also long been a very frustrating text.¹ We face a paradox: Rawls, the celebrated American philosopher of justice, had next to nothing to say in his work about what has arguably historically been the most blatant American variety of *injustice*, racial oppression. The postwar struggle for racial justice in practice and in theory and the Rawlsian corpus on justice are almost completely separate and nonintersecting universes.

The remediation of the legacy of white supremacy is apparently not of the slightest interest or concern for Rawls and most of his commentators and critics, as manifested in the marginality of this subject in his own work, and its virtual nonappearance in the secondary literature. Samuel Freeman's edited *Cambridge Companion to Rawls* (2003a), for example, which provides a synoptic overview of key themes in the literature, has not a single subsection of any chapter, let alone any chapter, on race, while the 2006 *Perspectives on Politics* special symposium on Rawls barely has two paragraphs on the subject (Ackerley et al. 2006). So, particularly for people of color in the United States, but also for those elsewhere, for example in the former colonizing powers and in the former colonial world, a weird feeling of incon-

gruity and dissonance is unavoidable. Here is a huge body of work focused on questions of social justice—seemingly the natural place to look for guidance on normative issues related to race—that has nothing to say about racial injustice, the distinctive injustice of the modern world.²

What explains this systematic omission? Any elementary sociology of belief would tell us that the demography of the profession (overwhelmingly white) will itself be an obvious major causal factor, group membership in the privileged race tendentially producing certain distinctive interests (uninterests), priorities (marginalities), and concerns (indifferences). But apart from this major extra-ideational factor, I suggest that there is a key internal conceptual factor as well: Rawls's methodological decision to focus in *A Theory of Justice* on "ideal theory"—the reconstruction of what a perfectly just society would look like. If this might have seemed reasonable enough when first propounded—after all, what's wrong with striving for the asymptotic realization of perfect justice?—it is, I propose, because of a crucial ambiguity: "ideally just" as meaning a society without *any* previous history of injustice and "ideally just" as meaning a society with an unjust history that has now been *completely corrected for*. Rawls means the former, not the latter. But the difference between the two will obviously make a significant difference to the recommendations respectively appropriate in the two sets of cases. *Pre-emptive* precautions to prevent injustices entering the "basic structure" of a society are not the same as *rectificatory* measures aimed at correcting them once they have already entered. Prevention generally differs from cure. Insofar as Rawls's focus is on the former, his prophylactic recommendations will be of limited, if any, use, when it comes to remediation. Thus by a simple conceptual stipulation, the theoretical problems raised of how to adjudicate the redressing of past injustices are immediately shunted aside. In particular, the manifestly *nonideal* record of our country on race can now be ignored, since such matters fall into an area of dikaiological territory not covered by the mandate of the program. As Thomas Nagel observes in two of the few sentences referring to race (and elliptically at that) in the *Cambridge Companion*:

[A]ffirmative action ... is probably best understood in Rawlsian terms as an attempt at corrective justice—an attempt to rectify the residual consequences of a particularly gross violation in the past of the first principle of equal rights and liberties. Affirmative action therefore does not form a part of what Rawls would call "strict compliance theory" or ideal theory, which is what the two principles of justice are supposed to describe. (2003b, 84 n. 3)

In contrast, my 1997 book, *The Racial Contract*, was explicitly and self-describedly a work in nonideal theory. I sought to show there that—insofar as the contractarian tradition has

descriptive pretensions (“contract” as a way of thinking about the creation of society)—the modern “contract” is better thought of as an exclusionary agreement among whites to create racial politics rather than as a modeling of the origin of colorless, egalitarian, and inclusive sociopolitical systems. Since Rawls’s updating of the contract is purely normative and hypothetical, however, a thought-experiment for generating judgments about justice rather than a historical account, it might seem that my challenge, even if successful, is irrelevant, doubly missing the mark. The contract for Rawls is not meant to be descriptive in the first place, and in the second place, as just emphasized, his normative project is confined to the realm of ideal theory. But my claim would be that this twofold displacement in fact constitutes a double *evasion*, and that the ghost of the ostensibly repudiated *factual* dimension of contractarianism continues to haunt the *normative* account, as manifested precisely in this silence on racial justice (Mills 2005; Pateman and Mills 2007). A mystified and idealized story of the creation of the modern world, which denies the centrality of racial subordination to its genesis, makes the achievement of corrective racial justice a less pressing matter, if it is seen as necessary at all, for contemporary white ethicists and political philosophers.

In this paper, I will both document what (little) Rawls does say about race (“Rawls on Race”) and attempt, from a critical race theory perspective (“Race in Rawls”), to bring out what I see as the larger significance of these silences. For me, in other words, they are not contingent but are structurally related to the architecture of what I have elsewhere called “racial liberalism” (Mills 2008)—the numerous ways in which white racial privilege shapes and orients (occidents?) the work of white liberals.

1. Rawls on Race: The Textual Record

For this exercise, I will look at Rawls’s five major books: *A Theory of Justice* (1971), *Political Liberalism* (1993/1996), the *Collected Papers* (1999a), *The Law of Peoples* (1999b), and *Justice as Fairness: A Restatement* (2001). The two edited volumes of Rawls’s lectures—*Lectures on the History of Moral Philosophy* (2000) and *Lectures on the History of Political Philosophy* (2007)—provide expositions of the thought of central figures in Western moral and political theory rather than discussions of justice, and so are less appropriate sources for us. But it makes no difference since in any case they manifest the same pattern of silence. Nowhere in either of these books does Rawls discuss the racial views of, for example, Locke, Hume, Kant, Hegel, Mill, or their relation to European colonialism.

1.1 *A Theory of Justice*

Race is not initially listed (see, e.g., 12, 137) as one of the features you do not know about yourself behind the veil of ignorance (nor is sex, as Susan Moller Okin [1989, 81] has famously pointed out). However, Rawls does explicitly condemn racism. He declares “we are confident that religious intolerance and racial discrimination are unjust” (1971, 19), and that no one behind the veil of ignorance would “put forward the principle that basic rights should depend on the color of one’s skin or the texture of one’s hair” (149). Similarly, he says: “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” (149).

Rawls seems to regard race as natural. Thus at one point he 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” (1971, 99). He considers the possibility of a society whose basic structure allocates “unequal basic rights” according to these “starting places in the basic structure” (99). However, he says such “racial and ethnic inequalities” “are seldom, if ever, to the advantage of the less favored,” and so would be ruled out by the difference principle (99). Later he states: “There is no race or recognized group of human beings that lacks [the capacity for moral personality]” (506).

These are the only overt references I can find to race in the 600+ pages of *A Theory of Justice*. He does talk about slavery at various places (e.g., 158, 248, 325), but the second two references are explicitly to the nonracial slavery of antiquity rather than American slavery, while the first one just raises the abstract possibility of “slavery and serfdom” as a traditional objection to utilitarianism. Chapter 53, “The Duty To Comply with an Unjust Law,” does talk about “permanent minorities,” while chapter 57, “The Justification of Civil Disobedience,” refers to situations when “certain minorities are denied the right to vote or to hold office, or to own property and to move from place to place” (1971, 327). But race is not explicitly mentioned. Finally, it should be noted that neither “race” nor “racism” appears in the index, though there are brief textual mentions, as cited above, while such topics as “segregation,” “Jim Crow,” and “white supremacy” appear neither in the index nor anywhere in the text.

1.2 *Political Liberalism*

Rawls’s second book, two decades later, shows a self-conscious defensiveness about *Theory*’s silences that suggests that these points of criticism had in fact been raised to him. In his original (1993) introduction to the cloth edition, he concedes that the first

book does not deal with race: "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" (1993, xxviii). Similarly, in his introduction to the later paperback edition (1996), he admits the need for changes over time in the content of "public reason," since: "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" (liii). Race is also cited on a list of factors that give rise to conflict among citizens ("[conflicts deriving] from their different status, class position, and occupation, or from their ethnicity, gender, and race" [lx]). In addition, race is now explicitly mentioned as something you do not know behind the veil (25), and is included as an illustration of illegitimate restrictions in advertisements of jobs and positions, which Rawls's principles would prohibit, that is, those that "exclude applicants of certain designated ethnic and racial groups" (363). Whereas *Theory* only referred to ancient slavery, Rawls now expressly refers to American slavery and its legacy: "similarly, slavery, which caused our Civil War, is rejected as inherently unjust, and however much the aftermath of slavery may persist in social policies and unavowed attitudes, no one is willing to defend it" (8; also 234, 238, 254, 398). He also mentions the work of the abolitionists (lii, 249–51), the Abraham Lincoln–Alexander Stephens correspondence (45), Lincoln's Second Inaugural condemnation of "the sin of slavery" (254), and the *Dred Scott* decision (233 n. 18). Blacks are described at one point as "a subjugated race" (during slavery: 238). He also refers several times, in discussions of "public reason," to Martin Luther King, Jr.'s, doctrines (lii, 247 n. 36, 250), and mentions the *Brown v. Board of Education* decision and segregation (250). The Jewish Holocaust is also cited as illustrating "manic evil" (lxii). So the second book obviously represents—admittedly by a very low benchmark—some progress in at least conceding the special problem posed by race. It should be noted though that, as before, "race," "racism," "segregation," and "white supremacy" appear nowhere in the index, and "white supremacy" appears nowhere in the text.

1.3 *Collected Papers*

In 1999, Samuel Freeman edited a collection of twenty-six of Rawls's published papers, spanning almost half a century (1951 to 1997) and including a 1998 interview of Rawls with the magazine *Commonweal*. According to Freeman's preface, the collection is almost comprehensive, the excluded essays being variously earlier versions of more polished articles, minor

occasional pieces, or essays later incorporated into the paperback edition of *Political Liberalism* (Freeman 1999, ix–x).

Rawls's first published paper, in 1951, characterizes "ideologies" negatively as claiming "a monopoly of the knowledge of truth and justice for some particular race, or social class, or institutional group, and competence is defined in terms of racial and/or sociological characteristics" (Rawls 1999a, 5). Appearing only a few years after the end of World War II, with the defeat of the Third Reich still a powerfully overshadowing memory in the West, this comment is pretty clearly a reference to National Socialism. A 1969 essay discusses civil disobedience in the context of oppressed "minorities," though race is not mentioned (this essay would later become chapter 57 of *Theory*, mentioned above). Apart from the implicit and brief 1951 Nazi reference, then, race does not appear in any of the essays leading up to the 1971 publication of *Theory*. Subsequent to its publication there are a few appearances of the topic, or at least the term. A 1975 paper lists "sex and race" among the data about themselves to which parties behind the veil should not have access (268), and cites as examples of unjust conceptions of the good those "that require the repression or degradation of certain groups on, say, racial or ethnic ... grounds" (280). A 1988 essay says it is permissible for "a constitutional regime" to discourage "various kinds of religious and racial discrimination (in ways consistent with liberty of conscience and freedom of speech)" (461) and repeats that any conceptions of the good requiring racial repression, "for example, slavery in ancient Athens or in the antebellum South," are ruled out (462). There is a footnote in a 1989 essay to another author's discussion of the *Dred Scott* and *Brown* decisions (496 n. 51). Finally, the last essay (1997), "The Idea of Public Reason Revisited," which also appears in *The Law of Peoples*, has some brief discussion in connection with "public reason" of the abolitionists, Martin Luther King, Jr., and the civil rights movement (593, 610), as well as the Lincoln–Douglas debates (609–10). As before, race is cited on a list of the factors giving rise to "three main kinds of conflicts" (612). That is all that I can find in the collection's 600+ pages.

1.4 *The Law of Peoples*

In this book, Rawls is focused on international relations. He discusses anti-Semitism and Nazism (1999b, 19–23, 99–101), characterizes the Jewish Holocaust as unique (19), and refers to "The fact of the Holocaust and our *now* [my emphasis] knowing that human society admits this demonic possibility" (21). There is a footnote on the South and slavery ("This was as severe a violation of human rights as any, and it extended to nearly half the population," 38 n. 45). Rawls condemns the World War II firebombing of Japanese cities and the use of nuclear weapons

on Hiroshima and Nagasaki (99–105) but does not, unlike some other authors, link these military decisions to anti-Japanese racism.³ He refers briefly to the “empire building” of European nations (53–54) but does not make any reference to the genocide of non-European peoples as part of this process. Though he later talks about the “outlaw states of modern Europe in the early modern period” (105–6), this judgment of “outlawry” is clearly inspired by their intra- rather than extra-European policies, as his listing and subsequent gloss make evident: “Spain, France, and the Hapsburgs—or, more recently, Germany, all tried at one time to subject much of Europe to their will” (106). The final chapter, “The Idea of Public Reason Revisited,” has the same references cited above to abolitionists, the civil rights movement, Martin Luther King, Jr., the Lincoln–Douglas debates, and race as a factor causing conflicts (154, 174, 177). The concept of imperialism appears nowhere in the text (the above brief references aside), nor colonialism, nor the Atlantic Slave Trade, nor any mention of their legacy in the Third World.

1.5 *Justice as Fairness: A Restatement*

Finally, this 2001 book—edited by Erin Kelly, and unfinished because of Rawls’s illness and death—originated in Rawls’s lectures updating and restating his final position on “justice as fairness.”

As before, Rawls now lists “race and ethnic group” as information prohibited to the parties in the original position (2001, 15), says that “we view a democratic society as a political society that excludes ... a caste, slave, or a racist one” (21), and emphasizes that “Fixed status ascribed by birth, or by gender or race, is particularly odious” (131). He refers to Lincoln’s condemnation of slavery (29), and repeats the point that 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 South,” would be ruled out (154). In a discussion of the application of the difference principle, he emphasizes that the “least advantaged are never identifiable as men or women, say, or as whites or blacks, or Indians or British,” since the term is “not a rigid designator” picking out the same individuals across all possible worlds (59 n. 26; see also 69–71). A footnote on public reason says of *Political Liberalism*’s position that “the inclusive view [of public reason] allowed comprehensive doctrines to be introduced only in nonideal circumstances, as illustrated by slavery in the antebellum South and the civil rights movement in the 1960s and later” (90 n. 12).

However, the most detailed and illuminating passage on race (not merely in this book, but in his entire body of work) is the following:

We have seen that the two principles of justice apply to citizens as identified by their indexes of primary goods. It is natural to ask: Why are distinctions of race and gender not explicitly included among the three contingencies noted earlier (§16)? [In this earlier section, Rawls had listed “three kinds of contingencies” that affect “inequalities in citizens’ life-prospects”: social class, native endowments and opportunities to develop them, good or ill fortune.] How can one ignore such historical facts as slavery (in the antebellum South)[?]..... The answer is that we are mainly concerned with ideal theory: the account of the well-ordered society of justice as fairness. (2001, 64–65)

So it is his focus on ideal theory that justifies the exclusion of race, since racial justice is a matter of nonideal theory. However, Rawls continues:

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 (*Theory*, §16: 85). It appears that historically these inequalities have arisen from inequalities in political power and control of economic resources. They are not now, and it would seem never have been, to the advantage of women or less favored races. (2001, 65–66)

Finally, he summarizes:

To conclude: 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 (*Theory*, §16: 85). We hope that in a well-ordered society under favorable conditions, with the equal basic liberties and fair equality of opportunity secured, gender and race would not specify relevant points of view. *Theory* takes up only two questions of partial compliance (or nonideal) theory.... *The serious problems arising from existing discrimination and distinctions based on gender and race are not on its agenda* [my emphasis], 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. 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. Whether fault

there be depends on how well that conception articulates the political values necessary to deal with these questions. 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. (2001, 66)

In the end, then—a few years before his death—Rawls does concede that *A Theory of Justice*'s silence on race is an omission. But he insists that the principles he articulated there can be adapted and utilized to address racial injustice, even if he himself did not so use them.

2. Race in Rawls: A Critical Overview

With the actual textual record established, I now want to turn to its evaluation. As emphasized at the start, I am seeking to make a point deeper than the fact of simple omission. My claim is that the ignoring of race in Rawls's work is structural and symptomatic of white political philosophy in general.

2.1 Rawls's Silences

To begin with the obvious: the impression one would get just from a superficial skimming of the texts that Rawls does not have much to say about race is amply confirmed, an impression that is not at all misleading but—as finally conceded by Rawls himself—quite accurate. The five books canvassed above total about two thousand pages; if all the sentences that mentioned race were to be collected together, I doubt if they would add up to half a dozen pages. Moreover, as can be seen, there is a significant degree of duplication, not just because of chapter overlap between texts, but because Rawls is repeating the same points. Eliminating repetition would make the page count even lower. In some cases, the points being made are really general, as when race is coupled with gender; in some cases they are relegated to footnotes; in no case are they ever central to his discourse. Race, racism, and racial oppression are marginal to Rawls's thought. Merely consulting the indexes of these five books would be enough to establish this truth. Indeed, if a single textual (non)reference could be chosen to summarize and epitomize Rawls's lack of concern about race it is the following startling fact: nowhere in these two thousand pages on justice penned over five decades by the American philosopher most celebrated for his work on social justice is the most important American postwar measure of corrective racial justice—affirmative action—even mentioned. It is not merely that the concept is

not discussed—even the *term* itself never appears!⁴ Such is the whiteness of Rawls's dikailogical world.

And this prescriptive albinism is, as earlier emphasized, complemented by a similarly bleached-out factual picture and corresponding descriptive/explanatory conceptual framework. It is not just a matter of what Rawls does *not* say—the omissions—but of how what he *does* say is conceptualized—the tendentious conceptual commissions. Rawls condemns racism and racial discrimination, of course, and (eventually) lists race as something you do not know about yourself behind the veil. But even (by now) respectable concepts like *institutional racism* never appear in his work, let alone *white supremacy* as a global concept. The marginalization of race in both his explicit normative theory and his (usually more tacit) underlying descriptive theory sanitizes the actual history of the modern world and obfuscates the centrality of white racial domination to its making. No one reading this work by an American would be able to guess, in historian George Fredrickson's (1981) judgment of a quarter-century ago, that "[t]he phrase 'white supremacy' applies with particular force to the historical experience of two nations—South Africa and the United States" (xi).

More than the other multi-racial societies resulting from the "expansion of Europe" that took place between the sixteenth century and the twentieth, South Africa and the United States ... have manifested over long periods of time a tendency to push the principle of differentiation by race to its logical outcome—a kind of *Herrenvolk* society in which people of color ... are treated as permanent aliens or outsiders. (1981, xi–xii)

So the historic reality is that race—white racial privilege and nonwhite racial subordination—has been foundational to the actual "basic structure" of the United States. How theoretically useful is it then going to be in the philosophical investigation of social justice to start from a raceless ideal so remote from this reality?

Moreover, his broader global perspective—pertinent both for his discussion of international issues in *The Law of Peoples* and for what becomes his key reference group of "modern democratic societies"—is similarly idealized. As pointed out above, there is no sense in his discussion of global matters (the natural place for it) of imperialism as a central reality shaping the history of the modern world, leaving a legacy of racial genocide and subordination. The Jewish Holocaust is represented, in keeping with conventional Western wisdom and amnesia, as a unique, "demonic" event (Rawls 1999b, 21) of "manic evil" (Rawls 1996, lxii), linked to the history of Christian anti-Semitism (Rawls 1999b, 19–22), but with no apparent continuity with the West's own racist history in the nonwhite world. Thus he speaks of our

“now knowing” (but not before, seemingly) “that human society admits this demonic possibility” (1999b, 21), and in reviewing comparable evils can apparently only think of the Inquisition and the 1572 Catholic massacre of the Huguenots as examples (21–22). A book like David Stannard’s *American Holocaust* (1992), on the Spanish genocide of Native Americans, is beyond the horizon of Rawls’s comprehension. Indeed, it is surely significant that though the black civil rights struggle is (eventually) mentioned, Native Americans are completely absent from every page of these five books. American slavery is, in the later work, condemned as an evil, and its legacy episodically cited, but the killing and expropriation of indigenous peoples is never referred to. And in a sense, how could it be? Facing up to the fact of the origins of the United States (and not just the United States) as a white settler state established through invasion and conquest (Jennings 1975; Robertson 2005) would explode the foundations of a conceptual framework predicated on treating society as “a cooperative venture for mutual advantage” (Rawls 1971, 4). But—if this is too embarrassingly close to home, too thoroughly disintegrative of the entire framework of assumptions, to be mentioned—nor is there any reference to any of the other epochal crimes of the Western colonial powers, such as the holocaust in the Belgian Congo at the start of the twentieth century that, as Adam Hochschild (1998) suggests, may well have been responsible for the deaths of ten million people. The European “outlaw states” apparently do not include England, since its global empire—the successful (not merely attempted) “subjection of much of the world to its will”—was not being established on European soil. Nor does the Atlantic Slave Trade as an international institution, with its death toll in the millions, appear anywhere in these five books, though most of the Western European powers were involved in it.

The fact is—unthinkable as it may be within Rawls’s framework of assumptions—that in a sense *all* the Western European nations (and their offshoots, such as the United States) were “outlaw states” jointly involved in a criminal enterprise on a planetary scale. The cosmopolitan “Society of Peoples” Rawls seeks (Rawls 1999b) will have to be established in a world fundamentally shaped by what was, in effect, the Western conquest of the “peoples” of the rest of the globe. As Paul Keal (2003) points out in his recent *European Conquest and the Rights of Indigenous Peoples*, “international society was itself a society of empires” (42), and “the expansion of the European society of states to an international society global in scope entailed the progressive dispossession and subordination of non-European peoples” (1), who were “progressively conceptualized in ways that dehumanized them” (21), so that “‘the West’ bears a collective responsibility for historic injustices” (22) of “the loss of life, land, culture and rights” (24).

[T]he expansion of international society cannot be separated from dispossession, genocide and the destruction of cultural identity.... To the extent that [these states] were founded on genocide and dispossession they are morally flawed states and the moral foundations of the international society that is constituted by them is also called into question. (35, 55)

Or as Mark Cocker writes more bluntly:

Europe's encounter with and treatment of the world's tribal peoples is ... in essence ... the story of how a handful of small . . . nation-states at the western extremity of Eurasia embarked on a mission of territorial conquest. And how in little more than 400 years they had brought within their political orbit most of the diverse peoples across five continents. It is ... a tragedy of staggering proportions, involving the deaths of many millions of victims and the complete extinction of numerous distinct peoples. In fact, when viewed as a single process the European consumption of tribal society could be said to represent the greatest, most persistent act of human destructiveness ever recorded. (1998, xiii)

Rawls's failure to cite any of these facts and his corresponding deployment of obfuscatory and apologist categories—all too typical of white political theorists even today, and routine, of course, for his generation—are thus an abdication of both moral and theoretical responsibility, producing a grotesquely sanitized and Eurocentric picture of the history of the last few hundred years, one from which race, racial conquest, and racial atrocity have been whitewashed out.

2.2 Rawls's Eurocentrism

Let me now turn specifically to Rawls's Eurocentrism. That his political philosophy is Eurocentric may seem so trivially and obviously true as to be not even worth mentioning; after all, we are dealing with Western political philosophy, and social contract theory is itself a Western invention. But my point is a deeper one—that even granted these origins, there were conceptual and theoretical moves open to him to extend the scope of the traditional apparatus to address the issues cited above that he refused to make. The Eurocentrism is not the (relatively) innocent one of genealogy (which does not necessarily foreclose subversive creative development) but a systematic ignoring of the experience of the nonwhite political subject, ubiquitously manifest in the “whiteness” of Rawls's perspectives on time and space, his tacit conceptions of the populations he is speaking about and to, and his assumptions about how best to frame their narrative. Rawls's conception is *multiply* Eurocentric. It is not merely that he focuses on Europe, but that he also focuses

on Europeans, and the problems and issues that affect the white population, and not—in his native United States—the problems of blacks and Native Americans. (The former, as we have seen, eventually make a belated appearance, but the latter remain invisible in his writing till his death.) Moreover, he does so within a (sanitized) European conceptual apparatus, ethnically cleansed of its actual discursive history of ethnic cleansing. (And this, to repeat, is why though Rawls's contract is hypothetical and normative rather than descriptive, the factual critique *is* still relevant, since the factual picture presupposed shapes the orientation of the normative inquiry, and the concepts deemed appropriate for it.)

For Rawls, the pivotal political periodization is determined by the origin of political liberalism in “the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries” (1996, xxvi). Internationally, the crucial date for him is the 1648 Peace of Westphalia that supposedly established the beginnings of the international system. It does not occur to him that 1492 might have more resonance for the rest of the world (not to mention his native United States), the date eventually leading to the joint European domination of the planet—the international *racial* system, a.k.a. global white supremacy—and the complementary development of a *racialized* liberalism with one set of rules for whites and another for nonwhites. Within the United States itself, of course, it is the European population that is his focus, albeit in the displaced, abstract, and (ostensibly) general form typical of philosophy in general and social contract theory in particular. One need only ask for whom the contractarian founding as a consensual event is supposed to be an illuminating normative starting point to see that the audience Rawls is tacitly presupposing for his work is really white settlerdom and their descendants. Only for this population could it not be ludicrously inapposite to represent society as actually (not merely ideally) being “a cooperative venture for mutual advantage,” as Rawls suggests we do in *Theory* (1971, 4). Native Americans did not “agree” to be killed and to end up losing 98 percent of their land through “conquest by law” (Robertson 2005) any more than captured Africans “agreed” to be enslaved. Domination and coercion of the nonwhite population are the founding moments for the American (and not just the American) polity, not democratic inclusion and consent. To ignore this basic, framework-establishing, political agenda-setting reality means that, from the very beginning, whether overtly acknowledged or not, one is really addressing oneself to the white population. Nor, as I have tried to demonstrate, is it an adequate reply to say that we are dealing with normative matters, and with ideal theory, so that these admitted (though they are *not* usually admitted) and unhappy truths, deplorable as they may be, need not detain us. Insofar as

the overarching metaphor of the contract paradigmatically models consent (rather than coercion), insofar as the normative agenda is the mapping of an ideal ideal (rather than how ideally to rectify the nonideal), it means that we are *already* located on the conceptual terrain (with its accompanying normative priorities) of the racially privileged population rather than that of their victims.

Indeed, the Eurocentrism is manifest not merely in the evasive idealizations, but even in the main domestic and international nonideal issues with which he chooses to deal. Domestically, Rawls's famous "difference principle," which puts him on the left of the liberal spectrum, is supposed to address the problems of the worst-off in a constrained market society, or "property-owning democracy," as he would later put it (2001). But it does not offer guidance on dealing with the specific problems of the *racially* oppressed (Native peoples' land claims, affirmative action). Rather, it is inspired by the long tradition of European social democracy and really focused on the white working class. But in taking class as the main axis of social disadvantage, Rawls is importing a European sociopolitical framework that is applicable without modification in the United States only through ignoring the nonwhite population and their distinctive experience of systemic racial subordination. He is treating a white settler state as if it were merely a transplant on different soil of a European society. In this respect, he is very much part of a longstanding American political tradition that, as Rogers Smith (1997) has pointed out, follows Alexis de Tocqueville, Gunnar Myrdal, and Louis Hartz in conceptualizing the United States as a liberal democracy free of the caste hierarchies of the Old World, a feat of intellectual evasion accomplished by utilizing orthodox class categories imported across the Atlantic and ignoring the emergence in the New World of a *new kind* of ascriptive social hierarchy, race.

As various political theorists, including myself, have argued, the distinctive feature of New World politics is precisely the *centrality* of race to their make-up, because, of course, they were founded as white settler states and racial slave states. So to marginalize race in your apparatus means that from the very start your intellectual framework is going to be inadequate to comprehending their workings and prescribing justice for them. Rawls, who came of intellectual age in the pre-decolonization 1940s and 1950s, with white Western domination of the world taken for granted, is transparently a product of this political mindset, as his characterization in the 1996 *Political Liberalism* introduction of "race and ethnicity" as "new" political questions (liii) reveals.⁵ Don't white and black abolitionism and native peoples' struggles against white encroachment go back centuries? Aren't they appropriately to be thought of as "political"? But not, of course, from the perspective of a political theory that takes the

European and Euro-American experience as normative, as demarcating the proper boundaries of the field.

As for the global arena, in *The Law of Peoples*, unlike *A Theory of Justice*, Rawls has an entire part of the book dedicated to nonideal theory (1999b, Part III). But the focus is on what Rawls calls—from the perspective of the modern Western democratic nations that are his main reference class—“outlaw states” who “refuse to comply with a reasonable Law of Peoples” and “burdened societies” whose “historical, social, and economic circumstances make their achieving a well-ordered regime ... difficult if not impossible” (90). Again, then, the implicit or explicit perspective is that of the privileged West, the former colonial powers. That these nations could themselves be thought of as “outlaw states” whose record of enslavement, expropriation, and genocide constitutes a massive violation of the “Law of Peoples,” that Third World societies could pre-eminently be “burdened” by the legacy of underdevelopment of an exploitative world economic system established by these very same nations is, as earlier emphasized, excluded by the framework of Rawls’s assumptions. Thus there is a Eurocentric idealization both domestically and internationally, and not merely in the officially “ideal” but even where the nonideal is treated in Rawls’s theory. It is a systemic white idealization away from the ugly empirical nonideal realities affecting the nonwhite population.

2.3 Rawls’s First Argument for Not Dealing with Race: The Classical Tradition

Let us now turn to Rawls’s explanation (cited above) in *Justice as Fairness* for why he does not deal with race. He actually mentions two factors: his focus on ideal theory and his self-location within the “classical” (Western) political tradition. I see this explanation, which is very terse, as unsatisfactory, and I want to disentangle various possible components to it so as to demonstrate this.

To begin with, as Rodney Roberts (2002) has emphasized, it should be noted that on occasion, if admittedly not often and in any detail, the classical tradition *has* dealt with nonideal theory, for example Aristotle on rectificatory justice and Locke on reparations for violations of natural law. So it is not that there is no classical precedent for treating these matters. Moreover—though this is not usually admitted in history of philosophy texts—race is indeed part of the classical tradition in the sense that, at least for the modern period, and possibly even earlier (see Isaac 2004), most of the “classical” modern Western philosophers, such as Hume, Locke, Kant, Mill, Hegel, and others, had racial views that arguably shaped how they intended their principles to be applied to the nonwhite population. (See, for example, Arneil 1996, Mehta 1999, Pitts 2005, Valls 2005.) So if

Rawls's tacit assumption is that race is a new and alien incursion into the classical Western tradition, this is quite wrong. It is precisely because it has been *central* to that tradition in the modern period, even if not currently acknowledged as such, that it is so important to recognize it and correct for its legacy rather than abstracting away from it and pretending it doesn't exist. In effect, his Eurocentrism is compounded, reflexively exacerbated: he uses the Western tradition as his reference point to begin with, and then he conceives of that tradition in an ethnically cleansed and sanitized way only possible if you restrict your attention to the norms governing the treatment of Europeans.

But the second and arguably more significant point is—even if the classic European thinkers had themselves all been blamelessly nonracist—how these principles of the Western tradition were *applied* in the world made by the West, in the Americas, in Asia, in Australasia, in Africa. *A Theory of Justice* was originally interpreted by most commentators as being in the normative spirit of the classic contract, providing an ideal of justice for all societies at all times (except perhaps at low levels of technological development). In this “classical” conception, the contract then provides an Archimedean conceptual and theoretical vantage point from which to adjudicate issues of social justice in a transhistorical and transnational way. But from his essays of the 1980s onward, Rawls began a long and elaborate retreat from such an interpretation. Justice was “political,” not “metaphysical,” the epistemological touchstone was the “overlapping consensus” in our Western tradition rather than eternal truths, and his theory of justice was the theory for *us* (the West), not the world as a whole. But once this shift to the local has been made, race declares itself even more imperatively as a subject that needs to be addressed, since, of course, modern Western societies and the world they made were deeply racist. Racial justice is not a transhistorical issue because racial injustice is limited to the modern period. So if you're taking the long view, *sub specie aeternitatis*, then a case can be made for abstracting away from racial justice. But if your rationale for developing a revisionist contractarianism appropriate to a “political liberalism” is that concern is now explicitly supposed to be focused on the local and contingent rather than the global and transhistorical, then the investigation and adjudication of matters of racial justice has to be *central* for you. So by his own criterion, Rawls is contradicting himself in restricting his ambit of concern to the specific features of the modern Western tradition while simultaneously ignoring one of the most salient features of that tradition.

Finally, Rawls's argument is also problematic because of the tendentious way it defines the “Western” tradition (again, his Eurocentrism at work). Rawls forgets—or perhaps, more likely,

never knew—that there is a long intellectual countertradition of those subordinated by the West contesting their racial oppression. In some cases, for example in the anticolonial theory of Asia and Africa, one can try to partition it from the West. But, to cite only the most obvious example, this cannot be done for African Americans, ineluctably “Western,” and the long history of African American political thought, whether in terms of black nationalism and Pan-Africanism, or black liberalism and black Marxism (Robinson 2000; Dawson 2001; Bogues 2003; Shelby 2005), needs to be seen as an oppositional element *within* this tradition, both shaped by and reacting against it. In the work of David Walker, Martin Delany, Frederick Douglass, W. E. B. Du Bois, Martin Luther King, Jr., Malcolm X, and many others, we have a political tradition for which race and the battle for racial justice have been crucial, whether in terms of abolitionism, anti-Jim Crow, anti-imperialism, or antisegregation. But apart from some ritualistic genuflection at King’s name, Rawls ignores all of this work. In effect, Rawls defines the West so that the West is white and the political problems of the West are limited to the politics of its white members.

2.4 Rawls’s Second Argument for Not Dealing with Race: The Focus on Ideal Theory

So one cannot appeal unproblematically to the intrinsic nature of the “classical” tradition to explain one’s omission of race. The burden of the argument really has to rest heavily on the “ideal theory” component. Accordingly, let us now turn to that aspect.

First, a simple reminder. Ideal theory is not supposed to be an end in itself but is instrumental to the goal of more adequately dealing with injustice. Recall that Rawls himself said that the point of starting with ideal theory was to provide a foundation for the more “urgent” matters of nonideal theory. “[T]he problems of [nonideal] partial compliance theory are the pressing and urgent matters. These are the things that we are faced with in everyday life.” But ideal theory “provides, I believe, the only basis for the systematic grasp of these more pressing problems” (1971, 8–9). Yet thirty years after *Theory*, he had still not moved on to race—surely one of the most pressing, if not *the* most pressing, issues of justice in the American polity. What was keeping him? It could not be a principled refusal (and what would such a principle be, anyway?) to deal with nonideal theory, given both his own earlier contrary declaration and the fact that in *The Law of Peoples* he does broach such matters to a limited extent. So if he could shift to the nonideal for international issues, over which the American polity has limited influence, why could he not do the same for domestic issues of race, which *are* in our power to affect, and which raise so urgently those questions of the “especially deep inequalities” in “men’s initial chances in life”

(Rawls 1971, 7) about which a theory of justice is supposed to be particularly concerned? Why at the end of his life had he still not even begun to tackle this nonideal issue?

It might be urged in reply that criticizing an author for articles and books he did *not* write is a tricky and perhaps even a completely misguided enterprise. Authors know best, it might be insisted, on what they should focus their energies, and they should not be second-guessed. And yet.... And yet I cannot resist pointing out the following. Rawls was for decades at the most prestigious academic institution in the country, at one of the most prestigious philosophy departments in the country, and, post-*Theory*, as the book's fame spread, he was the best-known and most celebrated political philosopher in the country. If anyone ever had an academic bully pulpit from which to influence public policy and intellectual debate—not merely in philosophy, but numerous other fields, given the book's crossover interdisciplinary success—it was John Rawls. Moreover, Rawls grew up in a United States segregated by the 1896 *Plessy v. Ferguson* decision, fought in World War II in a Jim Crow army, went to college at a time when blacks were still largely barred from “white” institutions. The start of his academic career coincided with the birth of the modern (postwar) civil rights movement, the demonstrations and marches organized by Martin Luther King, Jr., and the Southern Christian Leadership Conference in the 1950s, the later more radical movements and ghetto uprisings of the 1960s. Certainly nobody in the United States of the period could have been unaware of segregation, racial subordination, and the struggle against them as problems daily making national headlines. Moreover Rawls knew not merely how white the academy in general was, but how white philosophy in particular was. He knew that if (white) women were underrepresented in his discipline, people of color were virtually completely absent. So why then could he—in the three decades up to his death, enjoying the success of *Theory*—not find the time to write even *one* essay on racial justice? Just *one* essay on how his theory would need to be developed to take race into account? What does this say about his priorities? And, symptomatically, what does it say about white political philosophy in general?

But there is a deeper criticism that hinges on the distinction I drew at the start between an ideally just society in the sense of a society with no past history of injustice and an ideally just society in the sense of a society whose past unjust history has been corrected for. Let us demarcate these as the ideal ideal (ideal theory in ideally just circumstances) and the rectificatory ideal (what is ideally required to remedy past injustices). I suggest that if we think of ideal theory as being able to play an adjudicative role in determining which public policy option is morally superior, it is because we really have the second in mind. In other words, the rectificatory ideal is a goal to be approached,

if only asymptotically, and used as a criterion in determining whether option A or option B more closely approaches it. Thus Rawls writes, in seeming support of this interpretation: “[N]on-ideal theory presupposes that ideal theory is already on hand. For until the ideal is identified, at least in outline ... nonideal theory lacks an objective, an aim, by reference to which its queries can be answered” (Rawls 1999b, 89–90). But as earlier emphasized, this claim of his is problematic since by his own earlier avowal, he is talking about the *ideal* ideal. And the problem, I would claim, is that the ideal ideal cannot in general play this role because it represents a goal located in a different conceptual space, on an alternate timeline to which we have no access. We would have to abandon our present social order and build a new “basic structure” from scratch, from the ground up. (And not merely with reference to social structures and political institutions, but with new people, unmolded by the previous unjust order.)

We can see this simply by considering how the ideal ideal would play itself out in the context of trying to correct for racial injustice. The Rawlsian ideal, starting from ground zero, is a society with no history of racial (or any other kind of) injustice. So all we need is appropriate antidiscrimination legislation to make sure that this injustice does not enter the basic structure. But not only would this produce a racism-free polity, it would produce a *race-free* polity. As the huge and ever-growing body of literature over the last decade in critical race theory and critical white studies demonstrates, race is socially constructed, and without systemic discrimination, race would not even have come into existence in the first place. So it is not merely that we would have a basic structure without systemic racism, we would have a basic structure without races existing as social entities at all. It is not merely that there would be no need for rectificatory public policy measures like affirmative action and, more radically, reparations, but that there would be no identifiable groups to whom these policies could even be targeted. By contrast, Rawls’s ignorance and naivety about race are manifested in the fact that both in *Theory* and *Justice as Fairness* he represents race—and even culture!—as “fixed” and “natural.” Admittedly, when he wrote *Theory* he did not, as we do, have the benefit of the aforementioned huge body of literature in the left academy on the construction of race. But even so, Ashley Montagu’s well-known *Man’s Most Dangerous Myth: The Fallacy of Race* (1997) had been around since 1942, and has gone through numerous editions ever since. It would have been available to Rawls, making clear to him that race is not natural at all but social.

Now how can this ideal ideal—a society not merely without a past history of racism but without races themselves—serve to adjudicate the merits of competing policies aimed at correcting

for a long history of white supremacy manifest in Native American expropriation, African slavery, residential and educational segregation, large differentials in income and huge differentials in wealth, nonwhite underrepresentation in high-prestige occupations and overrepresentation in the prison system, contested national narratives and cultural representations, widespread white evasion and bad faith on issues of their racial privilege, and a corresponding hostile white backlash against (what remains of) those mild corrective measures already implemented? Obviously, it cannot. As Thomas Nagel concedes: "Ideal theory enables you to say when a society is unjust, because it falls short of the ideal. But it does not tell you what to do if, as is almost always the case, you find yourself in an unjust society, and want to correct that injustice" (2003a, 82). Ideal theory represents an unattainable target that would require us to roll back the clock and start over. So in a sense it is an ideal with little or no practical worth. What is required is the nonideal (rectificatory) ideal that starts from the reality of these injustices and then seeks some fair means of correcting for them, recognizing that in most cases the original prediscrimination situation (even if it can be intelligibly characterized and stipulated) cannot be restored. Trying to rectify systemic black disadvantage through affirmative action is not the equivalent of not discriminating against blacks, especially when there are no blacks to be discriminated against. Far from being indispensable to the elaboration of non-ideal theory, ideal theory would have been revealed to be largely useless for it.

But the situation is worse than that. As the example just given illustrates, it is not merely a matter of an ideal with problems of operationalization and relevance, but of an ideal likely to lend itself more readily to retrograde political agendas. If the ideal ideal rather than the rectificatory ideal is to guide us, then a world without races and any kind of distinction-drawing by race may seem to be an attractive goal. One takes the ideal to be colorblind nondiscrimination, as appropriate for a society beginning from the state of nature, and then—completely ignoring the nonideal history that has given whites a systemic illicit advantage over people of color—conflates together as "discrimination" all attempts to draw racial distinctions for public policy goals, no matter what their motivation, on the grounds that this perpetuates race and invidious differential treatment by race. In the magisterial judgment of Chief Justice John Roberts in the June 2007 Supreme Court decision on the Seattle and Louisville cases where schools were using race as a factor to maintain diversity, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race,"⁶ a statement achieving the remarkable feat of depicting not merely as true, but as *tautologically* true, the equating of Jim Crow segregation and the attempt to remedy Jim Crow segrega-

tion! What is ideally called for under ideal circumstances is not, or at least is not necessarily, what is ideally called for under nonideal circumstances. Claiming that all we need to do is to cease (what is here characterized as) discrimination ignores the differential advantages and privileges that have accumulated in the white population because of the past history of discrimination.

So the defense in terms of ideal theory is doubly problematic. In the first place, ideal theory was never supposed to be an end in itself, but a means to improving our handling of nonideal matters, and the fact that Rawls and his disciples and commentators have for the most part stayed in the realm of the ideal represents an evasion of the imperative of dealing with what were supposed to be the really pressing issues. And in the second place, it is questionable in any case how useful the ideal ideal in the Rawlsian sense is or ever would have been in assisting this task. So it is not merely that ideal theory has not come to the aid of those dealing with nonideal injustice but that it was unlikely to have been of much help when and if it ever did arrive.

3. Retrieving Contractarianism

Does this mean, then, that contractarianism is a completely useless apparatus for the exploration of these matters of racial justice? My claim would be that it is not, that it can indeed be retrieved, but that a fundamental modification of some of its crucial assumptions is necessary.⁷ As argued throughout, the problem is the methodological focus on ideal theory. So what we need to do is to modify the apparatus to deal with nonideal theory. The way to do this is to reject the key assumption of a founding moment that is consensual and inclusive, which—whether taken literally or metaphorically—is obviously hopelessly inappropriate as a characterization of the actual origins of modern polities, whether in the West or elsewhere. Rousseau's demystificatory "domination contract" of *Discourse on the Origins of Inequality* (1997) should be the model for us instead, since it directs our theoretical attention from the start to domination and exploitation as central to the sociopolitical order. We can then see Rousseau's "class contract" and its conceptual descendants, Pateman's "sexual contract" (Pateman 1988) and my "racial contract" (Mills 1997), as all falling within an alternative undeveloped strain of contract theory, one which retains the key "contract" ideas of human moral equality and the human creation of the sociopolitical order, but drops the misleading additional ideas with which they are standardly conflated of *socially recognized* moral equality and *equal consensual* input into this creation. Correspondingly, the moral framework would then be centered on the imperative of eliminating the structures of sociopolitical domination—whether of class, gender, or race—

that preclude the realization of genuine equality for the majority of the population.

From the cognitive vantage point of this alternative contractarianism, we would be able to see more clearly what has always been at least dimly visible: that the orthodox contract apparatus, far from being methodologically neutral, in fact embeds within its framework a *substantive* and deeply wrong vision of the polity as *consensual* and *nonoppressive*. Making oppression central would mean that from the start we would be locating ourselves unequivocally on the terrain of nonideal theory. The normative project would then no longer be the adjudication of competing versions of an ideally just social order, but, rather, the adjudication of competing policies for redressing social injustice. The evasions in the Rawls literature would no longer be possible—and that, obviously, would be a very different variety of contractarianism (Pateman and Mills 2007, chs. 3, 4, 8).

Notes

A much shorter and significantly different version of this paper was earlier published as Mills 2006.

¹ See, for example, the contributions by Allen (2004), Foster (2004), Shelby (2004), and Shiffrin (2004) to the “Equal Citizenship: Race and Ethnicity” section of the *Fordham Law Review*’s April 2004 special issue on Rawls.

² I mean by this not that other oppressions and injustices do not exist or are unimportant but, rather, that both gender and class, for example, predate the modern world as social structures and social identities. Race by contrast—at least in the conventional scholarly judgment (but see Isaac 2004)—is distinctively modern, and, insofar as it has facilitated slavery and genocide at a time when human moral equality was supposed to have been broadly established, is distinctively horrific in the blatancy of the degree of its oppression.

³ In citing possible explanations, Rawls does say “Truman once described the Japanese as beasts and said they should be treated as such.” But he then immediately goes on to write “how foolish it sounds now to call the Germans and the Japanese as a whole barbarians and beasts” (1999b, 100), which makes it doubtful that he saw this epithet as racial on Truman’s part. For a more informed discussion of the role of race in the Pacific War, see Dower 1986.

⁴ Nagel (2003a, 82) claims that Rawls, in a personal conversation, expressed “his view of the importance of defending the constitutionality of affirmative action,” but concedes that “he never referred to it in his writings, so far as I know, except obliquely [in one of the passages cited above in *Justice as Fairness*].” In a comment presumably meant as exculpatory, Nagel points out that affirmative action “only began to be a major issue in the early 1970s ... and the *Bakke* case was not decided until 1978,” well after *Theory* appeared. But he does not answer the obvious question of why Rawls did not address the issue in any of his 1980s’ essays, or in his 1993 book *Political Liberalism*, or, for that matter, why the *Justice as Fairness* reference is “oblique” rather than direct.

⁵ It is, of course, even more strikingly revealed in his failure, as earlier pointed out, to condemn the *extra*-European conquests of the European empires. Europeans conquering other European nations is bad; Europeans conquering non-European nations is apparently not even seen by Rawls as conquest (but, presumably, "discovery," etc.).

⁶ Chief Justice John Roberts, quoted in "Justices, 5–4, Limit Use of Race for School Integration Plans," *New York Times*, June 29, 2007, A1.

⁷ But for alternative approaches, see Shelby 2004 and Shiffrin 2004.

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