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COLOR-BLINDNESS IN RAWLS'S THEORY OF JUSTICE

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COLOR-BLINDNESS IN RAWLS'S THEORY OF  
JUSTICE

A Master's Thesis

by  
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May 2019



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**COLOR-BLINDNESS IN RAWLS'S THEORY OF JUSTICE**

**The Graduate School of Economics and Social Sciences  
of  
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**by**

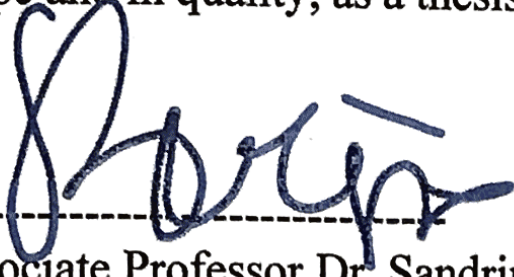
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**In Partial Fulfillment of the Requirements for Degree of  
MASTER OF ARTS IN PHILOSOPHY**

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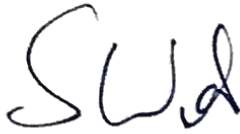
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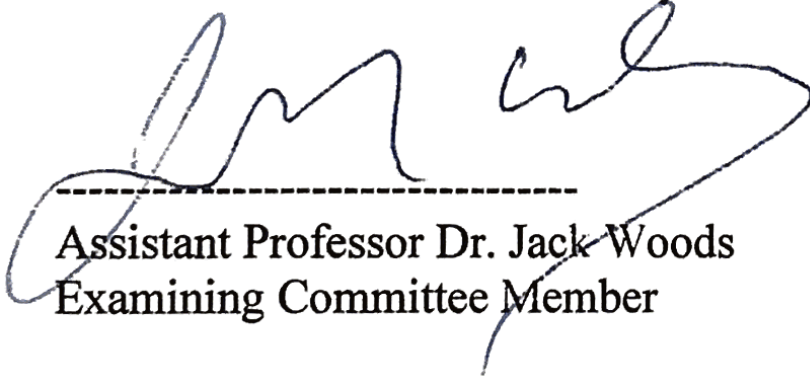
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## **ABSTRACT**

### **COLOR-BLINDNESS IN RAWLS'S THEORY OF JUSTICE**

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I argue that Rawls's theory of justice cannot be a guide to rectify or even to address racial injustice. While critics of Rawls's theory do not particularly focus on color-blind discourse, my critique builds on this problematic feature of Rawls's account. In particular, the original position, a central element of the motivation for Rawls's account, is constructed from a color-blind perspective. For the case of racial injustices, any ideal drawn from a color-blind perspective cannot be of any help, since it emphasizes equality and sameness of all human beings. This serves to cover up the deep causes of racial inequalities and contributes to maintenance of racial structure in society. In order to illustrate my point, I use Eduardo Bonilla-Silva's conceptualization of color-blindness as "color-blind racism", which makes clear the negative impact of a focus on egalitarian considerations. Surely, Rawls's conception of a perfectly just society is taken by him as a part of ideal theory. Yet, even though questions of racial injustices are part of nonideal theory, the fact that his ideal theory is the foundation of his normative theory renders this defense questionable, as Charles Mills also emphasizes. This is because it suggests that our actual society would become more just, if it approximates to his ideal society. And since ideal society is a color-blind one, my worry is that Rawls's normative account is also color-blind and would give us a society where racial structures remain intact and keep producing racial inequalities.

Keywords: Color-blind racism, Race, Racial Justice, Rawls, Theory of Justice

## ÖZET

### RAWLS'UN ADALET TEORİSİNDE RENK KÖRLÜĞÜ

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Bu tezde Rawls'un adalet teorisinin ırka dayanan adaletsizlikleri düzeltme ve hatta onları ele alma konusunda bize rehberlik edemeyeceğini savunuyorum. Rawls'u eleştirenler renk-körlüğü söylemine vurgu yapmazlarken benim eleştirimin odağında bu sorunsal bulunuyor. Rawls'un teorisinin temel öğelerinden olan başlangıç durumu [*original position*] renk-körü bir perspektif ile kurulmuştur. Irka dayanan adaletsizlikler söz konusu olduğunda renk-körü bir perspektifin ürünü olan hiçbir ideal faydalı olmayacaktır, çünkü bu tür idealler bütün insanların eşitliğine ve aynılığına vurgu yaparlar. Bu da ırksal eşitsizliklerin kökenindeki asıl sebepleri gizleyerek toplumdaki ırksal yapının sürdürülmesini sağlar. Argümanımı açıklamak için Eduardo Bonilla-Silva'nın kavramsallaştırdığı "renk-körü ırkçılık" fikrini kullanacağım, çünkü bu kavram egaliteryan yaklaşımlar üstüne odaklanmanın olumsuz etkisini açığa çıkarıyor. Rawls'un mükemmelen adil toplum düşüncesi kendisi tarafından ideal teori kapsamında alınmaktadır; lakin ırka dayanan adaletsizlikler ideal olmayan teorisinin alanı olsa da Rawls'un ideal teorisinin normatif teorisinin temelini oluşturduğu gerçeği, Charles Mills'in de vurguladığı gibi, bu savunmayı geçersiz kılmaktadır. Bunun sebebi, ideal ve normatif teori arasındaki bu ilişkinin ardında yaşadığımız toplumun ideal toplumla benzeştiği oranda adil olacağı önermesinin bulunmasıdır. İdeal toplum renk-körü bir toplum olduğundan, bu konudaki endişem Rawls'un normatif teorisinin de renk-körü olduğu ve bu yüzden bize vereceği toplumda ırksal yapıların olduğu gibi kalacağı ve ırka dayanan eşitsizlikler üretmeye devam edeceğidir.

Anahtar Kelimeler: Adalet Teorisi, Irkçılık, Rawls, Renk-körü Irkçılık

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## 1. INTRODUCTION

Racial justice is a fairly unexplored concept in philosophy, even though it is among the most frequently used terms in everyday discourse (Mills, 2018a: 69). Various theories of justice, such as Rawlsian, libertarian, utilitarian, communitarian, define the broad category of ‘social justice’, which in theory should encompass racial justice, but does not, however, adequately take racial justice into account (Mills, 2018a: 69). The reason for this seems to be that these theories are constructed within a worldview that is the product of a racially structured world. As James Baldwin wrote in his book *No Name in the Street* “...it must be remembered —it cannot be overstated— that those centuries of [racial] oppression are also the history of a system of thought...” (1972: 99). Western political philosophy seems to produce its works from within a racialized system of thought, and as long as it does not put racial injustice at its center while theorizing about justice, and aspires to an idealism focusing on universalism, formal equality and so on, it does nothing to rectify the racial injustice that is deeply rooted in modern societies. The proposal or even the requirement to single out the case of racial injustice is based on the peculiarity of it, in the sense that racial injustice shapes the modern world in a way that no other category does; “in so far as ‘race’ becomes the visible marker of the superiority and inferiority, biological or cultural, that justifies European rule” (Mills, 2018a: 78). Charles Mills (2018a: 77-78) explains this in the following way:

Different European ethnic groups, tribes and nations eventually become ‘racially’ subsumed into a pan-European ‘whiteness’, and this identity becomes crucially determinant for the world-shaping projects of imperialism, colonialism, Atlantic slavery, white settlement, and the displacement and genocide of indigenous populations. Correspondingly, Native Americans, Africans and Australians from thousands of different cultures and civilizations and traditions become respectively ‘Indians’, ‘Negroes’/ ‘blacks’ and ‘blacks’/‘aborigines’, positioned as subordinate to ‘whites’. Unprecedented in its global reach, in the power differentials between conquerors and conquered, and the thoroughness of the discursive creation and inculcation of a planetary norm of superiors and inferiors, the transnational Euro-polity turns ‘race’ into the centrally structuring intersubjective category of the modern world order. [...] there is both ‘racial’ domination of Europe over non-Europe, and ethno-national and inter-imperial conflict within the racialized category of Europeans (sometimes themselves internally racially demarcated: Nordics, Alpines, Mediterraneans). But in these disputes and wars, the inferiority of the non-European is generally taken for granted, a common premiss that can be shared by all sides.

So, racial injustice is deeply embedded in the modern world order, thus if our aim is to theorize about justice, the discourse of political philosophy has to be challenged in a way that it recognizes and tries to extend its own limited scope to encompass racial justice, and this is possible if race is depicted as a crucial and even central question of justice. Since “ignoring of racial injustice has so profoundly shaped Western political philosophy”<sup>1</sup>, self-consciously taking it into account would require a radical rethinking of it (Mills, 2018a: 79-80). Critical philosophy of race is a body of theory which aims to fulfill this duty. It examines racial issues from an *anti-racist* point of view, thus it breaks away from “the earlier *uncritical* (that is, racist)” works of philosophy concerning racial matters (Mills, 2018a: 69).

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<sup>1</sup> By “Western political Philosophy”, Mills means both analytic and Continental political philosophy; as in another essay of his, “Black Radical Kantianism”, he writes: “Yet despite the shaping of the modern world by European colonialism and imperialism, by African slavery and expropriative white settlement, which has made race an integral constituent of the modern polity’s ‘basic structure’ (Mills 1997), it is not thematized by this literature. If racial justice has been central to the normative theorizing of people of color, and certainly of blacks, it has been almost completely absent from mainstream ‘white’ justice theory, whether analytic or Continental.” (Mills, 2018b: 25)

My focus in this dissertation is racial injustice; by scrutinizing Rawls's theory of justice, I will try to show how his theory is shaped within the discourse of modern world order which Mills talks about, and how and why it fails to be a guide for achieving racially just societies. Because, the best way to show that racial justice is ignored by mainstream philosophers is to pick the most famous and demonstrate the lack or unsatisfactory discussion of race in their work. Rawls, particularly, his *A Theory of Justice*, seems to be the perfect candidate in this sense. His theory of justice and its applicability to racial injustices have been questioned by many philosophers including Charles Mills and Elizabeth Anderson. Mills argues that Rawls's theory of justice, as it is, cannot be used to fight against racial injustice, because it neglects the history of racial domination. So, it requires some radical changes in order to be applicable to racial injustices. His proposal is to abandon Rawls's ideal theory conception altogether by rejecting the core assumption of a consensual and inclusive founding moment of society and commit to nonideal theory by utilizing instead Rousseau's "domination contract", which puts domination at the center of the sociopolitical order (Mills, 2009: 181-182).<sup>2</sup> In Mills's proposed approach, the moral framework would be focused on "the imperative of eliminating the structures of sociopolitical domination that preclude the realization of genuine

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<sup>2</sup> My primary aim in this dissertation is simply to show that Rawls's conceptualization of justice stems from a color-blind perspective and thus cannot be a guide for racial justice. Rawls's principles, especially his first principle stipulating equal rights and liberties, seem to be all fair and not objectionable per se. However, the problem is that Rawls arrives at these principles by using a theoretical tool representing color-blind ideals, that is, original position, and in this way, he assumes a consensually created impartial state. This leaves out the history of exploitation, oppression and domination from the conception of justice. So, republican framework might be a better fit to deal with the issue of race, due to its emphasis on non-domination and awareness of slavery in history. For instance, Alan Thomas (2012) favors a republican reading of Rawls, and his approach might give us better results concerning racial justice. Charles Mills's revision of Rawls's theory, by turning his contract into a nonexclusive and coercive contract (for certain populations), also might give us better results. However, considering my primary aim here, a detailed discussion of such works is beyond the scope of this dissertation.

equality for the majority of the population” (Mills, 2009: 181-182). And “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” (Mills, 2009: 182).

Elizabeth Anderson rejects Rawls’s theory in all its respects. She gives three reasons to reject Rawlsian ideal theory. The first is the “need to tailor our principles to the motivational and cognitive capacities of human beings” (Anderson, 2010: 3). The second is the risk of “leaping to the conclusion that any gaps we see between our ideal and reality must be the cause of the problems in our actual world, and that the solution must therefore be to adopt policies aimed at directly closing the gaps.” (Anderson, 2010: 4). For instance, if the ideal is a color-blind society, then the solution would wrongly seem to be abandonment of race-conscious policies, and an emphasis on individualism (Anderson, 2010: 4). And the third reason is that “starting from an ideal theory might prevent us from recognizing injustices in our actual world.” (Anderson, 2010: 5).

Tommie Shelby, on the other hand, defends the view that we can successfully use Rawls’s method to rectify racial injustices without applying any radical modifications, and argues that ideal theory is required to guide nonideal theory. His main point is that fair equality of opportunity principle, if realized “in a well-ordered society in which the basic liberties were secure and their fair value guaranteed, would mitigate, if not correct, these race-based disadvantages by insuring that the life prospects of racial minorities are not negatively affected by the economic legacy of racial oppression.” (Shelby, 2004: 1711). Shelby takes fair equality of opportunity as addressing “one of the most urgent concerns” of disadvantaged races, that is, “to

ensure that their life prospects are not unfairly diminished by the economic inequalities that have been created by a history of racism” (2004: 1712). For him, a successful implementation of this principle in the society could even reduce “the resentment for past racial injustice”, and make their claims to reparations less important and less urgent, “because they would no longer be as materially disadvantaged as they are now”, it might even lead to a complete abandonment of these claims, even though these claims would still be valid (Shelby, 2004: 1712; 2013:159).

Contra Shelby, I argue that achieving racial justice is only possible by implementing race conscious policies that undermine the racial structure. The contribution of a realization of Rawls’s theory to the benefit of racially disadvantaged groups would, at best, be in economic terms, but economic injustice is only a part of racial injustice. Corrective justice, including reparations, affirmative action policies, and recognition, is a crucial constituent of successful ways of mitigating racial injustices. Reducing racial justice to economic justice does not take the complexity of racial injustices into account. Realization of fair equality opportunity might make the members of disadvantaged races financially better-off, as Shelby maintains, but this would not suffice to better their position sufficient vis a vis the dominant race. In fact, the belief that racial injustice can be reduced to economic injustice, contributes to the maintenance of the existing racist structure. The applicability of Rawls's position to gender-related injustices has also been questioned. Susan Moller Okin (1987) emphasizes Rawls’s silence on injustice between sexes but holds that we can revise Rawls’s theory in the way that it will be sensitive to gender-related injustices, in particular injustice within family. Thus, she

says, we can work within Rawlsian framework to offer a solution to the injustices between sexes in gender-structured societies. Even if her solution could work for gender-related injustices, similar remedies will not work for racial injustice.

I will argue, like Mills and Anderson, that Rawls's theory of justice cannot be a guide to rectify or even to address racial injustice. Critics of Rawls's theory have somewhat ignored color-blind discourse, whereas my critique builds on this problematic feature of Rawls's account. In particular, the original position is constructed from a color-blind perspective. For the case of racial injustices, any ideal drawn from color-blind perspective cannot be of help, since it emphasizes the equality and sameness of all human beings. This serves to cover up the deep causes of racial inequalities and contributes to the maintenance of racial structure in the society. In order to illustrate my point, I use Eduardo Bonilla-Silva's conceptualization of color-blindness as "color-blind racism", which makes clear the negative impact of a focus on egalitarian considerations. Now Rawls's conception of a perfectly just society is taken by Rawls as falling under the project of ideal theory, as he himself admits in *A Theory of Justice*. Yet, even though questions of racial injustices are part of nonideal theory, the fact that his ideal theory is the foundation of his normative theory renders this defense questionable. Why is Rawls's theory color-blind racist? The first reason concerns the liberal framework he works within. Since the liberal framework sees the sociological reality of race "as an artificial overlay on more fundamental constituents of the self", it is not able to take the particularity of being a member of a certain race into account (Alcoff, 2001: 269). This is because it aims for a general analysis which eliminates the particular contours of our actual non-ideal state. The liberal approach represents a way of thinking which

sees social differences such as race as the source of inequalities among people, whereas it is the racial/racist structure of a society that assigns meanings to such differences.

The second reason Rawls's theory is color-blind racist is that his normative theory of how a society *ought to be*, or more properly what individuals should think and do in the nonideal circumstances, is derived from his ideal theory of a perfectly just society. This suggests that our actual society would become more just only if it approximates to his ideal society. In short, ideal theory should function as a guide for nonideal theory. But if I am right that his theory is color-blind racist, then it is problematic to attempt to base our non-ideal improvements on approximating ideal theory. We risk, by doing so, aggravating existing injustices by neglecting their non-economic source.

The third reason is about the scope of Rawls's understanding of inequality, which seems to be limited to -or at least focuses on- economic inequality. This concerns Fair Equality of Opportunity Principle and the Difference Principle, which aim to mitigate the inequalities among citizens, which arise from their place in the society determined by factors such as being born into a socially advantaged/disadvantaged group, as a member of a wealthy/poor family, and so on, which he labels as "brute luck", by redistribution. I believe his distributive account reduces racial injustices to economic injustices, and thus again is placed within a color-blind discourse, as such a reduction masks the real source of economic inequalities, which is related to and produced by racial structure. In this way, while redistribution might make racially disadvantaged financially better-off, it does not

challenge the racial structure, rather by reducing racial injustice to economic, it contributes to the maintenance of this structure.

In sum, I argue that Rawls's theory of justice is color-blind racist for three reasons. It is firstly because of the liberal framework he works within, which shapes his conception of justice and the tool he picks to arrive at this conception, that is, the original position which represents color-blind ideals. Secondly, his normative theory stems from his ideal theory, which indicates that the more our actual society comes closer to Rawls's ideal society, the more just it becomes. This reason is particularly important, since it invalidates the defense that Rawls's theory is ideal, and the issue of racial injustices belongs to the domain of nonideal theory. The third and final reason is that Rawls's theory of justice primarily focuses on economic inequalities. His redistributive account reduces racial injustices to economic ones, thus again works within color-blind discourse, since it disguises racial problems as economic problems.

In order to detail and clarify my criticism, in the following section, I will briefly explain the main tenets of Rawls's theory of justice, I will particularly elaborate on the original position, as it is the most crucial part of the theory.

## **2. RAWLS'S THEORY OF JUSTICE**

Rawls's theory of justice is guided by "the ideal theory determination of social justice for a *perfectly just society*" and is not about the everyday sense of the term justice, which concerns the *rectification of injustices in unjust societies* (Mills, 2018a: 83). Rawls himself considers that urgent injustices, such as racial ones, are placed in the domain of non-ideal theory, not of the ideal theory (Mills, 2018a: 83).



However, ideal theory is presumed to provide us with the guidelines we need for non-ideal theorizing (Mills, 2018a: 83); and it falls short of its duty as the picture of the perfectly just society fails to give us the tools to evaluate and correct actual injustices. So even if Rawls's exclusion of racial injustice strives to be a principled one, Mills argues that it is rather contingent and determined by the reflection of the racialized world order onto philosophy (2018a: 83):

...the contingent shaping of Rawlsianism, and more generally, liberalism, [...] white domination, resulting in a liberalism [...] that ignores its own history of racism and the need to redress it, above all, through developing as a central strand of social justice theory a theorization of corrective justice. My claim is, in other words, that the non-transition over nearly half a century from ideal theory for well-ordered societies to non-ideal-theory-as-corrective-justice for what I have called 'ill-ordered societies' (Mills 2017) is not accidental, not adventitious, but itself a manifestation of group privilege, and the dominant maleness and overwhelming whiteness of the profession (about 97 per cent in the United States, almost 100 per cent in the United Kingdom).

My overall argument runs along very similar lines to Mills's observations; and the most crucial part of it is the duty of guidance for non-ideal theory that is ascribed to ideal theory. Rawls's theory is a product of color-blind discourse and aspires to color-blind ideals; and since it is supposed to guide us in our non-ideal theorizing about racial injustices in actual societies, it turns out to be useless. That is why if we search for a theory of justice, we should look for one that recognizes and demarcates the racial injustice, and so save itself from color-blind racism.

To explain and elaborate on my argument, I will give a brief summary of Rawls's theory of justice. For Rawls, "the primary subject of justice is the basic structure of society", and he thinks of society as a social contract in the hypothetical sense (2001: 65). Thus, the starting point of Rawls's theory of justice is an initial situation where rational parties deprived of any inequalities choose the best

organization of society for all, that is, a perfectly just society. In other words, Rawls thinks of an initial situation where every rational person is equal and free, and they agree on a system of cooperation, which is going to be for the benefit of all.

In this initial situation, people are said to be in the original position; they are free and equal individuals, who stand in fair relations to each other (Rawls, 1999: 12). Rawls emphasizes that original position is not to be understood “as an actual historical state of affairs” but it is simply “a purely hypothetical situation” designed to arrive at a particular conception of justice (1999: 11). In the original position, “no one knows his place in society, his class position or social status, nor does any one knows his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like”, even “their conceptions of the good or their special psychological propensities” are not known to them (Rawls, 1999: 11). Because “knowledge of particulars” would bias the outcome of agreements by morally arbitrary contingencies, since these social or natural contingencies would provide some parties with higher bargaining power (Shelby, 2004: 1699). That is to say, parties in the original position choose the principles of justice behind a veil of ignorance, which guarantees that no person is advantaged or disadvantaged while choosing the principles “by the outcome of natural chance or the contingency of social circumstances” (Rawls, 1999: 11).

The original position is the first step towards the constitution of an ideally just society. Rawls states that the first choice people are going to make in the original position is of the first principles of a conception of justice, because only then they can apply these principles to basic structure of society, to regulate and reform the institutions (1999: 11-12). The two principles of justice that Rawls thinks will be

agreed on in the original position are the following. The first principle asserts the equal right of each person to basic liberties, and it is considered to be the most important principle (Rawls, 1999: 52). The second principle consists of the Fair Equality of Opportunity Principle and the Difference Principle, which respectively state that everyone should be able to get at existing opportunities no matter where they are situated in the society as a result of “social lottery”, and that social and economic inequalities are only permissible if they make the condition of the least advantaged better, who are worst-off as a consequence of the “natural lottery” (Mills, 2013: 5). With the combination of these two principles Rawls aims to reduce the effects of “social contingencies and natural fortune” by redistribution (1999: 63).

The general conception of justice from which Rawls derives these two principles is that “all social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.” (1999: 54). Under this conception of justice, injustice is defined as inequalities which do not benefit all (Rawls, 1999: 54).

After agreeing on a conception of justice, parties can further choose a constitution and a legislature in compliance with the principles of justice they have chosen (Rawls, 1999: 12). One’s social situation is just, if it is determined by this process of hypothetical agreements which they “have contracted into the general system of rules” (Rawls, 1999: 12). Since people in the original position would have agreed upon the principles of justice, when social institutions comply with these principles, they “can say to one another that they are cooperating on terms to which they would agree if they were free and equal persons whose relations with respect to

one another were fair” (Rawls, 1999: 12). The common acknowledgement of this fact would be “the basis for a public acceptance of the corresponding principles of justice” (Rawls, 1999: 12). At this point, Rawls underlines that this hypothetical process conducted in the original position cannot be thought of as actually applying to society, as “no society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense”, since in any given society, people find themselves in a certain position in that society, which has material effects on their life prospects (1999: 12). However, his inclination is still that the closer a society can come to be a voluntary scheme as described by the original position, the more just of a society it becomes (Rawls, 1999: 12). That is, for Rawls, a society becomes more just to the degree of its approximation to the hypothetical situation described in the original position.

In short, Rawls’s theory of justice tries to construct an account of justice by social contractarian approach which takes society to be an agreement of all its members in hypothetical sense. So, his aim is to come up with a hypothetical agreement that every individual in a society would agree upon, and in order to do that he uses the idea of original position, where nobody knows their place in the society. The idea behind this is that only when individuals are deprived of the knowledge of their social position they can act impartially, otherwise their decision would be impaired. I argue that this way of thinking, that is, choosing a device like original position to establish an account of justice, speaks from a color-blind perspective and thus his theory of justice is color-blind racist.

For this reason, in the next section, I will dwell on the concept color-blind racism. I will briefly describe the four frames of color-blind racism: *abstract*

*liberalism, naturalization, cultural racism* and *minimization of racism*. I will provide examples for each of them, and then in the light of the frame of abstract liberalism, I will briefly introduce in what aspects Rawls's theory can be characterized as color-blind racist.

### **3. COLOR-BLIND RACISM**

In this section I will explain what color-blind racism is, as conceptualized by Eduardo Bonilla-Silva<sup>3</sup>; but firstly, I will clarify the concepts of *race*, *racial structure* and *racial ideology*. *Race*, like class and gender, is a social category that is constructed but “has a *social* reality”; that is, after the category of *race* is created, “it produces real effects on the actors racialized as ‘black’ or ‘white’” (Bonilla-Silva, 2014: 8-9). A social structure, namely, a racialized social system or *racial structure* is founded on this constructed category of race, which produced systemic advantages for Europeans who became “white”, and systemic disadvantages for non-Europeans, who became “nonwhite” (Bonilla-Silva, 2014: 9). “Racial social systems, or white supremacy” extended to all societies where Europeans have reached, thus Bonilla-Silva sees the racial structure of a society as “*the totality of the social relations and practices that reinforce white privilege.*” (2014: 9). And racial structures are sustained even after the realization of the fatuity of the category of race, because of the fact that it benefits the dominant race (Bonilla-Silva, 2014: 9). In order to keep this racial structure intact and thus continue to benefit from it, the dominant race

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<sup>3</sup> Bonilla-Silva specifically refers to the context of the United States, which is also my main focus throughout this paper, since I believe that studying the North American case could provide a useful framework to look at racism in more general terms. I believe that Bonilla-Silva's conceptualization of color-blind racism is applicable globally, first of all to all societies where white supremacy is present, and also to other societies dominated by other “blindnesses”. For instance, as sociologist Barış Ünlü (2018) noted, “ethnic blindness” might be used in a similar way for the Turkish case.

develops rationalizations to explain the racial order, which constitute their racial ideology (Bonilla-Silva, 2014: 9).

Even though the members of the dominant race, or whites, are divided by their “class, gender, sexual orientation, and other forms of ‘social cleavage’, still all of them regardless of their various structural positions benefit from the ‘racial contract’<sup>4</sup> in Mills’s terms” (Bonilla-Silva, 2014: 10). Along the same lines, even though not all whites endorse color-blind racism, most do, and it is essential for maintaining white privilege (Bonilla-Silva, 2014: 10).

Racism is a form of social organization that puts subjects in common social locations (Bonilla-Silva, 2015: 1360). In the United States, after the Jim Crow Era, a new type of racism has emerged, which Bonilla-Silva calls *color-blind racism*. It is the racial ideology “based on superficial extensions of the principles of liberalism” to racial issues which produces nonracial explanations for all racial affairs (Bonilla-Silva, 2015: 1364). Racial inequality, under color-blind racism, is still produced in a systemic way, however, the dominant practices that produce it are no longer open, they are rather invisible, and seem to be nonracial (Bonilla-Silva, 2015: 1363).

One fitting example here is the penal system in the US, as Michelle Alexander (2010), in her book *The New Jim Crow*, argues that incarceration practices replace the more open Jim Crow laws. Ava DuVernay’s documentary *13th* (2016), which also stars Michelle Alexander and reinforces her argument, revolves around a similar issue. The main argument of the documentary is that the 13<sup>th</sup> Amendment to the US Constitution, which formally ended slavery, provided a legal gap, which is

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<sup>4</sup> Charles W. Mills (1997) replaces the traditional social contract with “racial contract” which describes the contract as being made by and for white people, so as excluding nonwhites, and is superior to raceless social contract as it acknowledges white supremacy as a sociopolitical system and thus can describe the society more accurately. Although not all whites have signed the racial contract, all of them benefit from it.

still used to incarcerate and to make black people work for free. The 13th Amendment states: “Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.”<sup>5</sup> This means, The 13<sup>th</sup> Amendment allows slavery under conviction. And when the Southern economy collapsed after the abolition, Southerners found the solution in mass incarceration of black people for “crimes” such as idleness, so that they can provide them free labor.

The color-blind rational is apparent in explanations like “It’s not because you’re black that you can’t vote, it’s because you have a criminal conviction”, “It is not about race, it is because they are criminals”. Furthermore, color-blind appeals such as “I don’t see color, I only see people”, “We are all human”, “Everybody is the same”, #alllivesmatter, etc. which seemingly signal a positive position towards people from all backgrounds, in fact prevent serious and significant discussions about identity politics, and thus also constitute an impediment to progressive institutional reforms (Holmes, 2007: 26). The dominant group can engage in an enfranchising use of language both intentionally and unwittingly, while at the same time engaging in practices that disenfranchise minority groups (Holmes, 2007: 26).

Another fitting example would be reactions to and legal cases against color conscious affirmative action policies, which illustrated the misconception of the color-conscious policies as being “reverse discriminatory”. One of those cases was *Regents of the University of California v. Bakke*. In 1972 Allan Bakke, a white California man, applied to two medical schools and both schools rejected him (Moreno, 2003: 17). In 1973, he applied to 11 different medical schools which

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<sup>5</sup> <https://www.law.cornell.edu/constitution/amendmentxiii>

included the University of California, Davis Medical School (UCDMS) and he was rejected again by all of them (Moreno, 2003: 17). He then applied once again to UCDMS for early admission for the fall term in 1974 and got rejected again (Moreno, 2003: 17). After that, in June 1974, he sued Regents of the University of California; his claim was that special admission quotas reserved for minorities under a minority program decreased his chance of competing (Moreno, 2003: 17). The number of places reserved for members of certain minority groups under school's minority program was 16 out of 100 places (Moreno, 2003: 17).

The California Supreme Court decided that this affirmative action program of UCDMS was not constitutional, and employment of racial preferences was banned by the Equal Protection Clause of the Fourteenth Amendment (Moreno, 2003: 17). Bakke's admission to the medical school was ordered by the court (Moreno, 2003: 17). Four Supreme Court Justices ruled against school's affirmative action program, because they argued that it violated Title VI of the Civil Rights Act, which was about ensuring prevention of discrimination by government agencies, while four other justices of the Supreme Court approved the program (Moreno, 2003: 17). The Final vote was given by Justice William Powell, who approved race-consciousness to a certain extent, he was against use of specific numerical quotas by universities to increase diversity (Moreno, 2003: 17). This case illustrates the misconceptions of affirmative action policies, as they were seen as "preferences" that violate citizens' rights to equal protection, rather than attempts to reduce inequalities between people of color and whites.

Later, in 1980s, when Ronald Reagan administration came to power, he tried to pull down affirmative action policies, and conservative think tanks propagated the



idea that affirmative action harmed white men, by using books, articles, and the news media (Pierce, 2014: 89). In 1996, a federal court decision ordered the Texas State to drop all of its race conscious affirmative action policies regarding university admissions (Fryer, Yuret, Loury 2003: 2). This decision was made in *Hopwood v. Texas*, where four white applicants sued the University of Texas and the State of Texas for the allegation that both the University and the State engaged in discrimination against them by employing an affirmative action policy in their admissions which was favoring African Americans and Mexican Americans over non-minority applicants who possessed comparable scores (Scanlan, 1996: 1581). The argument of the prosecutors was that any employment of race in the process of admissions was unconstitutional, because it violated Fourteenth Amendment right to equal protection (Scanlan, 1996: 1581).

These cases are examples of how color-blind ideology works its way to sustain the current unjust situation of the society, which is racially structured. Prosecutors' argument did not recognize this structure and hence, they perceived affirmative action policies, which aim at rectifying racial structure of the society, as an unfair action to white people.

### **3.1 Four Frames of Color-blind Racism**

Bonilla-Silva identifies four frames of color-blind racism; “*abstract liberalism, naturalization, cultural racism, and minimization of racism.*” (2014: 74). Among these four frames he categorizes the *abstract liberalism* as the most important, because it sets the foundation of the ideology of color-blind racism (Bonilla-Silva, 2014: 74). This frame “involves using ideas associated with political liberalism (e.g.,

‘equal opportunity’, the idea that force should not be used to achieve social policy) and economic liberalism (e.g., choice, individualism) in an abstract manner to explain racial matters.” (Bonilla-Silva, 2014: 76).

### **3.1.1 Abstract Liberalism**

Reformulation of racial issues in the language of liberalism allows whites to seem “‘reasonable’ and even ‘moral’” while at the same time countering any practical solution for the actual racial inequality (Bonilla-Silva, 2014: 76). As an example, Bonilla-Silva mentions the principle of equal opportunity, which was at the center of the civil rights movement’s agenda and “whose extension to people of color was vehemently opposed by most whites”, today is used by whites to contest affirmative action policies, “because they supposedly represent the ‘preferential treatment’ of certain groups.” (Bonilla-Silva, 2014: 76). Making this kind of claims ignores the fact that “people of color are severely underrepresented in most good jobs, schools, and universities and, hence, it is an abstract utilization of the idea of ‘equal opportunity’” (Bonilla-Silva, 2014: 76). Bonilla-Silva gives another example of how the notion of equal opportunity is used in an abstract way by whites to rationalize racial injustice. A white student when asked about if minority students should be provided with “unique opportunities” for admission into universities, makes a statement that does not take “the effects of past and contemporary discrimination on ‘the social, economic, and educational status of minorities’ into account” (Bonilla-Silva, 2014: 79):

I don’t think that they should be provided with unique opportunities. I think that they should have the same opportunities as everyone else. You know, it’s up to them to meet the standards and whatever that’s required for entrance

into universities or whatever. I don't think that just because they're a minority that they should, you know, not meet the requirements, you know.

Such viewpoints<sup>6</sup>, adopted by most whites, which support “equal opportunity for everyone without a concern for the savage inequalities between whites and blacks” preserve white privilege (Bonilla-Silva, 2014: 79). The notion of equal opportunity is also used by most whites as an explanation of worse academic records of blacks than of whites, by emphasizing that all have the same opportunity and blacks' failure to do as well as whites is seen as individually based (Bonilla-Silva, 2014: 79).

Another idea of liberalism used by whites to explain racial issues is meritocracy (Bonilla-Silva, 2014: 80). Meritocracy is used by whites to oppose policies like affirmative action in a supposedly nonracial way. By emphasizing the irrelevancy of race in hiring, admission to universities and so on, and defending that such decisions should be based on qualifications, and if both people have the same qualifications, then their personality or something else should be decisive, but not their race (Bonilla-Silva, 2014: 80). Again, this disregards the effects of discrimination on blacks' status, and so explains the inequalities between blacks and whites as a consequence of individual failure, lack of motivation, or personal choice (Bonilla-Silva, 2014: 80-81).

The idea of meritocracy is most commonly used in order to explain away racism in the context of practices of color-blindness in education. Racism is either unconsciously or consciously seen in many educational policies and in their development, implementation, and interpretation (Williams & Land, 2006: 581). This

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<sup>6</sup> Hannah Arendt also held a similar view about granting unique opportunities to black students for university admission, she saw such affirmative action policies as undermining academic quality, as she wrote in her reflections on violence: “Negro students, the majority of them admitted without academic qualification, regarded and organized themselves as an interest group, the representatives of the black community. Their interest was to lower academic standards.” (1972: 120, italics added).

racism takes many different forms such as “high-stakes testing, student tracking and ability grouping, low teacher perceptions and expectations, lack of resources given to highly populated minority schools, blame placed on African American families for their lack of involvement in their children’s education, racially disparate disciplinary reactions and consequences within schools, and poverty in African American communities” (Williams & Land, 2006: 581). To be successful in dealing with the problems of inequality of educational opportunities for students of color due to discrimination and racism, all the aforementioned factors should be taken into account (Williams & Land, 2006: 581).

Academic tracking policies are one of the most used school practices concerning organization of classrooms based on academic level of students (Williams & Land, 2006: 581). These policies are masked under meritocracy, since they employ testing to determine who will enter the more advanced classes (Williams & Land, 2006: 581). As a consequence of tracking policies, poor and marginalized students in most of the cases are put into the lowest level classrooms with inferior curriculums and low expectations from students (Williams & Land, 2006: 581). And students placed in these low-level classrooms usually do not go to college, and take classes preparing them for low wage jobs (Williams & Land, 2006: 581).

Socioeconomic status and positions in life are in part determined during school years (Williams & Land, 2006: 581). Practice of grouping students accordingly to their perceived academic capacities has been playing a crucial role in school organization (Williams & Land, 2006: 581). Standardized tests intend to justify this practice and make it seem fair (Williams & Land, 2006: 581). Students

are placed into specific levels according to their scores on these tests (Williams & Land, 2006: 581). Tests are not merely used to rank and classify students, they also have important effects for schools and students (Williams & Land, 2006: 582). High stakes tests reinforced further restrictions on opportunities for African American students to educational advancement (Williams & Land, 2006: 582). In the context of high stakes testing achievement has a very narrow definition and the only way to recognize it, is testing (Williams & Land, 2006: 582).

One might ask how high stakes testing reinforce discrimination against African American students when all students are exposed to the same test, awards and sanctions (Williams & Land, 2006: 583). There are several elements to be taken into recognition and consideration while answering this kind of questions (Williams & Land, 2006: 583). Firstly, even though all the students take the same test, they do not all get the same preparation for the test (Williams & Land, 2006: 583). The schools that African American students attend are more likely to be insufficiently funded, understaffed, and overpopulated (Williams & Land, 2006: 583). Furthermore, data from academic tracking in more mixed schools, African American students are more likely to be placed into classes varying from the middle to low level, and hence they are offered a less ambitious curriculum (Williams & Land, 2006: 583).

The employment of standardized tests might also be recognized as a form of institutionalized racism, since they provide credibility to policies denying equal access of people of color to educational and job opportunities (Williams & Land, 2006: 583). These tests are prepared without any consideration being given to social, cultural and educational realities of African American students (Williams & Land,

2006: 583). What has been valued and applied is white standards and thus, even though color-blind ideology attempts to impose standardized testing system as a reform, it, in fact, deepens the achievement gap between white and African American students (Williams & Land, 2006: 583). And ideology of meritocracy succeeds to normalize these big gaps in academic achievement (Lewis, 2001: 800).

These color-blind educational policies and practices which frequently put African Americans in lower positions than white people encourage the belief that these placements are not racially constructed or biased but rather deserved; and hence people do not question them (Williams & Land, 2006: 585).

The main point is that color-blind policies might seem to be fair, since they seem to assess everyone in the same way; however, teaching under the illusion that every student is the same, contributes to subordination of African American students (Williams & Land, 2006: 585). In the same way, testing students under that illusion provides justification for that subordination (Williams & Land, 2006: 585). Because one's culture is one of the main elements that affects her experience of the world (Williams & Land, 2006: 585). So, treating every student the same in fact means treating them from the aspect of the dominant culture, which again puts students of color in a less advantageous position than white students.

In opposition to this viewpoint, Roger Clegg, Adam Meyerson, Michael Franc and Todd Gaziano<sup>7</sup> argue that color-blind affirmative actions should be favored, since giving someone benefits because of their race, ethnicity or sex is discriminatory and wrong, and hence should be opposed (1998). In this view, color-

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<sup>7</sup> All these names held (some of them still hold) positions at conservative think tanks which have an influence on the US public policy making such as The Heritage Foundation, The Center for Equal Opportunity, and Hoover Institution.

blind policies provide economic and educational opportunities for everyone who is willing and capable of competing for them (Clegg, Meyerson, Franc, & Gaziano, 1998). The argument is that there can be specific government supports in education, such as providing disadvantaged students SAT tutoring and encouragement to attend to college; giving loans or scholarships to financially troubled students with potential; giving a second review from colleges for students from regions with low standards of living or broken homes despite their academic performance; however there is no need to take race into account in any of these cases (Clegg et al., 1998).

This argument and propositions for color-blind affirmative actions in education overlook the reality of a racially structured society. Reducing the problem to a financial problem and attempting to solve it by giving government scholarship or loans to students who have “potential” is one of the practices that contribute to the problem. As, which student has “potential” is itself determined by a racially discriminatory procedure, that is, standardized tests.

The emphasis on everyone being an “‘individual’ with ‘choices’” also gives rise to nonracial explanations of racial injustices such as segregation (Bonilla-Silva, 2014: 76). For instance, whites label race-related problems such as school segregation and residential segregation as choice, and state that everybody should send their kids to the schools of their choice and everybody should live wherever they want (Bonilla-Silva, 2015: 1364). These types of explanations give white people the possibility of disregarding the various “institutional and state-sponsored practices” behind racially discriminatory practices, such as school segregations, residential segregation and so on, without being or sounding “racist”, and not taking

the negative outcomes these practices for minority groups into account (Bonilla-Silva, 2015: 1364; 2014: 76).

A good example here would be a 1968 episode of “The Dick Cavett Show”<sup>8</sup> in which James Baldwin, an African American essayist, novelist, and playwright known particularly for his eloquent treatment of the subject race in his works, declares that he is not too optimistic about race relations in America and that racism is not only harmful to individuals but also to democracy. A philosophy professor from Yale University, Paul Weiss, responds to Baldwin in the following way. “I think he is overlooking one very important matter, I think. Each of us, I think, is terribly alone. He lives in his own *individual* life... So why must we always concentrate on color?” He also told Baldwin that he, a white philosopher, has more in common with a black philosopher than a white man who hates philosophy; and he assumes in the same way that Baldwin has more in common with white authors than black people who hate literature. After Weiss’s comments, Baldwin explains why he left America in 1948 to escape its “particular social terror, which was not the paranoia of [his] own mind, but a real social danger visible in the face of every cop, every boss, everybody.” He then continued:

I don’t know what most white people in this country feel. But I can only conclude what they feel from the state of their institutions. I don’t know if white Christians hate Negroes or not, but I know we have a Christian Church which is white and a Christian Church which is black. I know, as Malcom X once put it, the most segregated hour in American life is high noon on Sunday. That says a great deal for me about a Christian nation. It means I can’t afford to trust most white Christians, and I certainly can’t trust the Christian church. I don’t know whether the labor unions and their boss really hate me—that doesn’t matter—but I know I am not in their union. I don’t know whether the real estate lobby has anything against black people, but I know the real estate lobby is keeping me in the ghetto. I don’t know if the board of education hates black people, but I know the textbooks they give my

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<sup>8</sup> [https://www.youtube.com/watch?v=\\_fZQQ7o16yQ](https://www.youtube.com/watch?v=_fZQQ7o16yQ)



children and the schools we have to go to. Now, this is evidence. You want me to make an act of faith, risking myself, my wife, my woman, my sister, my children on some idealism which you assure me exists in America, which I have never seen.

Here, Paul Weiss speaks from within a color-blind racist discourse, as he tries to explain the racial issues that Baldwin raised in a nonracial way. Weiss thinks that we should stop categorizing people by their race, instead we should see them as *individuals*. This, of course, ignores the fact that institutions in American society play a crucial role in determining blacks' social and economic life. For Weiss, emphasizing on color is the problem, as we are the ones creating the category of race by mentioning it and if we focus on our individuality and simply become human, then the problem would be solved. Baldwin's response to him demonstrates that it does not matter whether you individually have anything against blacks or not, what actually matters is that blacks are treated unfairly by the institutions in the American society; they are systematically excluded, marginalized and disregarded in the society. Not recognizing this fact and presenting it as something else contributes to the maintenance of racially structured society.

### **3.1.2 Naturalization**

The second frame of color-blind racism is *naturalization*, which permits "whites to explain racial phenomena away" by treating them as "natural occurrences" (Bonilla-Silva, 2014: 76). For instance, whites can suggest that segregation and choice of friends and partners from the same racial background are natural, because all people regardless of their racial background have a natural tendency to be with their like (Bonilla-Silva, 2014: 76). This suggests that racial phenomena such as segregation

are not a consequence of racial structure, but instead it is just due to natural preference, it is the way things are for everyone (Bonilla-Silva, 2014: 76).

*Naturalization* is different than essentialism in the sense that racial essentialism is the view that certain racial groups are intrinsically biologically different, that is why different races act in different ways, which is used to explain inequality and discrepancy among them. Essentialism is linked with the Jim Crow era racism, as the presumed idea behind racism back then was that blacks were biologically inferior to whites. However, *naturalization* does not make use of this kind of ideas. Instead, this frame emphasizes that *all people* have a natural tendency to be with their like; regardless of their race and thus normalizes segregational practices by presenting them as results of human nature and not of any institutional, structural mechanisms. The idea is not that blacks act in a certain way because of their peculiar nature or biology, but rather it is natural that all people of all backgrounds prefer to be with people like them. An updated version of essentialism could be taken to be the next frame I will explain, that is, *cultural racism*.

### **3.1.3 Cultural Racism**

*Cultural racism* explains the positions of the minorities in the society with culturally based arguments, such as “Mexicans do not put much emphasis on education” or “blacks have too many babies” (Bonilla-Silva, 2014: 76). These cultural arguments have replaced the main rationale of the era of slavery and Jim Crow that assumed “biological inferiority” of racial minorities (Bonilla-Silva, 2014: 77).

### 3.1.4 Minimization of Racism

The fourth and the last frame of color-blind racism is *minimization of racism*, which presumes that racial discrimination is not an important factor influencing the life chances of minorities anymore (Bonilla-Silva, 2014: 77). So, it leads to accusations of minorities for “being ‘hypersensitive’ or ‘playing the infamous race card.’”; since the assumption is that race is not an important factor as it was before, it only becomes a problem when someone mentions it (Bonilla-Silva, 2014: 77).

Bonilla-Silva introduces these frames as central elements of “an interpretive matrix from where to extract arguments to explain a host of racial issues” (2014: 95). “Together these frames form an impregnable yet elastic wall that barricades whites from the United States’ racial reality” (Bonilla-Silva, 2014: 95). The frame of *abstract liberalism* relies on abstract ideals linked with political and economic liberalism to explain racial matters in a nonracial way. *Naturalization* is a frame allowing whites to rationalize and ignore racial phenomena by labeling them as natural tendencies or manifestations. The frame of *cultural racism* utilizes culturally based arguments in order to explain the disadvantaged social position of people of color. The fourth and final frame, *minimization of racism*, is based on arguments that suggest that discrimination does not affect life chances of minorities that much anymore, that the situation is better now than it used to be. Although these four frames have some distinct features, they are not mutually exclusive. On the contrary, they are mostly used in combination.

### 3.2 Rawls's Color-blindness

These four frames are used by whites to maintain the racial structure and their use is not mutually exclusive, and the frame of *abstract liberalism* functions as the foundation for other frames. Liberal tenets are constantly utilized by the dominant race to produce nonracial explanations of racial injustices, which preserves and reproduces the racial structure of society. Treating race as an irrelevant factor stems from a point of view which refuses to see the fact that racial minorities find themselves in the lower ranks of society because of past and current discrimination, which created and shaped and continues to recreate and reshape the racial structure deeply embedded in societies. This indicates that any account that makes race irrelevant or invisible cannot be a solution for racial injustice, as it fails to challenge the racial structure. Therefore, Rawls's original position which takes race out of the picture to provide all people with equal bargaining power cannot be applied to societies with racial injustice.

Rawls's theory, by not making racial subordination a central consideration, marginalizes the importance of corrective racial justice (Mills, 2009: 163). Of course, his theory is not descriptive but rather it is purely "normative and hypothetical", so a criticism of it based on its lack of accounting for history might seem to be beside the point, however the very fact that Rawls chose the method of ideal theory to talk about justice as a citizen of a deeply racialized society presents a perspective dominant among white political and moral philosophers (Mills, 2009: 163). Mills sees the Rawls's silence on racial justice not as contingent but as being structurally related to the various ways "in which white racial privilege shapes and orients (occidents?) the work of white liberals" (Mills, 2009: 163). I agree with Mills's

points, but further I want to add the focus on color-blind racism as a framework shaping Rawls's ideal theory, and hence his normative theory. Also, I want to base the inapplicability of his theory to racial justices on color-blindness of his ideal society from which he derives his normative theory; his argument that aims to guide actions of individuals in their real circumstances.<sup>9</sup>

#### **4. WHY RAWLS'S THEORY IS AN INSTANCE OF COLOR-BLIND RACISM**

In this section, I will give three reasons why Rawls's theory is color-blind racist. The first reason is the liberal framework of the theory, which most recognizably employs the frame of *abstract liberalism*. The second reason is that Rawls's normative theory is derived from his ideal theory. This is particularly important, because the obvious defense of Rawls concerning his lack of dealing with racial injustice always stems from the declaration that he deals with ideal theory and so criticisms like mine are not relevant or harmful to his theory; it is the job of the nonideal theory. I argue that such criticisms are in fact relevant and important to Rawls's theory, because his ideal theory is the basis for nonideal theory; and this entails that Rawls's normative theory (how a society *ought to be*) is founded on his ideal theory of a perfectly just society.

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<sup>9</sup> In *Racial Contract* Mills states "The silence of mainstream moral and political philosophy on issues of race is a sign of the continuing power of the Contract over its signatories, and illusionary color blindness that actually entrenches white privilege. A genuine transcendence of its terms would require, as a preliminary, the acknowledgement of its past and present existence and the social, political, economic, psychological, and moral implications it has had both for its contractors and its victims. By treating the present as a somehow neutral baseline, with its given configuration of wealth, property, social standing, and psychological willingness to sacrifice, the idealized social contract renders permanent the legacy of the Racial Contract." (1997: 77). So, my aim in this paper is not to say that color-blindness is left out by the critics of Rawls concerning racial justice, it is certainly recognized and mentioned; what I hope to add to these criticisms is an exclusive focus on color-blind racism.

The third reason is the theory's economic focus, which causes its failure to recognize and rectify other noneconomic social injustices.

#### **4.1 Liberal Framework**

In this section, I will explain how the liberal framework of Rawls's theory is one of the reasons for its color-blind racism. The liberal framework he works within leads to the formulation of liberal ideals present in the way he chooses to arrive at a conception of justice, constructing the original position, which represents color-blind ideals, as the tool to conceptualize justice. In other words, his starting point for arriving at a particular conception of justice stems from a color-blind perspective, which prevents the theory from offering any fundamental solutions to racial injustices. This criticism seems to be aiming at ideal theory which enables Rawlsian approach to get off the hook by simply declaring injustices related to race to be in the domain of the nonideal theory. However, even though such a criticism obviously applies to the choice of ideal theory as a method, it is further aimed at a certain way of thinking, which is represented in the original position. After all, ideals are formed in the light of actualities. That is to say, I assume that the actual injustices in a society are what drives one to conceptualize an ideally just society. In this sense, the aim of the original position seems to be to construct an ideal situation, which aims at eliminating any effects leading to unjust outcomes in actuality. Since in the actual society, people are not equal and find themselves in an advantaged or a disadvantaged position based on their race, gender, class and so on; the ideally just society is formed by the initial situation, where none of such characteristics is known and hence individuals in the original position possess equal bargaining power, and

any agreement they reach is considered to be fair. Put differently, Rawls sees the only way to assign people equal bargaining power is to shear them of their morally arbitrary differences, namely, of their race, sex, class and so on. So, a fair agreement for him is one not affected by one's race. This signals the underlying idea that what gives rise to injustices is differences among people; in particular, shaping decisions with respect to one's race is what creates injustice. Color-blind racism also embodies the idea that race only becomes a problem when you notice or talk about it. Of course, this is not to say that is exactly what Rawls thinks, but the way he builds his conception of justice speaks from such a perspective. His theory trivializes race and justifies it with deference to ideal theory, but his very conception of justice is formulated within a color-blind framework, which cannot give race the centrality required.

Liberal ideals reject the relevance of race as, and strongly emphasize sameness and equality among individuals. The presumption is that if we erase the differences among people, which are (*seen as*) the reasons for one group to hate the other, if we realize that we are all the same, then we can have a society that is just to everyone, where there is no discrimination, no hate and so on. James Baldwin (1984) in *Notes of a Native Son* points out the irrelevance of such ideals and of the presumptions behind them:

Though there are whites and blacks among us who hate each other, we will not; there are those who are betrayed by greed, by guilt, by blood lust, but not we; we will set our faces against them and join hands and walk together into that dazzling future when there will be no white or black. This is *the dream of all liberal men*, a dream not at all dishonorable, but, nevertheless, *a dream*. For, let us join hands on this mountain as we may, the battle is elsewhere. It proceeds far from us in the heat and horror and pain of life itself where all men are betrayed by greed and guilt and bloodlust and where no one's hands are clean. Our good will, from which we yet expect such power to transform us, is thin, passionless, strident: its roots, examined, lead us back to our

forebears, whose assumption it was that the black man, to become truly human and acceptable, must first become like us. This assumption once accepted, the Negro in America can only acquiesce in the obliteration of his own personality, the distortion and debasement of his own experience, surrendering to those forces which reduce the person to anonymity and which make themselves manifest daily all over the darkening world.

So, especially in the case of the US, a tool centered on “abstract citizens” deprived of their race would not be a useful tool to conceptualize about justice. Rawls’s conception of justice is based on the erasure of differences, namely sameness, he denies the “legitimacy and moral relevance of racial concepts”, “while race continues to determine job prospects, career possibilities, available places to live, potential friends and lovers, reactions from police, credence from jurors, and the amount of credibility one is given by one’s students” (Alcoff, 2001: 269). However, such a general concept of justice cannot be properly applied to particular societies, further, it cannot serve as a guide to rectify racial injustices.

While constructing the basic structure of an ideal society, Rawls envisages abstract equal and free individuals, who do not know any of their morally arbitrary characteristics. This amounts to what they agree on would be impartial, fair and thus, acceptable to all. As “the parties in the original position must evaluate principles solely on the basis of *general* considerations, not particular contingent facts about existing persons or societies.” (Shelby, 2004: 1699). However, once we start to build our normative principles based on such an ideal aspiring to such a general conception of justice, we are left with no guide to redress racial injustices.

Race is not even listed explicitly among the list of unknowns in the original position, though it is treated as a morally arbitrary characteristic. The situation is the same with gender, as Susan Okin (1987) noted and problematized as something to be revised in Rawls’s theory of justice. Her argument is that Rawls’s theory can actually



be applied to challenge gender-structured societies, if one's sex is included among the things unknown by persons in the original position, and if family is taken to be a basic structure of society to which Rawls's principles of justice apply (Okin, 1987). Because "the family with its gender structure, female parenting in particular, is clearly a crucial determinant in the different socialization of the two sexes-in how men and women 'get to be what they are'". (Okin, 1987: 52). Even if her solution would work in the case of injustices between sexes, we cannot formulate a similar solution for race. This is because, in the case of race, we do not have a corresponding basic structure like "family", which we can take to be the basis of racialization of people.

The main idea of Rawls's theory is that "justice characterizes institutions whose members could hypothetically have agreed to their structure and rules from a position in which they did not know which place in the structure they were to occupy" (Okin, 1987: 49). Rawls aims to show that the two principles of justice as fairness are principles that parties in the original position would agree upon (Okin, 1987: 49). However, Okin points out the problem of the theory. "Since those in the original position are the heads or representatives of families", namely they are men, "they are not in a position to determine questions of justice within families" (Okin, 1987: 49). This means women are not represented in the original position at all and so the structure of the family cannot be subjected to principles of justice (Okin, 1987: 49-51). This is a particularly important failure of Rawls's theory as he believes that "a theory of justice must take account of 'how [individuals] get to be what they are' and 'cannot take their final aims and interests, their attitudes to themselves and their life, as given.'"; as Okin emphasizes "the family with its gender structure, female

parenting in particular, is clearly a crucial determinant in the different socialization of the two sexes-in how men and women ‘get to be what they are.’” (Okin, 1987: 51-52).

Okin’s suggestion is that Rawls has to “require that the family, as a major social institution affecting the life chances of individuals, be constructed in accordance with the two principles of justice” (1987: 52). In Okin’s view, family is a crucial basic structure<sup>10</sup>, where children (future citizens) can learn being just. Therefore, a just family is a prerequisite for a just society (Okin, 1987: 52):

If Rawls were to assume throughout the construction of his theory that all human adults are to be participants in what goes on behind the veil of ignorance, he would have no option but to require that the family, as a major social institution affecting the life chances of individuals, be constructed in accordance with the two principles of justice.

So, Okin’s claim is that Rawls's original position and his ideal theory can be modified in ways that lead to gender justice. The crucial step in this modification seems to be applying the principles of justice to family, which is the basic structure generating gender roles and inequalities between two sexes. I am not fully convinced by Okin’s claim, but even if we grant that such a modification of Rawls’s theory would work to end gender-related injustices, we cannot have a similar solution in the case of race. Because we do not have a specific place such as family that we can detect as the origin or racial inequalities. In other words, we do not have a corresponding site to family, where, in Okin’s use of words, how the different socialization of different racial groups "get to be what they are” (1987: 52).

In addition to that, I want to add a further criticism concerning Okin’s overall claims. She argues that original position is not necessarily an egoistic and

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<sup>10</sup> Whether we should grant that family indeed is a basic structure, and whether we could have a just society where it was not, are also important questions that I hope to discuss elsewhere, as they are beyond the scope of this dissertation.

individualistic standpoint employing merely impartial and universalist principles (Schwartzman, 2013: 42). Taken within the context of this paper's purpose, this bears the implication that original position is not subject to color-blind racism. On the other hand, Okin believes (as cited in Schwartzman, 2013: 42):

the only coherent way in which a party in the original position can think about justice is through empathy with persons of all kinds in all the different positions in society, but especially with the least well-off in various respects. To think as a person in the original position . . . is to think from the point of view of everybody, of every 'concrete other' whom one might turn out to be.

Moreover, she says that since the parties in the original position have the knowledge of the general facts of the society, they would know that the society is "gender-structured both by custom and still in some respects by law" (Okin, 1989: 91), and "that women have been and continue to be the less advantaged sex in a great number of respects" (Okin, 1989: 102–3). Thus, knowing this and being required to think about justice from the viewpoint of "everyone", the parties in the original position would think of the possibility that they could be women and choose principles that would lead to gender justice (Schwartzman, 2013: 42). If her arguments are considered for racial inequality, then we have an argument defending original position also as a way to reach racial justice, which I object to.

I argue that even though Rawls's exclusion of race and gender in the original position was a deliberate choice<sup>11</sup>, an explicit inclusion of them would also not be of

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<sup>11</sup> As Rawls wrote in *Justice as Fairness*: "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)? 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 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

any help. Because, as I have already suggested, the original position as a hypothetical situation aspires to color-blind ideals, where all people are equal and same, and no one sees one's race to be a factor in deciding on an agreement, because such knowledge would impair one's decision. The original position might be aimed at being an attempt to take all perspectives into consideration while deciding on an agreement, and thus granting the fairness of the agreements. However, it accepts one's race as a matter of brute luck and treats it merely as an arbitrary factor affecting the fairness of an agreement, and thereby neglects the conditions which led to the emergence of racism and races, and what caused racial inequalities in the first place. Therefore, persons in the original position cannot take the perspective of members of a racially disadvantaged group and they cannot represent their demands of justice as belonging to that group for the group as a whole. As "many people who have been discriminated against and persecuted want to be accepted, not just as a member of humanity, or for their singularity, but in the same terms under which they had previously been rejected. It is not enough to be 'a man', 'a woman', 'a human-being, nothing but a human being'. Even if this were possible, it is not regarded as desirable." (Bernasconi, 2001: 290). Because, historically oppressed groups find themselves in a disadvantaged position in the society, on economic, social, psychological terms, their life chances are highly affected by the inheritance of the past presenting itself in new forms in the contemporary society. Thus, any ideal aspiring to color-blindness tends to erase this history or declare it as no more relevant, and put an emphasis on humanity, equality, and sameness of all human beings, and fails to represent demands of these groups. "The members of a minority

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considerations, to take the basic structure as the primary subject of justice; and second, how within ideal theory should the least advantaged be specified?" (2001: 64-65)

group would not be content to seek equality with the dominant group in the form of assimilation”, but they would “insist on being granted special rights to secure real equality, in addition to mere formal equality” (Bernasconi, 2001: 292). And Rawls’s liberal framework, responsible for his color-blind ideals, cannot provide such special rights, as their aspiration to equality and justice depends on the erasure of differences. As Charles Mills (2009; 2013) frequently notes, Rawls’s theory leaves out the most central components of racial justice such as affirmative action, preferential treatment, land claims and reparations, by categorizing them as the questions of nonideal theory. In the next section, I will elaborate on the inadequacy of such an answer, which is connected to the second reason why Rawls’s theory is an instance of color-blind racism. That is, what he says about how our society *ought to be* and how individuals ought to act is obtained from his description of ideal society.

#### **4.2 Rawls’s Normative Theory is derived from his Ideal Theory**

Rawls’s theory of justice is restricted to the domain of the ideal theory; that is, it provides and justifies the principles of justice applying to the basic structure of a perfectly just society (Shelby, 2013: 148). He does not consider the issues of compensatory justice within his account and justifies this negligence by the statement that it belongs to the nonideal theory. In *A Theory of Justice*, he states (Rawls, 1999: 308-309):

As we have seen, the principles of justice (in lexical order) belong to ideal theory (§39). The persons in the original position assume that the principles they acknowledge, whatever they are, will be strictly complied with and followed by everyone. Thus the principles of justice that result are those defining a perfectly just society, given favorable conditions. With the presumption of strict compliance, we arrive at a certain ideal conception. When we ask whether and under what circumstances unjust arrangements are

to be tolerated, we are faced with a different sort of question. We must ascertain how the ideal conception of justice applies, if indeed it applies at all, to cases where rather than having to make adjustments to natural limitations, we are confronted with injustice. The discussion of these problems belongs to the partial compliance part of nonideal theory. It includes, among other things, the theory of punishment and compensatory justice, just war and conscientious objection, civil disobedience and militant resistance. These are among the central issues of political life, yet so far the conception of justice as fairness does not directly apply to them.

This is not a sufficient answer, because Rawls asserts that the ideal conception sets the guide for the nonideal scheme, and thus ideal theory is the fundamental to nonideal theory (Rawls, 1999: 212); which, as Charles Mills points out, indicates that Rawls's normative theory of how a society *ought to be* is based on his ideal theory of a perfectly just society, which means, what he says about how a just society *ought to be*, comes from an ideal conception of a just society, where there are no past injustices, where there is no history of oppression and so on.<sup>12</sup> This indicates the inadequacy of ideal theory in addressing the actual injustices and being a guide towards a just society. Elizabeth Anderson makes a similar point, that is, when we use contractualist ideals to evaluate nonideal societies, as Rawls does, it means that we take the standpoint of "representative positions in the ideally just society" (2010: 5). And since in the ideal society, there are no racial positions, theories such as Rawls's do not provide us a perspective from which we can evaluate racially unjust societies (Anderson, 2010: 5).

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<sup>12</sup> Contra Rawls's belief in the necessity of the ideal theory for constructing nonideal theory, Amartya Sen (2006) argues that an account of a perfectly just society is neither necessary nor sufficient for identifying comparative injustices or for determining policies that would ameliorate injustices in a society. Traditional theories asking the question "What should a perfectly just society be like?" take a "transcendental approach", that is, they attempt to find out what a perfectly just society ought to be (216). However, an account of a perfectly just society is not sufficient because a society might depart from an ideal standard of justice in many different ways. And it is not necessary as Sen basically points out, just like Elizabeth Anderson (2010), that "knowledge of the better does not require knowledge of the best". Rather, he suggests a comparative approach which would comparatively rank which arrangements are less just or more just.

I agree with both Mills's and Anderson's points, but I want to add a further point. The fact that Rawls founds his normative account on his ideal theory bears the implication that our actual society would become more just, the closer it gets to the ideal society he describes. And since his ideal society is a color-blind one, Rawls's normative account becomes also color-blind and would give us a society where the racial structure of society remains intact and keeps producing racial inequalities. For the situation described in the original position is one, where persons are deprived of their morally arbitrary characteristics, that is, where no one knows no one's race, including their own. Rawls sees this erasure as the only way to equip people with equal bargaining power. Put differently, it avoids people's racial backgrounds and only by doing so assigns them equal bargaining power. As I have stated before, this very perspective is color-blind. And when we consider the normative part of Rawls's theory, and the fact that it is constructed upon this color-blind ideal, what is implied here seems to be that the more we forget about our and everybody else's racial background, the more just our society will become. Whereas, in actual societies, the rectification of racial injustices requires a special treatment and recognition for historically oppressed racial groups, who find themselves at disadvantaged positions in the society. A normative theory based on a color-blind ideal cannot acknowledge such requirements, and thus cannot be applied to racial injustice.

### 4.3 Economic Focus of the Theory

In this section, I will explain the third reason why Rawls's theory falls under color-blind ideology. This reason concerns the theory's economic focus, which prevents it from recognizing and rectifying other noneconomic social injustices. The Fair Equality of Opportunity Principle and the Difference Principle, which are the two parts of Rawls's Second Principle of Justice, aim to mitigate the inequalities among citizens, which arise from their place in the society determined by factors such as being born into a socially advantaged/disadvantaged group, as a member of a wealthy/poor family, and so on, which he labels as "brute luck", by redistribution. His distributive account reduces racial injustices to economic injustices, and thus again is placed within a color-blind discourse, as such a reduction masks the real source of economic inequalities, which is related to and produced by racial structure. In this way, while redistribution might make racially disadvantaged financially better-off, it does not challenge the racial structure, rather by reducing racial injustice to economic, it contributes to the maintenance of this structure. I will explain the Fair Equality of Opportunity Principle and the Difference Principle and how they serve for color-blind ideology and thus fail to be principles for racial justice.

The first part of the Second principle of Justice, namely, Fair Equality of Opportunity Principle asserts that everyone should have access to opportunities regardless of their position in the society (Rawls, 1999: 63). The second part of the second principle is the Difference Principle, which basically states that the situation of the better off should be improved only if doing so would also improve the situation of the worst off, otherwise the equal distribution should be chosen (Rawls, 1999: 68). At first glance, these two principles seem to protect the worst of however



Rawls's articulation of Difference Principle "refers almost exclusively to income, class, and economic status, paying far less attention to other forms of social inequality." (Schwartzman, 2013: 42). Rawls's theory tends to reduce social justice to the distribution of material goods, namely, resources, things, income wealth, and social positions such as jobs (Young, 1990: 16). His second principle of justice aiming at correcting the inequalities arising from being born into a disadvantaged social group by making all opportunities open to all people regardless of their social identities and allows social inequalities only if they are for the benefit of the worst-off (Mills, 2013: 5). With the guide of these principles, "the benefits and burdens of social life" are to be redistributed (Rawls, 1999: 47).

However, this redistribution only concerns economic goods. Although his claim is that the combination of these two principles "applies to all social and economic inequalities", the most of his concern is given to the class positions determined by income and wealth (Schwartzman, 2013: 42). As in the original position, representative people occupying particular social positions must think from two perspectives: one of "equal citizenship" and one "defined by his place in the distribution of income and wealth" (Rawls, 1999: 96; Schwartzman, 2013: 43). Moreover, he underlines economic class in his formulation of the difference principle and in his explanation of determining the group that is the worst off (Rawls, 1999: 97–98; Schwartzman, 2013: 43). Lisa Schwartzman in "Feminism, Method, and Rawlsian Abstraction" explains why this is particularly "troubling for feminists, as well as for those concerned about racism, heterosexism, and other forms of oppression" (2013: 43). She states that it is because Rawls's discussion of inequality seems to be focused on questions of economic class and thus other forms of social

power are rendered invisible (Schwartzman, 2013: 43). “The difficulties that feminists might have in defining the ‘least well off’ involve important questions about how racial, class, and gender oppression should be weighed and balanced; Rawls, however, does not even consider such questions.” (Schwartzman, 2013: 43). In *A Theory of Justice*, Rawls (as cited in Schwartzman, 2013: 43) mentions in one passage the possibility of social positions trumping over economic positions:

If, for example, there are unequal basic rights founded on fixed natural characteristics, these inequalities will single out relevant positions. Since these characteristics cannot be changed, the positions they define count as starting places in the basic structure. Distinctions based on sex are of this type, and so are those depending upon race and culture. Thus if, say, men are favored in the assignment of basic rights, this inequality is justified by the difference principle (in the general interpretation) only if it is to the advantage of women and acceptable from their standpoint... Such inequalities multiply relevant positions and complicate the application of the two principles. On the other hand, these inequalities are seldom, if ever, to the advantage of the less favored, and therefore in a just society the smaller number of relevant positions should ordinarily suffice.

However, Rawls concludes that racial and sexual inequalities are rarely to the benefit of people of color or women, so these social positions would not be relevant ones in a just society (Schwartzman, 2013: 43). In a just society, women or people of color suffering from noneconomic inequalities do not seem to be included in the group of “least well off”, since they are not accepted to be politically relevant positions in a well-ordered society (Schwartzman, 2013: 44). “In contrast, Rawls does assume that some class differences are justified by the difference principle and that the well-ordered society would therefore contain economic classes. These would be justified because they would benefit the least well-off class through advantages such as increased incentives and greater productivity.” (Schwartzman, 2013: 44). So, again Rawls’s theory fails to take racial inequalities into account, because they are politically irrelevant positions in his ideal society.

Tommie Shelby, who has a counter take on this issue, for instance, contends that the thought that “abstraction from the social realities of race within the contractarian model” serves as an obfuscation or denial of the centrality of racial domination is wrong (2004: 1700). On the other hand, he thinks, this abstraction guarantees that “racial bias is not codified in or further entrenched by our shared conception of justice” (Shelby, 2004: 1700). Thus, the reason why parties in the original position do not possess the knowledge of racial identities is precisely because of the fact that “there are unjustified racial inequalities” (Shelby, 2004: 1701). He furthermore states (Shelby, 2004: 1709):

[T]he worst off in society (i.e., those with the lowest expectation of primary goods over their lives) will be those in the lowest socioeconomic position. Rawls should not be understood as asserting here that racial disadvantage is, or can be reduced to, class disadvantage. Racism, from a Rawlsian point of view, is an insult to human dignity and unjust in its own right, for example, in its denial of equal citizenship on morally arbitrary grounds. Further, racism creates peculiar forms of disadvantage that are not strictly speaking a matter of socioeconomic disadvantage, for instance, in its tendency to produce in its victims a diminished sense of their own worth as persons.

However, race (and other noneconomic categories such as sex) is among crucial social indicators of inequality, and even if an abstract ideal can postulate a world where race and sex do not put people into socially disadvantaged, subordinated groups, if a theory does not take them into account, this indicates that such categories are not important in theorizing about justice and equality (Schwartzman, 2013: 44).

So, the mere contribution of Rawls’s theory to the racially disadvantaged groups at best would be on economic terms, but economic injustice is only a part of racial injustice and reducing racial justice to economic justice masks the actual, namely race-related, source of such economic inequalities and furthermore disregards the noneconomic effects of racial inequalities which contribute a great

deal to subordination of certain groups. Therefore, Rawls's theory's economic focus (and/or reduction) is yet another aspect that makes it operate on a color-blind discourse.

## **5. Conclusion**

Racial justice requires recognition, reparations, preferential treatment, unique opportunities given for historically subjugated racial groups; so, it requires taking the history of racial oppression into account and producing color conscious policies to rectify both the past and current racial injustices, caused by the racial structure embedded in societies. In other words, racial justice is only possible if racial structures are challenged. So, theories of justice need to give the issue of racial justice an emphasis, because racial injustice structured and continues to structure the world order, and thus also the domain of political philosophy. Therefore, a theory of justice which is silent on, ignores, overlooks racial injustice reflects an understanding of justice that is itself *racialized*, simply because it fails to recognize that it speaks from within the same system of thought that produces racism.

I have argued that Rawls's theory, as it is, does not and cannot challenge the racial structure of a society, because it is a product of a color-blind perspective and aims at color-blind ideals which contribute to the maintenance of racism, and thus conceptualized as "color-blind racism" by Eduardo Bonilla-Silva. I have briefly explained Rawls's theory of justice and what color-blind racism is, and then stated three aspects of his theory that makes it fall under color-blind racism. The first one concerns the liberal framework he builds his ideal theory within, which leads him to construct a general conception of justice based on sameness of individuals that

renders race irrelevant. For he sees race among contingencies that are the generators of inequalities.

The second one is the fact that he presents his ideal theory as the foundation of his normative theory, which implies that the closer we get to his ideal society, the more just our society will become. This aspect prevents an escape from criticisms highlighting the inapplicability of his theory to actual societies by simply pointing out that his theory is ideal, and not in any way descriptive, and declaring racial injustice as belonging to the sphere of nonideal theory. Rawls's ideal society is a color-blind one, due to the apparatus he employs to build it, which is the original position stripping parties of their race in order to assure equal bargaining power to each party. And the implication is then that the more we leave race out of consideration the more of a just society we get.

The third reason is that the emphasis of the theory is on economic injustice, because Rawls's theory only sees class differences based on wealth, income and so on as justifiable in a perfectly just society, so he primarily takes different economic positions in society as the most relevant standpoints in the original position and offers redistribution as a way to compensate them. Race is not considered as a relevant political position, simply because Rawls contends that social categories like race and gender almost never benefit the worst off, so they would not exist as categories in a perfectly just society. Surely, subordinated racial groups are usually also financially worse off than the dominant racial group and Rawls's normative theory when applied to a society would enhance their financial situation. However, economic justice is not the whole story when racial justice is considered. Thus, a theory centered on an economic focus reduces racial injustice to economic injustice

and can do nothing to correct noneconomic injustices that shape and worsen life chances of subordinated groups.

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