Conscription and the Color Line: Rawls, Race and Vietnam

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This article revisits one of John Rawls’s rare forays into activist politics, his proposal presented to the Harvard faculty, calling for a denunciation of the “2-S” system of student deferments from conscription. In little-studied archival papers, Rawls argued that the draft both exposed “background” structural racial injustice and constituted a burdening of black Americans that violated the norms of fair cooperation. Rather than obscuring racial injustice and focusing exclusively on economic inequality, as Charles Mills has claimed, Rawls rejected the ascendant conservative views that naturalized black poverty or else attributed it to cultural pathologies in black families. Thus Rawls found nothing illicit in taking the position of a disadvantaged racial group as a relevant comparison when applying his ideal theory to nonideal circumstances. However, I contend in this article that Rawls’s account of political philosophy as an attempt to find a consensus may be similarly ideological, leading him to displace the reality of conflict through begging descriptions, expressivist formulations, and historical romanticism.

The problem is your Black Brother in the pig’s armed forces. I am one of those brothers who have the misfortune of being trapped in and into Charlie’s service for exploitation. I said trapped, not to make an excuse for being in the service but to clarify this inescapable, unjustifiable action of forced service.

Anonymous African American soldier

At the 6 December 1966 meeting of the Faculty of Arts and Sciences at Harvard, following a resolution concerning the appropriate hours for which to entertain women guests in student rooms, John Rawls took the floor to introduce a more controversial motion. Against the backdrop of a raging war in Vietnam and an increasingly strident antiwar movement at home, Rawls hoped to lead the Harvard faculty into the pressing questions of justice surrounding both. Although Rawls was an early critic of the American war effort as profoundly unjust, his proposal that afternoon focused more narrowly on the existing military draft system and hoped to influence the newly organized Marshall commission,
appointed by President Johnson to recommend changes to the Selective Service system. Along with his cosponsors, including Judith Shklar, Stanley Cavell, and Hilary Putnam, Rawls urged the university’s faculty to denounce the draft’s “2-S” system of deferments for college students. After two intense meetings on the topic, and a minor revision to the original motion, the resolution was defeated.

Rawls’s rare foray into activist politics has attracted polite notice from biographers and historians. These scholars have rightly situated the motion’s argument within Rawls’s larger defense of liberal egalitarianism and justice as fairness. However, they—along with many others—have failed to appreciate just how extensive Rawls’s engagement was with the racial injustice of the draft and how important this engagement was for understanding his philosophy and for contemporary debates over the relationship between Rawlsian ideal theory and racial oppression. This paper shows, through its discovery and recovery of neglected arguments and claims from Rawls’s Vietnam-era writings and activism, that Rawls thought that the draft exposed the systematic racial injustice of American society as a whole and that it operated in a racially exploitative way. Contrary to a common criticism from critical race theorists, and in contrast to the defensive posture of silence from liberal egalitarians when confronted with such criticisms, this essay shows that Rawls’s approach to the racial injustice of the draft reveals the power of his ideal theory to articulate the intolerability of racial injustice. It also shows that Rawls’s theory has resources for a radical critique of the obligations the oppressed have to conform to or obey such blatantly unjust policies. However, pace Rawls’s more ardent defenders, there remains a weakness to Rawls’s approach to ideal theory and conceptual construction, which lies less in idealization as such, and more in the tendency to seek consensus and reason within contexts and categories whose relation to the conversation of justice is objectionable.

I. Justice and the Vietnam draft
In Rawls’s view, a just society is guided by two principles of justice. The first grants strong priority to the protection of basic liberties that may not be limited or restricted for the sake of economic efficiency or to realize some perfectionist ideal of the human good. The second guarantees fair equality of opportunity and a standard of distributive justice by which unequal partitioning of the social and economic benefits and burdens of the social order and its civic obligations must be justifiable and to the advantage of the least well-off. It is difficult to

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4 Faculty Resolution 1.
8 For the canonical statement of these principles see John Rawls’s A Theory of Justice, revised edn (hereafter Rawls, TJ) (Cambridge MA, 1999), 266.
imagine a system more at odds with the spirit of Rawlsian justice than the Vietnam-era draft.

From the 1964 Gulf of Tonkin resolution through the 1973 Paris Peace Accords, 2.2 million men were drafted and 8.7 million enlisted into the armed forces. Yet, unlike the more general enlistments of World War II, the 1960s military had a larger population to draw from and fewer needs for personnel. Faced with the question of who will serve when not all must, the US constructed a military overwhelmingly composed of working-class and poor citizens. According to the government report, *Legacies of Vietnam*, at least 68 percent of Vietnam veterans had working-class backgrounds, while only 23 percent had fathers with professional/technical or managerial positions—significantly out of proportion with the general male population of their generation. Educational attainment reflected the class-biased composition of the military as well, with 80 percent of Vietnam veterans having received only a high-school education or less, in an era where more than half of Americans aged eighteen to twenty-one attended college.

There were numerous ways in which more advantaged Americans could avoid conscription (e.g. medical fraud or the National Guard). Yet the “most overtly class-biased feature of the Vietnam era draft” was the 2-S student deferment, which drew Rawls’s ire. At the time of his memo, this system allowed for full-time undergraduate and graduate students “in good standing” to defer draft eligibility with no limits on successive deferments. This option had a skewing effect on the population eligible for the draft because middle- and upper-class students were far more likely to attend college, especially full-time, than their working-class and poor counterparts.

The preferential treatment for students was by design. As the Cold War hardened, the vision of a technocratic elite who would deliver victory over communism through scientific and engineering achievements became increasingly influential. Lewis Hershey, director of the Selective Service from 1941 to 1968, overcame his early suspicions against sweeping student deferments unrestricted by field to become a prominent champion of the policy as part of a broader vision of the draft as an inducement to “channel” youth into achievements and professions (especially science, engineering, and teaching) which were, in his words, “essential to the national interest.” The draft’s effect thus spread far beyond those officially conscripted. Hershey’s infamous “Channeling” statement openly lauded the “pressure” of possible conscription as a way of nudging American youth toward the

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9Christopher Appy, *Working-Class War: American Combat Soldiers and Vietnam* (Chapel Hill, 1993), 18. As Appy notes, however, as many as half of those who “voluntarily enlisted” were motivated by draft pressure, attempting to better the timing, branch, or location of their service. Ibid., 28.


11Ibid., 105

12Appy, *Working-Class War*, 25

13Ibid., 35


occupations that Cold War policy makers deemed vital. Selective Service, on this account, was “the American or indirect way of achieving what is done by direction in foreign countries where choice is not permitted.”

Denouncing the injustice of the draft’s disparate impact and defending the priority of basic liberties over “channeling,” the “explanatory note” attached to his 1966 faculty motion was quintessentially Rawlsian. “Conscription,” it reads, in a passage reprinted verbatim in *A Theory of Justice*, “is a drastic interference with the basic liberties of a free society and cannot be justified by any needs less compelling than those of national security.” Any “burden of this magnitude,” Rawls argues, must be “borne equally.” Yet the deferment system granted exemptions for “weak reasons of social interest,” while allowing the “hardships and risks of compulsory military service [to] fall disproportionately on the poor, the less intelligent, and the less well educated.” Rawls’s appreciation of the burdens and risks of military service was deeply influenced by his time in the US Army in the Pacific theater during World War II, an experience that also occasioned a dramatic crisis of religious faith.

Perhaps because of this obvious congruence between the motion and Rawls’s later published philosophy, however, scholars have ignored the wider range of considerations that influenced Rawls’s considered position on the injustice of US conscription in the 1960s. Specifically, they have neglected the extent to which Rawls was motivated by a consideration of the early Vietnam-era draft’s specifically racial injustice.

For many scholars, this claim may be surprising. For example, Charles Mills has argued influentially that Rawls “had next to nothing to say in his work about what has arguably historically been the most blatant American variety of injustice, racial oppression.” Despite Rawls’s writing amidst the civil rights and black power movements, Mills contends that the “postwar struggle for racial justice in practice and in theory and the Rawlsian corpus on justice are almost completely separate and non-intersecting universes.” For Mills, this is a “systematic omission,” evidenced by the paucity of explicit references to racial injustice and appropriate “corrective” measures in Rawls’s work, and ultimately rooted in Rawls’s commitment to “ideal” theory. Others, most prominently Tommie Shelby, dissent from

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17Faculty Resolution 1. Also see Rawls, *TJ*, 333–5.

18Faculty Resolution 1.


22Ibid.

23Charles W. Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism* (New York, 2017), esp. Chs. 5, 8–9. Ideal theory, in Rawls’s gloss, is an approach to moral and political philosophy that aims to develop or discern the principles (e.g. of justice) which would characterize and govern a “well-ordered” society. To do so, it constructs an abstract, idealized picture of society that assumes “strict compliance,” where nearly all persons and institutions adhere to principles of justice. Through the exercise of developing
this critical portrait by defending Rawls’s work as a productive foundation for theorizing racialized injustice. For Shelby, Rawls’s project of ideal theory provides a reasonable standard by which to judge complex, racialized social conditions (e.g. ghetto poverty) as unjust, while also clarifying the significance of various harms, disadvantages, and demands to better guide our efforts at reform.24

At the heart of this debate about Rawls and race are two questions. The first is interpretive: how, if at all, does Rawls think about racial injustice—particularly injustices like ghetto poverty, rather than overtly discriminatory policies like segregation or black chattel slavery?25 The second is evaluative and methodological. Do the Rawlsian commitments to ideal theorizing and social contractarianism function ideologically? Does it legitimate or mystify racial injustice? Does it undermine or distract from important forms of political action necessary to fight racial injustice?

This debate has focused so far on Rawls’s published work in ideal theory and thus necessarily contented itself with making inferences regarding its possible relation to nonideal theorizing on racial injustice. This, I argue, is a significant interpretive mistake with important normative and evaluative consequences. The view, now standardly associated with Charles Mills, that Rawls failed to attend to racial injustice, and that his theory is incapable of accommodating notions like “racial exploitation,” is, I show here, no longer sustainable in light of new archival evidence.26 Indeed, the archive reveals that Rawls himself developed lines of argument that would eventually become central to the defense of Rawlsianism that Tommie Shelby offers in his account of ghetto poverty. I turn in closing to another dimension of Mills’s objection to Rawls: that his theoretical understanding of injustice as a “deviation” from “ideal” justice supports an inadequate social theory, wherein injustice in contemporary (self-professed) liberal democratic societies is itself mapped onto a norm/deviance model. Here I suggest that the problem is less with ideal theory in principle than with Rawls’s particular conception of its tasks.

II. “A double injustice”: race and justice in the Rawls archive

Arguments that the Vietnam-era draft was racially unjust (particularly before a lottery was added in 1969) were a prominent feature of antiwar thought and activism, especially among black left intellectuals.27 In early 1965, at an event sponsored by a “realistically utopian” conception of society with a “perfectly just basic structure,” we might discover compelling and reliable standards by which to judge the failures of existing, nonideal, institutions. Ideal theory should therefore “clarify the goal of reform and … identify which wrongs are more grievous and hence more urgent to correct.” John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA, 2001), 13; and Rawls, *TJ*, 7–8, 215–16.


25Rawls considers these latter cases as so self-evidently wrong that he makes them exemplars in his expostitions of reflective equilibrium. For example, Rawls, *TJ*, 17.

26Elsewhere I write at length about Rawls’s understanding of the civil rights movement and uses of Martin Luther King Jr, but in what follows here I focus on Rawls’s arguments against the racial injustice of the Vietnam-era draft. “Rawls, Race, and Romance: A Critique of Civil Rights Exemplarity” (manuscript on file with author).

27Such critics were also, invariably, opponents of the war itself as unjust, but this essay focuses primarily on concerns about the draft.
the Student Nonviolent Coordinating Committee (SNCC), Malcolm X excoriated the draft as “the most hypocritical governmental half-truth that has ever been invented since the world was the world.” Malcolm’s strident criticisms of American militarism as racist, imperialist, exploitative, and hypocritical strongly influenced SNCC, which became the first major civil rights organization to denounce the war and advocate draft resistance. In January 1966, SNCC released a statement echoing Malcolm’s charges and indicting the government for failing to secure even basic voting rights or personal liberties from white-supremacist terrorism. SNCC chairman Stokely Carmichael proudly proclaimed that “we not only say we are against the war in Vietnam; we are against the draft … Any time a black man leaves the country where he can’t vote to supposedly deliver the vote to somebody else, he’s a black mercenary.”

Others emphasized broader problems of social oppression and inequality. In a February 1967 address, shortly after Rawls’s second resolution met defeat, Martin Luther King Jr decried the “arrogance” of American policy makers and legislators for “professing to be concerned about the freedom of foreign nations while not setting our own house in order.” As King continued,

> We are willing to make the Negro one hundred percent of a citizen in warfare, but reduce him to fifty percent of a citizen on American soil. Of all the good things in life the Negro has approximately one half those of whites, of the bad he has twice that of whites. Thus, half of all Negroes live in substandard housing and Negroes have half the income of whites … The infant mortality rate is double that of whites. There are twice as many Negroes in combat in Vietnam at the beginning of 1967 and twice as many Negro soldiers died in action (20.6%) in proportion to their numbers in the population as whites.

As King correctly noted, the early years of the Vietnam conflict (1965–7) saw the proportion of black casualties far outstrip the proportion of blacks in the US population. Due to intra-military racial discrimination (exacerbated by the extraordinarily low number of black officers), lower qualifying test scores (reflecting the
poor state of black education), and financial pressures to seek out higher-paying roles within the military (reflecting disproportionate poverty), blacks were far more likely to be assigned to high-casualty combat units. Surveying such statistics, King could only see a “cruel manipulation of the poor,” and especially the black poor, who bore the costs of social marginalization and educational apartheid at home and abroad.34

Where Charles Mills has claimed that such racial-justice struggles and Rawls’s thought are “almost completely and non-intersecting universes,” the archive reveals that Rawls echoed many of these criticisms from the black left. He developed these views in a set of working documents from 1966 and 1967 generated in the course of his antiwar activism and work on the resolution, including statements from faculty study groups on the draft, lectures to student antiwar groups, responses to potential questions concerning the motion, and correspondence with faculty about drafts of the memo.35 Included in these papers are a set of arguments about how the draft exposed “background” structural racial injustice within the broader society, while disproportionately and unfairly burdening black Americans in ways that violate the norms of fair cooperation. The racial injustice of draft deferments, on Rawls’s account, was evidence of the “degree to which a person’s social status determines … the extent to which that person is simply precluded from many opportunities.” It also underlined the “political fact that the underprivileged exert a disproportionately weak influence on the government.” The draft revealed violations of fair equality of opportunity, democratic equality, and also basic political liberties. “Generally,” Rawls says, “it is the Negro American and the other minority groups that are represented among the underprivileged and hence excluded from higher education.”36

In these papers, Rawls describes black Americans explicitly as a “severely deprived” group he is “particularly” worried about being victims of injustice in the draft.37 In his description, blacks are subjected to violations of the fair value of their basic political liberties (e.g. “direct and indirect denial of the franchise to the un or undereducated, the poor, and the non-white”), undeserved and unjust inequalities of opportunity, disproportionate poverty, and racial discrimination.38 For Rawls, one of the ironic and unintended consequences of peacetime conscription was that it revealed, in standardized and empirical data, the depth of deprivation among the nation’s poor, and among African Americans in particular.

A key influence here seems to have been the public discussion around One-Third of a Nation, the 1964 report by the Taskforce on Manpower Conservation.39 Principally researched and written by the social scientist gadfly Daniel Patrick Moynihan, then serving as assistant secretary of labor under John F. Kennedy,

the report analyzed the data on military conscripts and estimated that roughly one-third of newly draft-eligible eighteen-year-olds would “not meet the required standards of health and education.” Of those who failed the Armed Service Qualification Test (ASQT), the task force concluded, “a major proportion of these young men are the products of poverty” who “have inherited their situation from their parents.” Roughly 80 percent of those rejected had not completed high school, and approximately half came from families with annual incomes of less than four thousand dollars (or roughly $32,000 in 2019).

Disproportionately concentrated in these categories, blacks were decidedly over-represented among those who failed the ASQT. Department of Defense estimates suggest that of all potential candidates examined, almost 50 percent of nonwhites between the ages of twenty-six and twenty-nine in 1964 had been found unfit for service, compared to just 25 percent of whites. These findings, in many respects, were a crucial impetus for the Johnson administration’s “War on Poverty” and, for liberals at least, the military test became a ready symbol of America’s failure to develop the capacities of its most disadvantaged citizens. For example, Moynihan, in his controversial report *The Negro Family: A Case for National Action* (1965), cited failure on the test as “the ultimate mark of inadequate preparation for life” and lamented that over 50 percent of black men fell below its minimal standards.

These background injustices, however, raised important questions for the claim that the draft disadvantaged blacks. Among the most glaring was how the draft could burden blacks *disproportionately* if the group failed the ASQT in such dramatic proportions? Indeed, in the aftermath of the war, a handful of commentators sought to dismiss charges of racial injustice by pointing to the fact that while blacks were a disproportionately large percentage of the armed forces in the early years of the conflict, numbers of enlistees and casualties over time leveled out toward the overall black proportion of the population.

For Rawls, such numbers represented only “superficial equality.” In a 1966 document prepared to answer questions regarding his proposed motion to the Harvard faculty, Rawls dissolves this dilemma elegantly:

> It happens that if we take all black people, that the chance of a black man entering the army is the same as that of a white man. (Or let’s suppose.) Does it follow that the draft does not fall disproportionately on the poor and less well educated? No—since the relevant class is that of those who pass the tests of capacity for military service. The chances should be equal.

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40Hsiao, “Project 100,000,” 26.
41Ibid.
over this class (cet. par.). To see this, we could imagine a society in which every black man is drafted while only one of ten white men is. But since for reasons of poverty, etc., only one in ten blacks pass the test, while for reasons of affluence every white man passes, the risks over the whole society would be equal. Yet we would not suppose this scheme just. Two injustices—one in the draft and another in background sociological conditions—combine to give a superficial equality. It is clear that this equality is the upshot of a double injustice: the one keeping black people below the line of passing the tests, the other taking a larger proportion of those who manage to struggle above it (than of whites).45

In other words, the advent of the Vietnam draft might be said to establish unfairness in two respects. On the one hand, it discloses, through widespread black failure on the ASQT, that what Rawls calls the “basic structure” of society is unjust. On the other, the draft permitted a large proportion of white upper-class and elite youth to take unfair advantage of this background injustice. Instead of sharing the burdens of military service equally, a system of deferments and exemptions was concocted that allowed this group a mechanism to exit the pool of eligible conscripts, leaving behind (among others) those blacks who managed to overcome adversity and score adequately on the ASQT to bear the disproportionate burden of supplying military manpower. Let us take these two claims in turn.

On Rawls’s conception, the basic structure captures how “the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages from social cooperation over time.”46 It therefore includes institutions like the constitutional order and legal system, major governmental departments (e.g. judiciary, executive), economic structures, and their regulatory devices (e.g. markets, private property, banking, etc.), and social institutions like the family or the educational system.47 The basic structure gains its profound theoretical import and moral significance, in Rawls’s view, from its impact on our life chances and opportunities, broadly conceived, including its extraordinary impact on “citizens’ aims, aspirations, and character.”48

One important way in which the basic structure of a democratic society can be unjust, Rawls argues, is by not realizing or even approximately satisfying a fair equality-of-opportunity principle adapted to its specific historical circumstances. To fully realize this principle, Rawls argues, we must not only prevent “excessive accumulations of property and wealth,” but maintain “equal opportunities of education for all.” This commitment is not in defense of meritocracy, but of egalitarianism. As Rawls writes, “resources for education are not to be allotted solely or necessarily mainly according to their return as estimated in productive trained

45John Rawls, “Questions Re the 2-S Resolution (suggestions only) [1966],” Folder 2, Box 24, Rawls Papers, 2.
46Ibid.
47Rawls, TJ, 6. For the issue of the family and the basic structure see Sophie Smith, “Okin, Rawls and the Politics of Political Philosophy,” unpublished MS.
48Rawls, Justice as Fairness, 10.
abilities, but also according to their worth in enriching the personal and social lives of citizens, including here the least favored.”

Rawls’s reference in his unpublished papers to “background sociological conditions” that are unjustly “keeping black people below the line of passing the tests,” therefore, is easily filled in with the sordid history of racial oppression in the United States and its brazen violations of basic liberty and equal opportunity. What Rawls gleaned from the failure rates on the ASQT included, for example, educational inequalities forged in a social order riven by both de jure and de facto racial segregation, discriminatory patterns in public-school funding, teacher salaries, and private-school admission, and a willingness to subordinate the ostensible goals of education to racist ideologies about innate cognitive inferiority among blacks and/or the coercive demands of twentieth-century labor institutions (i.e. sharecropping, light industrial trades, etc.). Rawls also frequently insisted that the basic structure has immense influence over not only our material opportunities, but also subjective domains like our personal aims, aspirations, and character that allow us to make effective use of such opportunities. So, even if the contested claim were true that African Americans disproportionately came to devalue education and long-term planning during the Jim Crow era, the proliferation of these dispositions would still raise questions of justice.

If this interpretation is correct, then Rawls’s formulation is anti-ideological along this axis insofar as it neither legitimates, reifies, or mystifies racial gaps in academic achievement along racial lines, instead calling its Vietnam-era manifestation an “injustice” with language that suggests domination rather than deviance or natural inferiority.

Rawls also charged the draft itself with the commission of racial injustice. In a draft response to potential criticisms, Rawls lays out what he calls “the social injustice” argument against deferments, noting that it is “the Negro American and the other minority groups that are represented disproportionately among the underprivileged and hence are precluded from higher education.” Contrasting these men’s backgrounds with those of “members of the privileged classes” who, “regardless of intellectual merit, have undeserved access to a college education,” Rawls argues that the disproportionately high rates of black enlistment and the “extremely low” number of black officers are evidence of “the seriousness of this discrimination.” Elsewhere, in a comprehensive military manpower and recruitment policy proposal, Rawls argued against student deferments in part because it was

49Ibid., 63, 91–2.
52“Re: 2-S + Rank List: Draft,” Folder 2, Box 24, Rawls Papers, 3.
“ludicrous” to presume that it is in “the national interest, in any material sense, that students in philosophy (as well as many other subjects) should be deferred while the poor and the racially discriminated against are compelled to bear the burdens of military service.”

A just democratic society, Rawls argued, would maintain a well-compensated volunteer army with provisions for universal conscription of young men (e.g. eighteen-year-olds) or, less optimally, a universal draft lottery, in times of emergency. In the latter case, deferments would be dramatically limited: to cases of significant disability, a small number of occupational exemptions for persons whose work is instrumental to military success (e.g. some scientists and engineers), and perhaps other more ad hoc categories, like last surviving sons.

Against this standard, Rawls found the draft of the early Vietnam era severely flawed. Recall Rawls’s claim that class- or race- biased forms of conscription, as a “drastic interference” with basic liberties, could not be justified by considerations of efficiency, productivity, or perfectionist ideals (e.g. artistic achievement). When such vital interests are at stake, Rawls argued, there is a strong presumption in favor of all sharing the burdens equally, in a way that reflects the controlling idea of society as a fair system of social cooperation among equals over time and the mutual assurance that we need that others will live up to their sense of justice.

According to Rawls, the deferment structure of the draft granted the beneficiaries of morally arbitrary talent distributions (e.g. intelligence, motivation) and morally objectionable resource allotments (e.g. the benefits of overlapping racial and class hierarchy) an institutionalized pathway to free-ride on the contributions of the less advantaged for their advantage. Insofar as this free riding is possible because of vulnerability engendered by background conditions of injustice (i.e. historical wrongs, democratic disempowerment, and contemporary discrimination), it is racially exploitative in one possible sense of the concept. The free riding, and the institutional arrangement that facilitates it, take systematic and unfair advantage of vulnerabilities and superior power engendered by both past and present racial injustices to enrich (in resources like security, free time, money, education, health, etc.) a favored racial group, at the expense of fulfilling duties of fairness or beneficence to the disadvantaged (or dominated) group.

While Mills criticizes Rawls for failing to generate a concept of “racial exploitation,” Rawls’s account of racial injustice in the Vietnam era captures many of Mills’s concerns, including how “the relations of race play a role in the nature

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53a “Proposal for a Military Recruitment Policy,” Folder 2, Box 24, Rawls Papers, 7.
54Ibid.
55Ibid., Rawls’s persistent suggestion of a “last-surviving-sons” exemption from the draft as possibly legitimate, I think, shows how deeply his unreflective patriarchal conceptions of the family go. Nor does Rawls broach the subject of expanding women’s eligibility for the draft outside a small nursing provision.
and degree of … exploitation itself,” conceived as “unjust enrichment.” While Mills treats forms of racial exploitation that involve official ascriptions of sub-personhood (i.e. slavery or indigenous land expropriation) as the “paradigm” case, he also argues that a “secondary” form has arisen “from the legacy of the first” and become “more important over time.” In “secondary” racial exploitation, nominal civic equality and the official disavowal of hierarchical race ideologies sit alongside exploitation made possible by subordinate groups’ inheritance of “a disadvantaged material position that handicaps them … in the bargaining process or the competition in question.”

Further, as befitting Mills’s invocations of racial exploitation and white supremacy, Rawls’s critique of the racial injustice of the draft strives for systematics and coherence, linking a specific institutionally embedded unjust racial benefit (e.g. the draft exemption) with a broader account of the racial injustice of the broader social order (e.g. unequal opportunities and political domination). In doing so, it does not rely upon malice or discriminatory intent for judgments of injustice. It also does not rely only upon an account of black disadvantage, but foregrounds illicit white advantage, or what Mills describes as “the reproduction of wrongful white advantage and unjust nonwhite (particularly black and Latino) disadvantage through the workings of racialized social structures.” Not only is it attentive to the ways that “race determines, or significantly modifies,” the nature of the relationship between groups to make exploitation possible, but also it makes even clearer sense of what is objectionable about such practices. Insofar as contemporary whites born well into the development of a society founded upon white supremacy are “benefited by this history” by accruing “a competitive advantage that is not the result of superior innate ability and effort,” this transgresses the principles of justice in the ways that Rawls transfers them from ideal to nonideal theory.

However, concerns immediately arise. First, if the account above holds, then Rawls should think that many working-class or poor whites were exploited by the draft as well, for reasons that were not racially, but socioeconomically, exploitative. Yet Rawls’s argument treats exploitative practices as taking unfair advantage of vulnerabilities engendered by many different kinds of background injustice at once, without collapsing and conflating race and class injustice.

As Rawls noted (a point confirmed by later empirical study), while white college students were far less likely than other whites to be conscripted, the blacks most exploited by the draft itself were working-class men with high-school education, and not the most abjectly poor. The “truly disadvantaged” ghetto poor often failed the early Vietnam-era ASQT at astronomical rates before the standards were relaxed. Whereas the compressed class differentiation of the black population in this era led many commentators to collapse poverty and blackness into each other, keeping these categories conceptually distinct allows the social critic to ask where past injustice or racial discrimination might contribute to an unfair

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57 Mills, Black Rights/White Wrongs, 122.
58 Ibid., 125.
59 Ibid., 118.
60 Ibid., 125.
distribution of burdens and benefits for blacks who, nevertheless, are not “poor” on the income distribution curve.\textsuperscript{62} This is an important distinction that any ethical critique of racial injustice needs to achieve, and Rawls’s account shows some surprising deftness.

Second, it might be objected that the case of conscription is not especially illuminating for forms of exploitation that do not rely upon state violence. After all, conscription involves a severe case of government coercion, with state sanction (e.g. fines, imprisonment, etc.) and significant social stigma (especially in job markets) for those who refuse to comply. However, Rawls also objects to volunteer (as well as “professional and market”) military recruitment against conditions of background injustice for similar reasons. While defending the existence of a volunteer military in a “well-ordered society” that had not eliminated external threats, he writes explicitly that “if our institutions are unjust, and a volunteer army is set-up as an escape for severely deprived groups, particularly black people, then I have certain worries about it.” Rawls goes on to say, in one of his few explicit gestures toward “transitional” justice concerning race in any of his writings, that the advocacy of a volunteer army and a fair draft in times of emergency (his ideal military situation) \textit{must} be accompanied by a “press for measures which give greater social justice to black people.”\textsuperscript{63}

Together, these claims gesture toward the argument that the political community (as the authorizing agent of military formation) would be guilty of taking unfair advantage of historical ills and discrimination, rather than fulfilling its duty to ameliorate the social injustices that burden blacks qua blacks. Here, Rawls seems to treat blacks as the relevant “least-advantaged” social group from which to judge the justice and legitimacy of institutional arrangements \textit{and} justifications for reform, precisely in the ways that critics like Mills deny. It is not clear, further, if Rawls is indeed suspicious of a professional military that recruits with monetary and status incentives against a background of racial injustice, why he would not extend that same critical stance toward other coercive market incentives in the private sector.\textsuperscript{64}

Lastly, and relatedly, one might worry that the Vietnam-era draft could not be racially \textit{exploitative} because the ostensible “victims” actually \textit{benefited} from the practice in many respects.\textsuperscript{65} It is important to remember how influential such a view was in the Vietnam era. While circulating his thoughts on conscription to colleagues to solicit support for the 2-S deferment resolution, Rawls received a (hitherto unknown) critical letter from the neoconservative political scientist Edward Banfield, one of the central figures in the late twentieth-century ascendance of “cultural” explanations of urban poverty, crime, and deviance.\textsuperscript{66} For Banfield, who cited Moynihan’s 1966 Carnegie Foundation report, “Toward Equality as a Fact and as a

\textsuperscript{62}On the changing black class dynamics of this period see William J. Wilson, \textit{The Declining Significance of Race: Blacks and Changing American Institutions}, 3rd edn (Chicago, 2012), 122–82.

\textsuperscript{63}“Notes on the Draft (1966),” Folder 2, Box 24, Rawls Papers, 2.


\textsuperscript{66}Edward C. Banfield, \textit{The Unheavenly City Revisited} (Boston, 1974), esp. Chs. 3–4, 10–12.
Result,” Rawls’s racial-justice objections were misguided: if African Americans were “injured” by the draft process, it was arguably because they were under-drafted, rather than the reverse.67

Moynihan’s counterintuitive argument built upon themes from the aforementioned One-Third of a Nation alongside the more infamous report The Negro Family, where he lamented that military admission standards were too high, suppressing the percentage of black recruits to the armed forces. For Moynihan, military recruitment was an important tool for unraveling the “tangle of pathology” he saw as the most intractable obstacle to black social advancement. Increasing black participation in the military would, in his view, provide a decisive boost to racial equality and black flourishing by dramatically reducing unemployment, providing opportunities for human- and cultural-capital acquisition, and introducing blacks to interracial relations of equal recognition. It would also, Moynihan argued, “correct” through military discipline the “disorganized and matrifocal” pathologies bred by black families, by cultivating feelings of “manly” self-respect integral to the psychological health of black men in ghettos.68

In 1966, Moynihan’s profound influence on policy elites found its way into practice, when Secretary of Defense Robert McNamara launched a program called Project 100,000. Largely overlooked, this program dramatically lowered the standards of admission for the military and recruited over 300,000 formerly ineligible men, disproportionately poor and minority. Its justification, according to McNamara, was that the poor of America … have not had the opportunity to earn their fair share of this nation’s abundance, but they can be given an opportunity to serve in their country’s defense and they can be given an opportunity to return to civilian life with skills and aptitudes which for them and their families will reverse the downward spiral of decay.

The claim to repair the effects of racial inequality was crucial to the program’s execution. Almost 40 percent of Project 100,000 participants were African American, nearly quadruple the participation rate of blacks in the armed forces in total.69

Unsurprisingly, many of the objections to Project 100,000 have been consequentialist, disputing that it benefited participants.70 Rawls, however, took a different line of attack. He replied most directly to this sort of policy in a revised draft version of his “Proposal for a Military Recruitment Policy,” arguing,

We appreciate the desire on the part of many to use conscription as an agency of social justice. Given the glaring inequities of our society and the sluggishness of the movement for change, it is tempting to use the military for social ends. It may offer to some a mode of life without racial discrimination; to others [sic] it may offer an opportunity to acquire valuable skills. It is possible

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67Edward Banfield to John Rawls, 1966, Folder 2, Box 24, Rawls Papers.
70Hsiao, “Project 100,000.”
that there are many desirable side-effects. But we do not attempt to weight these against the many undesirable consequences. We feel that these considerations are irrelevant in view of the kind of justification required for compulsory service. Moreover, to maintain that these injustices are so great and the other institutions of our polity are in such a state of disarray that we must call upon the military to remedy our condition is tantamount to a confession of a social disorder so profound that were we to accept this confession as true, we should have to raise the question whether such a society has the right to conscript its citizens at all.71

Here, Rawls suggests that even if we concede the arguments for military conscription as an engine of social equality, such claims are either beside the point or self-undermining.

On the one hand, coercive (“compulsory”) interventions backed by the state that interfere with the most central aspects of our basic liberties cannot be legitimate, unless they strengthen “the total system of liberty shared by all” and are “acceptable to those citizens with the lesser liberty.”72 This priority rule prohibits “exchanges (‘trade-offs,’ as economists say) between the basic rights and liberties covered by the first principle and the social and economic advantages regulated by the difference principle.”73 In Rawls’s contention, members of (ostensibly or aspirationally) democratic societies are profoundly invested in the development of their moral powers and in being recognized as “free and equal” members of society—legitimate claims makers with rights to equal respect and fair consideration. For Rawls, many economic inequalities can thus be more “easily accepted” than “the hardships arising from political and civic inequality, and from cultural and ethnic discrimination,” which are degrading to the primary good of self-respect.74

This presumption in favor of the basic liberties is meant to apply in nonideal cases as well.75 Thus Rawls ruled out coercive interventions meant to reform the human-capital deficits of disadvantaged blacks for their own “good.”76 Against this liberal anti-paternalism, however, the defenders of coercive cultural reformism might appeal to “realist” considerations. Why not accept this proposal as simply the best of bad options given the vastly unjust background conditions of historical injustice and the resistance of many white Americans to redressing racial injustice?

Here again, Rawls finds such arguments self-undermining. The “realist” suggests that liberal reforms to improve the basic structure are nowhere forthcoming, that recognition as “free and equal” is not likely to be extended without deviant blacks undergoing profound cultural reorientation, and that the state nevertheless can impose significant and disproportionate burdens on the least advantaged to provide

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71Rawls, “A Proposal for a Military Recruitment Policy,” Folder 2, Box 24, Rawls Papers, 8–9, emphasis added. This paper is undated, but likely from 1966.
72Rawls, TJ, 220.
73Rawls, Justice as Fairness, 47.
74Rawls, TJ, 477–8.
75Ibid., 216–17.
76Faculty Resolution 1. This holds for all compulsory forms of “national service” as well, a view Rawls reiterated in 2001, quoting verbatim from his 1966 critique of draft deferments. Rawls, Justice as Fairness, 47.
the goods of social cooperation, insofar as they are likely to benefit. If such claims were true, Rawls suggests, then our affluent social order is so extraordinarily unfair that it represents a flagrant violation of the ethos of cooperation and principles of justice. Far from providing an ethical justification for the state’s coercive powers, Rawls suggests that this means that the state itself may be illegitimate, and thus without the standing to reasonably expect compliance with, or to rightfully enforce, otherwise normative claims on civic duty.77

This helps give some background context to some of Rawls’s more radical formulations from A Theory of Justice. “Unjust social arrangements,” Rawls proclaims, “are themselves a kind of extortion, even violence, and consent to them does not bind.”78 Even more suggestively concerning the case of African Americans, Rawls writes that “the duty to comply is problematic for permanent minorities that have suffered from injustice for many years” and who bear “too heavily” the burdens of injustice.79 That these arguments, and their thematic precursors within Rawls’s well-known antiwar activism, have been largely ignored reflects not simply analytical philosophy’s prejudices against nonideal theory or its often myopic relationship with intellectual and political history. More subtly, it reflects a surprisingly broad consensus between Rawls’s critics and apologists that, because questions of racial justice are rarely explicitly engaged in Rawls’s published texts, we can conclude from that relative “silence”—to use Mills’s charge—their absence.

This fallacious inference, long a target of devastating critique from literary scholars better attuned to the subtleties of writing, still exercises a surprising hold on the history of philosophy. Ideal theory is tethered, especially through historical judgment, to the nonideal. Concrete judgments about what is being abstracted away from, for what purposes, and with what degree of fact sensitivity allow it to find its way back to the imperfect world it presumes to judge or persuade. The devil is in the details, as it were, and the dangers that inevitably confront any abstractions that purport to theorize racial justice will not be overcome by alleged theoretical proofs of the bankruptcy of ideal theory or by presuming that “silence” is the best interpretive category to guide our engagement with thinkers like Rawls.

The “silence” hermeneutic reflects a misguided presumption that Toni Morrison criticized amongst literary historians: that “traditional, canonical American literature is free of, uninformed by, and unshaped by the four-hundred-year-old presence of, first, Africans and then African-Americans in the United States.”80 This assumption that “black people signified little or nothing in the imagination of white American writers,” Morrison writes, is demonstrably false if we take seriously the metaphorical and narratological practices, self-reflexive or allegorical themes—and, I will add, archival traces—through which white writers engage and invoke African American presence beyond explicit racism. “It would be a pity,” she warned, “if the criticism of that literature continued to shellac those [canonical]

77 Rawls, “A Proposal for a Military Recruitment Policy,” This provides more evidence for the persuasiveness of Shelby’s application of Rawlsian thought to ghetto poverty and cultural reform projects in Dark Ghettos, Ch. 3.
78 Rawls, TJ, 302.
79 Ibid., 312.
texts, immobilizing their complexities and power and laminations just below its
tight, reflecting surface ... too polite or too fearful to notice a disrupting darkness
before its eyes.”81

III. A time to break silence? Liberalism, political philosophy, and the
conversation of justice

Contra Mills, then, we can see now more clearly why philosophers and political
theorists like Shelby and Andrew Valls see the Rawlsian theoretical apparatus as a pro-
ductive toolkit for theorizing racial injustice, rather than an obstacle to it. In the anti-
draft writings under review, the transition from ideal to nonideal theory finds nothing
illicit in taking the position of a disadvantaged racial group as a relevant comparison
group without collapsing into class alone. Further, his arguments incorporate historical
and contemporary injustice as part of the explanatory background for judging viola-
tions of the basic liberties and fair equality of opportunity, as well as discussing the
distribution of benefits and burdens. Also, while he does not expound at length on
the content of principles of racial redress, Rawls explicitly endorses corrective-justice
measures for blacks (“greater social justice for black people”).82

Perhaps most importantly, Rawls’s arguments around the draft object to those
practices of coercive and punitive cultural reformation which later became ascend-
ant as the ideas of men like Moynihan and Banfield influenced a generation of con-
servative politicians consolidating power as A Theory of Justice was released.83

Given the lasting influence of these neoconservative doctrines, Rawls’s insistence
that we change the subject from deviance toward the basic structure of justice pro-
vides useful scaffolding for understanding and justifying resistance to and non-
cooperation with exploitative social arrangements and coercive civic demands. If
the prevailing racist ideology of the post-civil rights era is, as Mills and others
have suggested, a “cultural racism” or “neo-racism” or “laissez-faire racism” that
flows out of the cultural-pathology arguments of the late 1960s and early 1970s,
then Rawls’s claims against such doctrines should go some significant way toward
rebuitthing the charge of ideological complicity.

Even if the reconstruction above is compelling, however, at least one glaring his-
torical and philosophical problem remains. When Rawls submitted his final motion
and supporting statement to the Harvard faculty, the explicit references to race and
racial injustice were removed. A reason why most existing accounts of his work
regarding the 2-S deferments bear no trace of his concern with racial injustice is

81Ibid., 91.
82While certainly speculative, I think it also likely true that (at least as a matter of the good) he endorsed
broader efforts in the public sphere to educate the citizenry concerning the history of racial injustice in the
United States and support institutions capable of doing such work. I infer this largely Rawls’s principled
willingness to be the faculty cosponsor (with Stanley Cavell) for the student-drafted motion to establish
Afro-American studies at Harvard, a stance that required them to publicly oppose the university president.
See Cavell’s recollection in Stanley Cavell, Little Did I Know: Excerpts from Memory (Stanford, 2010), 508–
12.
83Daniel Geary, Beyond Civil Rights: The Moynihan Report and Its Legacy (Philadelphia, 2015); and
Elizabeth Kai Hinton, From the War on Poverty to the War on Crime: The Making of Mass
Incarceration in America (Cambridge, MA, 2016), Ch. 5.
that the final document is not explicit on this score. One must go to the archive to appreciate the depth and reach of Rawls’s early thinking about conscription and racial injustice, because when it came time to take the motion public, Rawls excised this crucial train of thought. The question is, why?

The easiest answer, one that is content with the explanatory force of university realpolitik, is that members of Rawls’s coalition (e.g. Banfield) were not willing to assent to those particular arguments. Given that there remained enough overlap to proceed with the policy demand of the motion, the racial-injustice claim was dropped to retain their support. Banfield’s note to Rawls regarding the draft resolution statement, after all, stated that “we agree on all points as the diplomats say,” before launching into his one objection—that the charge of racial injustice was likely overstated.84 Diplomacy, and the desire to show support across conventional political divisions, may have ruled the day at the expense of principled, public objection to racial injustice. It is important to note, however, that such constraints on the inclusion of racial-justice claims ran primarily in the direction against inclusion, in part because of the utter lack of minority faculty appointments and biases of group position that flourish absent the empowerment of such voices.85

For Rawls’s more trenchant critics, however, there will be a reasonable suspicion that the problem lies deeper. A powerful critique levied against so-called “white” or “racial” liberalism is that one of its most odious tendencies is a willingness to bury explicit concerns with racial injustice in “universal” or “color-blind” formulations in the face of opposition. Defenders of “color-blind” strategy insist (if not in public, then in private) that not only will the outcome of such egalitarian policies disproportionately benefit disadvantaged or oppressed minorities, but they will also, over time, work surreptitiously to further undermine the influence of racist ideology on citizens’ judgments concerning equal citizenship, the distribution of social resources and benefits, and anxieties about status and opportunity.86 Some arrangements, after all, begin as a modus vivendi, but may ultimately generate and be sustained by “genuine moral beliefs.”87

Transgressing the traditional liberal commitment to public justification, however, this practice seeks “justice through subterfuge,” and, in doing so, fails to give public affirmation to the justice claims of African Americans and treats whites’ sense of justice as so deformed as to require manipulation.88 Among the background commitments required for this strategy to be compelling to its defenders is a reasonable faith that, beneath the hostility and resentments that make explicit

84Banfield to Rawls, 1966.
appeals to racial justice a losing strategy, there are nevertheless deeper shared values, ideals, and institutional arrangements that are an effective foundation for reformist appeal. To put the point in Rawlsian terms, it requires a judgment that while the society may be unjust, it has nevertheless avoided falling into fundamental “disarray” in its constitutional essentials, background political culture, or basic structure. This is what permits us, on their account, to still speak of the US, as Rawls sometimes did, as a “basically just” liberal and democratic society. What might give the critical race theorist pause, therefore, is not Rawls’s open advocacy of “justice by subterfuge,” but a deeper affinity between that practice, this conception of American society in the world, and Rawls’s understanding of the tasks or roles of political philosophy.

For instance, in the delineation of his approach to political philosophy, Rawls defends what he calls the “practical” role of the discipline. Political philosophy, he argues, should seek to discover, underneath explosive and divisive disagreements in society, the deeper, shared commitments from which we might refocus our moral and political judgments to attain consensus on our governing principles. This task is aided by a second, that of “orientation,” which gives an account of our “political and social institutions as a whole,” and situates our “aims and purposes” and civic status in a historical account that is, crucially, that of “a nation.” Further, while Rawls is concerned to disclose injustice and supports radical reforms to attain it, he is also concerned with the task of reconciliation. He wants to “calm our frustration and rage against our society.” In other words, he thinks political philosophy should aim to show, despite the prevalence of injustice and irrationality in everyday life, that many of our key institutions, social facts, and self-conceptions have a deeper, rational core that we need to affirm from “a philosophical point of view” (e.g. the nation-state, religious pluralism, etc.). Lastly, to make such tasks emancipatory rather than ideological, on Rawls’s own explicitly hopeful account, they must avoid status quo bias toward existing institutions and extend our utopian imagination toward the limits of practicable political possibility.

The suggestion I want to conclude with, then, is that instead of the recent concern with “ideal theory as ideology,” we might instead follow Rawls’s own anxieties about the threat of ideology hiding amidst these conceptions of the tasks of philosophy. The threat of ideology, in other words, may not be ideal theory as such, but the way that the philosopher’s self-conception of her tasks may lead her judgment awry in developing the core concepts and commitments which guide her navigation between ideal and nonideal. For instance, the presumption that the “practical” role of political philosophy in a society like twentieth- or twenty-first-century America is to excavate the alleged deep consensus of our (singular) public political culture raises the persistent threat of the philosopher displacing conflict and dissensus over injustice through narratively laden concepts, question-begging descriptions, and historical romanticism. The consequence, in such cases, can be a kind of deep “misorientation” or “reconciliation as ideology” that undermines the utopian aspirations of political philosophy by obscuring the

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need to sharpen dissensus and transform the broader categories of our self-description and self-conception at critical moments like the crisis around the American War in Vietnam.

As a drama of politics and of the human soul, what is most arresting about the story of Rawls’s Vietnam memo is that, despite peering into the depths of racial injustice in America, he nevertheless seems to recoil from the fullest stakes or actionable demands of the civic crisis of legitimacy he limns from the abyss. Instead of finding himself intolerably compromised by the narrow consensus of the memo’s coalition, he presses on and inadvertently reinscribes the practices and discourses which arguably made his concerns about racial justice, and the implication of the most advantaged in reproducing an unjust society, more difficult to hear.

This argument builds on the sympathetic critique of Rawls pressed by Stanley Cavell.91 Cavell is concerned precisely with the ways in which Rawls undermines his realistic utopianism by not, in part, appreciating the extent to which an existing moral consensus, or the reigning forms of identification with society and its prevailing rules and partisans, can congeal into a kind of conformity or complicity that is itself part of structural injustice. Such conformity, Cavell argues, prematurely closes the “conversation of justice” by helping to evade, in bad faith, the suffering caused by our unwarranted certainty in the prevailing vocabularies, determinant judgments, and rules of moral encounter. Certain kinds of conformity and consensus in these domains can render particular claims of justice, and the political subjects that are constituted via these claims, inexpressible or invisible. Further, given that societies will always fall short of perfect justice, this dilemma is a perpetual threat.92

Explicitly citing Rawls’s contention that “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override” (a claim that does a great deal of work in the case of conscription), Cavell reminded his colleague that the advantaged often do not deign to describe violation as “violation.” A crucial element of injustice is that the advantaged often see existing arrangements as conducive to others’ welfare, even when the latter state grievances against it, and treat their own judgments with a degree of finality. Like Torvald in A Doll’s House or Banfield in his rejection of the claims of racial injustice, they see dissent as unintelligible, even immature, and cannot grasp how their justification of such a stance is itself a violation of the moral equality of the oppressed. Conformity or complicity with such views is itself part of a structure of injustice, part of a general set of rules, principles, definitions, and categories whose every word, Cavell writes (channeling Emerson) “chagrins us.”93

Rawls’s insistence on ideal theory entails that one of the most pressing moral and political questions will be how and whether to identify with societies, institutions, and practices that, inevitably, fall short of the standards of justice. To the extent that

92Stanley Cavell, Cities of Words: Pedagogical Letters on a Register of the Moral Life (Cambridge, MA, 2004), 186.
93Cavell, Conditions Handsome and Unhandsome, 110–12.
we remain committed or loyal to societies complicit with serious injustice, it is possible that “at some time my sense of my society’s distance from the reign of perfect justice, and of my implication in its distance, may become intolerable.”

Dwelling on the human suffering that is not receiving a full hearing, we may even experience a “disgust with or a disdain for the present state of things so complete as to require not merely reform, but a call for a transformation of things, and before all a transformation of the self.”

What should give us pause, then, is that Rawls’s excision of the racial-justice claim short-circuits what Cavell calls the “conversation of justice” by reconciling to conformity rather than responding, without defensiveness, to the alternative horizons of interpretation, judgment, and critique opened up by, for example, black radicalisms of the period. An important example here is Martin Luther King Jr’s reaction to the crisis around the war and conscription which led him to break the “betrayal of [his] own silences and to speak from the burnings of [his] own heart” rather than within dominant binaries of social criticism (e.g. civil rights/geopolitics, domestic/international). Unlike Rawls, King came to see how the habit (familiar to Rawlsians) of framing questions of social justice (including racial justice) as narrowly bounded within the nation-state, or as subordinate to and subsumable within attempts to speak from the space of “consensus,” had become—in the gap between ideal and nonideal society—part of the practice through which alternative and more just ways of living together had been foreclosed.

For King, the claim that America’s prosecution of the Vietnam War was racially unjust is not just two separate claims regarding (1) racial exploitation via the draft at home and (2) racist justifications for usurping self-determination abroad. Instead, it is a more global critique describing a shared, mutually reinforcing, and implicating ideological substrate to both practices. In this view, racial exploitation is a dangerous global sociopolitical and economic problem, sustained by an ideology that partitions the world into a hierarchy of races (as racialized nation-states, racialized peoples, and minorities within the “West”). In theory and practice, racial exploitation and related practices show contempt for the idea that nonwhites have legitimate or equal claims to mutual respect, fairness, and participatory parity in global and domestic institutions of governance.

Transcending the habitual partiality that would burden for decades the philosophy of global justice, these charges led King to describe the Vietnam war-era US in terms more befitting what Rawls would later call an “outlaw state” than a liberal, “decent” one, drawing attention to its human rights abuses at home and abroad. King excoriated the US as “the greatest purveyor of violence in the world” and decried its thralldom to “racism, materialism, and militarism.” From King’s vantage, to leave racism out of the story at all, therefore, is to obscure the nature of the American dilemma. Racism is often a controlling ideology within an outlaw

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94Ibid., 110
95Ibid., 46.
state’s practices, domestically and on the world stage. “Racism,” King argued, “and its perennial ally—economic exploitation—provide the key to understanding most of the international complications of this generation.”

Citing US support for racist regimes in South Africa and Rhodesia, the corporate cartels dominating Latin American societies, and US military efforts to usurp Vietnamese self-determination by supporting French colonialism and prosecuting their own military endeavor, King saw the US and many of its allies as engaged in “racism in its more sophisticated form—neocolonialism.” The war in Vietnam revealed, therefore, a “deeper malady within the American spirit,” one that portended the intractable and unjust prosecution of war and expropriation around the globe.

Indicting America for its “failure to make democracy real and follow through on the revolutions we initiated,” King called for a radically cosmopolitan “revolution of values” to transcend the limits of US nationalism. He urged “massive, active, non-violent resistance” and civil disobedience to further both the civil rights and peace movements while championing the “need to organize in international dimensions.”

Treating racial injustice globally, “the hope of the people of color in the world,” King wrote, “may well rest on the American Negro and his ability to reform the structure of racist imperialism from within and thereby turn the technology and wealth of the West to the task of liberating the world from want.”

A globally minded struggle for racial justice from within the United States, he hoped, would attack segregation at home and apartheid abroad, distribute wealth to end global poverty, restrain the efforts of Western corporations and militaries to usurp the self-governance of other peoples, and promote peace.

I invoke King’s vision because it helps clarify the long-term philosophical stakes in Rawls’s identification of practicality with deep consensus, and reconciliation with the search for the rational “essence” of our historical institutional development. In a society built upon racial domination, at home and abroad, these may be especially likely to lead us to compulsively and blindly produce ethico-historical accounts of consensus that exaggerate the depth and scope of agreement in our “background” political culture or the rationality of its development—making it difficult to find “orientation” in the appropriate sense. This matters because these histories, these self-descriptions, and their conceptual underpinnings then become the grist for the abstractions and idealizations that produce the fundamental categories of political and public philosophy, papering over the alchemy of historical, political, and other judgments which authorized them at their origin.

Glimpsing the legitimation crisis occasioned by the interpenetration of racism, poverty, and militarism, Rawls does not approach an equivalent philosophical or self-reckoning. The transformative possibilities of the affect of disgust or disdain, so palpable in Rawls’s response to arguments in the style of Moynihan and Banfield, remain subtly discouraged by Rawls’s approach to the tasks of political

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99 Martin Luther King Jr, Where Do We Go From Here: Chaos or Community? (Boston, MA, 2010), 183.
100 Ibid., 185.
102 King, Where Do We Go From Here, 58.
103 Ibid., 185–95.
philosophy. The confrontation with racial injustice in the drama of the memo is, for Rawls, a missed opportunity to occasion a rethinking of what kind of society we inhabit and what parties to the conversation of justice have claims upon us.

In a brief passage in *Law of Peoples* (1993), for example, Rawls argues that when a “so-called liberal” society requires citizens to fight for economic gain, power, or empire, “it no longer honors the Law of Peoples, and it becomes an outlaw state.” Elsewhere, he criticizes the United States’ covert efforts to overthrow democratic governments in Chile, Guatemala, Iran, and Nicaragua as unjust actions motivated by “monopolistic and oligarchic interests without the knowledge or criticism of the public” that exploited the rhetoric of “national security in the context of superpower rivalry.” Yet never does one get the sense that the aftermath of Vietnam led Rawls to fundamentally rethink his *orientation* to America’s history of settler colonialism, imperialism, and domination or his *reconciliatory* account of our essential institutions. Nor does one get the sense that Rawls recognized, as King did in the wake of Vietnam, how deeply *race* affects these judgments of “security,” and of which societies are “decent” or “outlaws.”

This kind of reckoning, as we see in King, should lead toward a revision of the terms on which utopian strivings for global and domestic justice must proceed, including a consequent emphasis on the problem of self-professed liberal societies becoming “outlaw” ones under the ideological influence of racialized discourses of security, racial paranoia, and religious bigotry that are more widely dispersed than the machinations of oligarchs. This would introduce a “conversation of justice,” both domestically and globally, where the significance of racism and the participatory parity of differently racialized groups in all governance institutions would loom far larger.

Whatever the real reason why the racial-justice claims fell from Rawls’s resolution, we may still draw the lesson that the fate of justice, racial or otherwise, may depend upon resisting the allure of speaking from consensus, especially in a society that raises profound questions of injustice. Calibrating the appropriate ethical response to different degrees of injustice will often require remaining responsive to evidence of misery and wrongdoing that eludes the language in which the conversation of justice is conducted. Conceiving of a *democratic* political philosophy’s task as one principally of distilling principles from consensus and proffering reconciliation as a response to political despair tilts the scale too heavily against the kind of humility and openness, self-reproach and receptivity, necessary to seriously contend with the way these problems marginalize the most vital voices in the conversation of justice. Nor is it especially amenable to the militant, contentious, and—in King’s words—“coercive” politics that might be necessary to restage that conversation when it is substantially disfigured by ideology and misrecognition. Doing justice, in theory and practice, depends upon an ethos of vigilance and receptivity, one that refuses to be so “distracted” (again, in Cavell’s sense) by its extant ideals, self-descriptions, conventional ends, or conception of our tasks that we fail to do the painful work of transforming them when necessary to rescue a

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106 Ibid., 53.
more perfect justice from the provisional, ignoble settlements that do not deserve our reconciliation or philosophical genuflection.\textsuperscript{108}

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\textsuperscript{108}Ibid., 13. On King’s own overlap with Cavell see Paul C. Taylor, ”Moral Perfectionism,” in Tommie Shelby and Brandon M. Terry, eds., To Shape a New World: Essays on the Political Philosophy of Martin Luther King, Jr (Cambridge, MA, 2018), 35–57.