



THE CLOSE REVIEW

A peer reviewed Sixth Form Journal

THE POLITICAL THEORY EDITION

2020

“JUSTICE IS THE FIRST
VIRTUE OF SOCIAL
INSTITUTIONS, AS TRUTH IS OF
SYSTEMS OF THOUGHT”
JOHN RAWLS

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EDITORS' NOTE

This project is an augmentation of our Politics Extension Club, which we created over the last term. Our weekly meet up involved discussions, and sometimes debates, about an article we had all read that week.

The initial focus of this group was learning about Rawls and liberal philosophy. As the weeks past, we branched off to critique Rawls through a personal lens; these included: lexism, race, utilitarianism and the judiciary. This peer review process was an extension of these choices as we all spent a few weeks writing an essay of our choice with a focal point on Rawls. This allowed us to explore deeper into our chosen topics as well as allowing us to be challenged. We then had the opportunity to read each others essays and critique them. This not only gave us a chance to appreciate other's points of view, but to solidify our own learning and help each other improve.

We have taken many positives from this process including a desire to challenge ourselves as well as taking a more critical viewpoint on our own essays, which will help us in higher education. We hope you enjoy reading our essays and hope that you learn something new that may inspire you to look further into Rawlsian philosophy.

A CRITIQUE OF JOHN RAWLS'S THEORY OF JUSTICE

THOMAS RICHARDSON

John Rawls is widely regarded as one of the most influential political philosophers of the twentieth century and his work has been crucial to strengthening the credibility of liberalism as an ideology in Western societies. Rawls felt that it was necessary to develop contractarian political theory in response to the socialist movements of the twentieth century and the growth of the size of the state subsequent to the second world war which had crowded out liberal, contractarian thinking. He also wanted to provide an ethical theory challenging the consequentialist outlook of Utilitarianism which had come to replace deontological theories – namely Kantian ethics: a change which Rawls thought provided a threat to human rights and individual autonomy (Douglass, 2012). In *A Theory of Justice* (1971) Rawls “expounded a contractualist theory of justice...based on the notions of fairness and reciprocity” (Choptiany, 1973, p.146) and he was able to achieve his two aims. However, since the publication of *A Theory of Justice*, many thinkers have looked to criticise Rawls's work. Authors have critiqued the idea that there should not exist any state-sanctioned conception of the good; the choice people would make in the original position; Rawls's beliefs about desert; and several other elements of Rawls's theory. Nevertheless, whilst it is easy to ‘jump on a bandwagon’ of criticising Rawls, there is still a lot that we can take away from his theories that may help to improve society's moral and political standards. This paper evaluates the criticisms put to Rawls and investigates whether anything can be salvaged from his theory.

One central area that could be seen as problematic is Rawls's plea for neutrality in the public sphere of life. Rawlsian liberalism advocates a state which holds a thin conception of the good life in order to encourage plurality of opinion to exist within society by making policies which do not presuppose any particular conception of the good life. This, Rawls argues, is necessary in order to protect individual autonomy by allowing individuals to express their own conception of the good life unhindered by the state, in line with the harm principle (Stratton-Lake, 1998). The reasons for this are especially convincing in our modern society where many contentious issues, like abortion; same-sex marriage; and racism, are frequently debated in public life: leaving one's personal conception of the good out of public discussion while discussing these debates will allow for people to make decisions for themselves about what they think is the right thing to do. Rawls also believed that requiring personal conceptions of the good life to be left out of the public realm by making political decisions behind the veil of ignorance would ensure tolerance and respect between individuals by nobody pronouncing their conception of the good

life to be the superior one and also by enabling rational, conducive public discussion to take place (Rawls, 1971). Habermas called such a scenario where public discussions are not entirely shaped by being internal to a particular conception of the good life the “ideal speech situation” (Walzer, 1981). Moreover, Rawls argued that making self-interested decisions behind the veil of ignorance would result in fair decisions in the real world. However, critics have challenged the idea of liberal neutrality. Some critics of Rawls denounce the idea of politics of neutral concern on the grounds that it is an ideal which is impossible and impractical to achieve, for humans can never fully detach themselves from their moral and religious convictions as the original position and a neutral public realm require (Barry, 1984). Macleod argues “neutrality is an implausible principle if billed as the fundamental principle upon which liberalism is predicated” (1997, p.530). As a result, attempts at neutrality in the public realm will result in states and individuals hiding behind a “false cloak of neutrality” where neutrality is claimed to be present but, in reality, one conception of the good life is favoured (Barry, 2000; Laborde, 2005; Leane, 2011). This is the case in instances of institutionalised racism where, despite tokenistic appearances of neutrality and equality, racism is still fundamentally engrained within certain liberal societies (Zamudio & Rios, 2006; Mills, 2008). Moreover, attempts at neutrality can discriminate against certain conceptions of the good life and thus undermine the original attempt at neutrality. Especially public religions, like Islam, will not have full opportunity to express their religious convictions with the presence of a secular state and a requirement for neutrality in the public realm, as many of the public displays fundamental to these religions will not be possible in such circumstances (Barry, 2000)¹. For example, in 2004, the French government, in an attempt to keep personal religious convictions out of the public realm, banned Islamic headscarves in schools. In 2010, it went on to ban the wearing of full-body burqas by adult women in public generally (Leane, 2011; Robshaw, 2019). In this case and others like it, the state’s aim to be neutral with regard to conceptions of the good has not been achieved since the state discriminated against religious convictions which require public expression of commitment. Thus, it is difficult to obtain a public realm which is thoroughly neutral with regard to conceptions of the good life and so critics argue that Rawls was wrong to make this a fundamental principle of his theory of justice.

Another source of critique of Rawls’s work could be made by arguing that political neutrality does not create the best foundation for justice. Aristotelians believe, in contrast to Rawlsians, that there is a correct way of ranking conceptions of the good life. Aristotle believed that there is in fact one superior conception of the good life and only through discussion and debate of moral and religious convictions can this ideal be discovered and justice subsequently be achieved (Butler-Bowdon, 2017). Liberal neutrality, Aristotelians argue, would prevent justice from ever being discovered (Sandel, 2009). Rawlsians would fight back against these criticisms arguing that by requiring one conception of the good life to prevail in society, the state is hindering pluralism and constricting one’s ability to choose their ends for themselves. Such a restriction of individual autonomy, Rawls would argue,

¹ It is worth noting that this depends on whether justificatory or consequentialist neutrality is adopted by those in the original position. Due to word limits, it is not possible to develop this but for more see Barry (2000) or Macleod (1997).

is not acceptable (Sandel, 2009). Despite Rawls's response to this criticism, the critiques of a politics of neutral concern have been extended: critics argue that liberal neutrality is not only impractical and does not result in justice, but that it is also harmful to society. Slavoj Žižek developed this criticism in *In the Living End* (2010) arguing that a refusal to debate competing conceptions of the good life in the public realm would not create tolerance as Rawls suggests (Rawls, 1993) but instead it will conjure resentment within society. A failure to discuss competing theories of the good will provide a fertile breeding ground for fundamentalist viewpoints to develop resulting in a less tolerant society (Žižek, 2010). In order to establish a more tolerant political environment, one must be able to challenge another's views in order to come to an agreement as to what is right, rather than just allowing everybody to express their own different, and potentially radical and harmful, conceptions of the good ad lib (Butler-Bowdon, 2017). Hence, overall critics argue that state neutrality with regard to conceptions of the good life is an unrealistic ideal; that it is the incorrect way to go about achieving justice; and that it creates a less tolerant, more polarised political environment by allowing the nurture of fundamentalist political viewpoints to take place. Rawls would argue against these criticisms by saying that the crucial principles of tolerance and autonomy are only achievable through state neutrality, however, I do not believe that Rawls could convincingly quash these criticisms since it is hard to evidence such claims. Thus, there are clearly potential flaws with Rawls's theory of justice with regard to its requirement of state neutrality.

A further criticism of Rawls's theory of justice denounces Rawls's conclusion that rational humans in the original position will choose the following two principles: The Liberty Principle and The Difference Principle. Robert Nozick was at the forefront of this criticism arguing that the two principles are incompatible with each other for two reasons. Firstly, Nozick argued that equality of opportunity would only be possible through equality of outcome (Nozick, 1974), "for it seems obvious that the rich can do more than the poor, and hence have more liberty" (Wolff, 1996, p.190). Therefore, the commitment to "fair equality of opportunity" (Rawls, 1971, p.302) is not possible without equality of outcome which Rawls's Difference Principle advocates the opposite of. Nozick furthers his case for believing that Rawls's two principles are in conflict with each other by arguing that the difference principle will at some point require a redistribution of wealth by the government in order to ensure the less well-off do not get left behind. This will most likely take the form of a progressive taxation system in order to provide a welfare state (Stanford Encyclopaedia of Philosophy, 2014) and Nozick argues that such a taxation system contradicts Rawls's dedication to individual liberty. Nozick is renowned for his promotion of libertarian, free market values and in line with this belief, he believes that taxation is "on a par with forced labour" since it forces certain people to work for the benefit of others (Wolff, 1996, p.194). However, Rawls would have several potential responses to these criticisms at the ready. Firstly, Rawls would argue that the Liberty Principle does not state that liberty entitles individuals to live their lives totally free from interference (Wolff, 1996). The Liberty Principle states that "each person is to have an equal right to the most extensive total system of equal basic liberties" (Rawls, 1971, p.302). The right to "basic liberties", rather than freeing people from all types of state intervention, entitles individuals to things such as freedom of speech or the right

to run for public office (Stanford Encyclopaedia of Philosophy, 2008). The Difference Principle does not restrict these freedoms. Also, Rawls includes in his Theory of Justice the Principle of Priority which states that if necessary, the Difference Principle will be forgone in order to protect the Liberty Principle (Philosophy Overdose, 2018). Therefore, Rawls can salvage the compatibility of his two key principles of Justice as Fairness and so whether Nozick's suggestion of a conflict between the two principles Rawls believes will be chosen in the original position is a viable criticism, depends on the definition of 'liberty' used. Rawls's definition ensures compatibility between the two principles.

A final area where Rawls's theory could be considered flawed is his desert theory. Rawls argues that many elements of one's character are rooted in biological or social circumstances (Lister, 2017) and these elements are arbitrarily distributed according to fortune (Rawls, 1971). As a result, we cannot be said to deserve the products of these "social endowments" since we do not own the means by which we achieve them (Sandel, 2003). Rawls writes that nobody can be said to deserve the fruits of their labour "for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit" (1971, p.104). Therefore, this theory suggests that only in a Harrison Bergeron style society (Vonnegut, 1961), where everybody is entirely equal can anyone ever be said to truly deserve the fruits of their labour. The first critique of this theory is a claim that it juxtaposes Rawls's Difference Principle (Steinberger, 1982). Whilst the Difference Principle allows inequalities within society, provided that those inequalities work to the benefit of the least advantaged (Rawls, 1971), according to Rawls's desert theory, "no-one can possibly deserve any more than anyone else" (Steinberger, 1982, p.986) as a result of the arbitrary distribution of social endowments. One might, however, be tempted to argue against this criticism by arguing that the theory of desert is not a theory of entitlement but rather is simply a moral theory and so has no implications for distributive shares. Rawls wrote, "The principles of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it" (1971, p.311). Therefore, desert has no implications for the distribution of property and thus does not juxtapose the Difference Principle (Rawls, 1971). However, personally I find the argument that desert is completely separate from justice hard to accept. How can we know what is just if we are unable to determine who deserves what in society? Steinberger writes, "the word "desert" is virtually unintelligible without connotations of justice" (1982, p.987). Thus, critics have condemned Rawls's desert theory on the basis that it is undermined by the Difference Principle.

Examined above are criticisms of Rawls's desire for neutrality in the public sphere of life; the compatibility of Rawls's two principle of justice; and Rawls's desert theory. These criticisms suggest weakness in Rawls's theory of justice and direct readers toward other theories like that of Aristotle and Bentham's Utilitarianism. However, despite criticisms, Rawls's theory of justice has been influential in strengthening the credibility of liberalism because, regardless of criticism, there is so much that can be taken from it and used to help improve the morality of modern societies. Firstly, Rawls recognises the importance of inalienable individual rights and liberties above all else. Unlike other theories of justice

which one might turn to, like Utilitarianism, Rawls refuses to let the rights of minority groups be violated in pursuit of the “national interest” (Frankel, 1974). In a society such as ours with huge ethnic, cultural and religious diversity, protection of human rights and liberties must be entrenched by law to ensure that minority groups are not oppressed in a tyranny of the majority. Rawls’s theory of justice provides such entrenchment of human rights. Secondly, Rawls’s original position provides a way in which people can make decisions based on rationality rather than on biases generated by the knowledge of their position in society (Benhabib, 2019). Such a tool could be used to achieve fairer outcomes to debates in numerous areas of life. For example, judicial cases which carry significant moral weight could be resolved in a more just manner if Rawls’s thought experiment was used in these scenarios by ensuring judges contemplate cases from behind the veil of ignorance (Lawrence, 2016). Also, in contemporary political debate the ideal speech situation would ensure that rational, conducive debate would take place regarding contentious issues. Such coherent discussion would not be able to take place if everybody spoke from the vantage point of their own conception of the good life. Moreover, Rawls’s theory of justice limits the influence of the state. Without state neutrality, there is the possibility of states overstepping their appropriate areas of influence and indoctrinating entire populations through totalitarian political systems. This has been seen historically in countries such as Cuba and Germany. Finally, Rawlsian liberalism provides equality between individuals within society. Rawls’s assertion that the state should not aim to improve the morality of individuals shows an equal respect for all competing conceptions of the good life by not ranking one higher than any other. This provides foundational and formal equality within society for all individuals (Benhabib, 2019). Therefore, if implemented Rawlsian liberalism would provide many benefits to society including the equal protection of human rights; provision of rational debate through tolerance of competing ideas of the good life; limits to the influence of the state to prevent authoritarian rule; and egalitarianism.

Since the publication of *A Theory of Justice* we have seen that various critics have made viable critiques of Rawls’s work. However, it is very hard to provide any fully infallible theory of justice, and to provide one which has no basis in any one particular conception of the good life was a particularly challenging endeavour. Thus, it was inevitable that Rawls’s theory of justice would face some criticism. Despite these criticisms, many areas of Rawls’s theory of justice remain coherent and if implemented would have many benefits for society. Hence, despite it being easy to condemn Rawls’s theory of justice having considered the criticisms of it, there is much that we can take away from this theory which will help to improve the society which we live in.

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LIBERALISM IN A MULTICULTURAL SOCIETY

GRACE GREAVES

With the publication of “A Theory of Justice” in 1971, John Rawls envisaged a socially acceptable and just society, which would arise under capitalism and social responsibility. To achieve this aim, his approach was founded on two concepts of equality: the right of each person to have basic liberty without affecting that of others, as well as opportunities being available to everyone’s advantage. The over-arching limitation that arises from Rawls’s theory is that it is based on reflection over action - which is not compatible with our modern society (Buchanan, 1989). He suggests that standing behind the “veil of ignorance” we should forget about history so that society is “blind” to previous injustices. But inherent tensions are created due to the unchangeable ties race and ethnicity hold on society. Even behind the “veil of ignorance”, unlike economic inequality, race is a concrete difference that cannot be changed. Although Rawls does offer a starting point from which we can look to improve circumstances, his “blindness” (Mack, 2001) to acknowledge the entrenched racial disadvantages that cannot be altered is misguided. Through my article I will discuss the role of Rawls in racial liberalism, the tensions that arise when we turn to a biased “philosopher king”, the marginalisation that has occurred under Rawls’s “social contract” and then finally I will look to suggest how we should progress in the future. I conclude that Liberalism and systematic racism are not antithetical, nor entirely compatible, however it is important to challenge Rawls theory in its stance towards systemic racism, as it does not take positive action to achieve equality far enough (Dang, 2015).

Throughout this article I will largely draw on examples from the Black community, although a lot of the points I make are relevant to other minority ethnic and racial groups. Therefore, I will be using the terms largely accepted by the black community in the UK, however I am aware that the debate around this topic is constantly changing, and so some may contest the use of the terminology.

The absence of Race in Rawls

At the very core of Rawls’s work is the idea that in order to achieve a “just” society, one must put themselves behind a “veil of ignorance” in the original position. Here an initial critique arises as this is extremely hard to achieve due to people being swayed by personal bias. In the original position social, economic, and cultural differences are clear, and so conclusions can be made to change this. However, identity has become racialised – in that

one's identity is tied to one's race over any other aspect of their character (Sheth, 2015). So, contradictions arise as to whether individual liberty is of a greater importance than collective liberty: does the right of an individual to be racist, hold an equal importance to the liberty and safety of a black community when policing against prejudice? Who should be given the responsibility to decide whose freedom is of a greater importance? George Yancy summarises this as: "complacency, or rather liberalism's inability to work to rectify racism, can, in and of itself, be considered a manifestation of an inherently racist system." (Gerdes, 2017, p1). Rawls's theories need to be taken further: it is no longer feasible to merely admit that there are injustices due to embedded racial prejudice, this is a reflection, not a vehicle to implement change. Governments have had to restrict individual liberty, so that an entire ethnic community does not suffer as a result – such as The Race Relations Act 1965 which was the first legislation in the United Kingdom to address racial discrimination. The Act outlawed discrimination on the "grounds of colour, race, or ethnic or national origins" in public places in Great Britain (John, 2005). In a modern society, the optimistic idea that everyone should be free is outdated, as black people do not witness this freedom to the same extent. Looking from behind a "veil of ignorance" is largely ineffective as the issues surrounding racial prejudice is not the same as economic injustices, as one cannot change their race. Rawls fails to make this acknowledgement in his work, it offers a starting point for equality, but it does not extend this into action.

Who deserves to be "The Philosopher King"?

Beyond the "veil of ignorance", Rawls suggests that we may be guided by a version of Plato's "Philosopher King". Yet, unlike what Rawls suggests, in order for the education of the new generation to act as a vehicle to initiate progress and development, it has to be provided by a greater variety and volume of individuals who use and build on history, rather than ignore it. Charles W. Mills draws on this argument considerably in his work "Racial Liberalism" (Mills, 2008). He notes that only about 1% of American Philosophers are African American, and therefore political viewpoints are narrow and potentially swayed to benefit the ethnic group of the author, either through unintentional, or purposeful bias. Rawlsian liberalism largely advocates freedom of speech, however, in practise this is not achieved due to the channelled outlet of opinions. To make Rawls's work compatible with modern society, we cannot work under the "ideal theory" which disregards a history of injustices, and must rather use nonideal theory and corrective measures to build on rather than forget the past. We fall subject to "racial avoidance", whereby collectively we claim to be "colour-blind", however, this side-lines Rawls's "partial compliance theory", and results in no permanent or material change to the inherent racial inequalities that plague modern societies. Rather than avoid the subject, by understanding the role of race and difference in society, we will no longer have to choose traditional philosophy at the expense of racial liberalism, instead they may work together in a modified manner (Smith, 2017). Rawls sets himself as a "philosopher king" in the sense that he aims to begin an evolutionary movement towards equality, however, he falls short insofar as he fails to acknowledge the views of disenfranchised and minority groups.

Marginalisation under the “social contract”

Rawls's use of contract theory as a supplementary part of “Justice as Fairness” has rightly been criticised by minority groups as it has unintentionally given hierarchical power to certain groups at the expense of others. Under a social contract, rights are given up to a superior body in return for safety and protection, however this is not compatible with our societies today: crime and punishment is susceptible to malpractice based on racist views (Tamkin, 2020). Whites regard each other as moral equals, and those that do not fit this criterion fall short. In his “Social Contract”, Rousseau maps an ideal polity, but this in practise destroys natural freedom, especially as governments are not initially formed with minorities in mind. James Logan concludes that “we are free to the extent that we have no story” (Logan, 2006) – society is unknowingly channelled by the views of the governing body, and these are often built on white supremacy. Tradition and empiricism have maintained these archaic viewpoints, and they are filtered into liberal life. Frequent elections in modern liberal states provide a legitimacy for governing bodies and their practices, therefore, the aims of contract theory have veered away from concerning relations with the state. The role of contract theory today is steered towards social justice by philosophers like Rawls. Yet political thinkers have glossed over the issues that still remain between the electorate and governments in many countries, tensions are still high as police racial violence has risen considerably - highlighted by the death of George Floyd in May 2020 which acted as a trigger for a national response to the 1,525 black people who have been victims of unjustified police shooting (Statista, 2020). Vulnerability goes beyond bio-power, so a Rawlsian social contract is largely outdated, as a fundamental flaw remains: the “compatibility” between the promise of universal protections for some groups, and the violence for others.

Where to go next?

The scale of racial inequality has dug deeper than social ties, it has created economic and political differences that need to be mended before we arrive at a credible version of “difference-blind” justice. This can only be achieved through economic incentives, and positive action to end casual racism. Rawls suggest that we may ignore the current problems and build a foundation for justice that works for all, but this does not work in practise (Buchanan, 1989). It is true that “traditional” racism (acts that most the majority of people would agree constitute racism, from racial epithets, to the extremes of murder on account of one's skin colour) has declined since the times of Martin Luther King and the Jim Crow lynchings. But many take this as enough and accept this progress while denying the fact that concept of racism is changing in tandem with society. This was brought into the spotlight during the Black Lives Matter protests that were ignited after the death of George Floyd. These protests spanned over 60 countries, and social media played a huge role in promoting the BLM message (Byrd, 2020). Similarly, Margaret M. Zamudio and Francisco Rios talk about how a second dimension of prejudice has developed under the term “liberal racism” which is based on one's arrogance, ignorance, and pride (Wycliff,

2004). Liberal racism is a more subtle and casual form of racism that has developed in modern society where it is no longer provocative, but implicit, and after a national study overseen by Dr, Joe Feagin at the University of Florida, of 329 documented accounts of racism, 51% were traditional, and 13% were liberal (Zamudio and Rios, 2006). The liberal accounts of racism included events such as a woman clutching her purse a little bit tighter when a black man entered an elevator she was in, it was almost a reflex that was built upon stereotypical generalisations. This creates an extremely difficult circumstance for liberal thinkers, as it is no longer enough to advocate formal and foundational equality alone, positive measures need to be put in place so that people are not discriminated against neither in thought, nor in action. Similarly, stereotypes have been created from media manipulation, and Hollywood films that for example may pair black people with criminality and violence. This is the how racism is legitimised in modern society, we are under the false pretence that one should be fearful of those that are different to us (Murty and Roebuck. 2013).

There is a widespread belief that if one defies segregationist practices, that act alone clears them of racist intentions – this has grown into a toxic normalisation. Moving forward we may use Rawls as a starting point, however, to make significant changes, one must act rather than reflect. We should still use Rawls as he does provide us with a strong foundation from which we can act due to his emphasis on awareness. His theories are based on examining the inequalities that are already present in society, and this is the first step to achieving a just society. Reflection creates a prism through which to consider whether current behaviour / conditions are fair by allowing us to envisage the accidental nature of why some people are 'black' and the 'lottery' of arbitrary advantages (Mills, 2008). I suggest that Rawls's work is vital to change it is just not the only method to implement it. It is those alternative methods such as the end to casual racism, and economic support schemes for those who have fallen short due to racial prejudice that should be our next steps in the future, as this may bring racism and liberalism closer together.

Conclusions

Therefore, Rawls and the developments achieved in Theory of Justice create a strong foundation from which we can build our own "just societies". Problems arise when we take his words in isolation and out of context, as there are a plethora of attributing factors that need to be considered when discussing the means of achieving solutions to racism. For years ethnic minorities have borne the weight of oppression and prejudice, largely because liberal democracies allow racism to occur, for fear of withdrawing and threatening individual liberties and opinions. This has not only continued under the changing use of racism, but these divisions have grown via economic means as well, resulting in minorities often having a poorer quality of life. Instead of making theoretical accounts based on a reflection of what there is, physical and positive action is needed to create potential for what there could be: a society that is aware of past injustices but has used them to move forward.

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VALIDATING THE USE OF THE RAWLSIAN THEORY OF JUSTICE IN THE JUDICIARY OF A LIBERAL STATE

SYDNEY DAVIES

The role of the judiciary has never been more important or controversial. An example of this is the development of artificial intelligence, which poses grave threats to the individual liberty of us all and often requires the intervention of the judiciary. The opening section of this paper titled ‘in defence of judicial review’ offers an interpretation of the controversies and benefits that the judiciary poses; the second section titled ‘judicial review’s role in the protection of minorities’ presents an interpretation of the impact the judiciary has on minority groups and different religious viewpoints. Overall, the ambition of this paper is to critically assess the role of judges in defending liberal democracy, without endangering the authority and independence of the judiciary as a whole. I propose to defend current manifestations of judicial review, as I hold the view that the judiciary can have a widely positive impact on the liberal state, particularly with regards to the protection of many rights and freedoms.

For the purposes of this paper, we can essentially define liberal democracy as a democratic system of government in which individual rights and freedoms are recognized and protected by the state, while the exercise of political power is limited by the rule of law (Lexico, 2020). We can also state that the principal role of the judiciary is to protect the rule of law, by resolving disputes and administering justice in the name of the sovereign or state (Wikipedia, 2020).

It is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures. This means that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law (Waltzer, 1981). Judicial independence serves as a safeguard for the rights and privileges provided by a limited constitution and prevents executive and legislative encroachment upon those rights. It serves as a foundation for the rule of law and democracy. Most importantly, the judiciary upholds a key set of foundational values, which we hold as cornerstones of our society. These values appeal to basic fairness principles which, I would contend, would be chosen from behind a Rawlsian veil of ignorance and which provide a sense of legitimacy even in a majority culture. However, it still needs to be examined whether judges and particularly judicial functionaries have a right to intervene and stand up for the values of liberal democracy and the rule of law whilst striving to

maintain the majoritarian values upon which said democracy is built.

In defence of judicial review

The Rawlsian theories of the veil of ignorance and the original position have very progressive aims of the provision of equality in the creation of a theory of justice that builds on lack of awareness of personal circumstances and a belief that no one should be advantaged or disadvantaged by the position or genetic accident of one's birth (Rawls, 1971). The 'justice-as fairness' approach promoted by John Rawls suggests that in order to achieve a 'just' society decision-makers should operate from behind a veil of ignorance as if decision-makers believe they may be among the most negatively affected this could affect their view. By applying this approach, the interests of the less advantaged or more vulnerable members of society are adequately considered. The Warren Court (1953-1969) is the most obvious example of this theory of justice in judicial context as it used equality as a guiding principle to make landmark and very progressive rulings such as the desegregation of schools in 1954 (Lawrence, 2016).

Most European countries are nowadays established on liberal democracy. Liberal democracy is typically based on attributes such as multi-party politics formed in democratic elections, recognition of individual rights, freedom of expression, maintaining political opposition, as well as a balanced division of state powers into the legislative, executive and judicial branches. Any democratic state should guarantee the proper application of legal norms in an impartial, just, fair and efficient manner; judicial independence and impartiality are therefore essential prerequisites for the operation of justice (The Magna Carta of Judges, 2010). A number of EU member states are currently facing a crisis of liberal democracy. Countries such as Hungary and Poland have witnessed a rise of populist parties, dangerous in the potential for the truth to be distorted. They have also seen some systemic changes to legislation and composition of public institutions. This one example of the judiciary's ability to provide checks upon certain public institutions and parties shows the importance of an independent and effective judiciary in a liberal state.

However, the process of judicial review carries many controversies. A principal argument in favour of limitations on the power of judicial review has always been that it is fundamentally inconsistent with the majoritarian premises on which the notion of democracy is founded. And, certainly, legislative bodies are indeed chosen in a democratic fashion and a reasonably representative basis, while members of the judiciary are given what amounts to life tenure plus the power to upset the acts of the democratically chosen representatives of the other parts of parliament and government. This controversy is particularly evident in the USA's Supreme Court (top branch of the judiciary), as it has the power to strike down laws and executive orders as unconstitutional if the acts are contrary to their interpretation of the constitution, rendering such acts void even if they are desired by a significant majority. This limitation to the role of the judiciary is reduced in the UK due to parliamentary sovereignty. However, the idea of a small elected group working as a check on a potentially destructive majority also actually carries some desirable qualities. For example, it can be

particularly effective if this small elected group is able to be completely impartial by having some external criterion to judge by and being able to separate themselves from society. However, Walzer shows the potential tension between the quest for universal, permanent objective truths and the relative, situated truths inherent in the value of democracy (Walzer, 1981).

Despite these controversies, I believe that the judiciary is completely necessary in a democratic society, in the interests of national security, public safety, for the prevention of disorder or crime and for the protection of health or morals (Kuncová, Nováková & Vikarská, 2018). It also possesses the immense responsibility of the protection of human rights, which are guaranteed by international and national conventions on human rights (Human Rights Act 1998). There are many powerful examples of judicial power being used to protect the human right to privacy (European Convention on Human Rights, 1950). A particular example of this is the case of *Shakir Ali vs Channel 5 Broadcast Ltd*, where the Court of Appeal of England and Wales held that broadcasting the eviction of Shakir Ali and Shahida Aslam (the Claimants) on television was a violation of their right to privacy (*Shakir Ali vs Channel 5 Broadcast Ltd*, 2019 ECA Civ677). This example effectively shows the positive side of the judiciary's power in the protection of individuals. In addition to this judicial review is needed to avoid the tyranny of the majority and the potential for democratic majorities to tyrannise minorities has long been recognised in liberal democracies, for example, this was often prevalent in the subsequent Brexit debates following the 2016 referendum. Again this demonstrates another benefit of the judiciary.

Ultimately, these examples show that the use of judicial review and the role of the judiciary, as a whole, despite being controversial, particularly in the terms of democratic legitimacy, it is overall a key component of a just society. Particularly when serving public justice, and from behind the veil of ignorance, we would be likely to chose to be protected by judges as that is the best overall protection against alternatives.

Judicial review's role in the protection of minorities

The judiciary has a very important role in according special protection to discrete and insular minorities as well as alternative religious viewpoints that might be the targets of discrimination. This is an example of a necessary safeguard that can be provided by the function of judicial review whilst accommodating the nation's commitment to democracy.

A clear example of judicial protection of minorities is the case of *Sejdic and Finci v Bosnia and Herzegovina*. Under the Dayton Peace Accords, only those belonging to one of the three Constituent Peoples of Bosnia and Herzegovina—Bosniaks, Croats or Serbs—are permitted to stand for election to the House of Peoples or for the Presidency; this excludes members of the 14 other national minorities in the country. The European Court of Human Rights found that this amounted to discrimination (European court of human rights, 2009, case numbers 27996/06 and 34836/06). This case effectively shows the benefits that the judiciary can have on the protection of these minorities, who, without this protection, can

be so easily ignored and manipulated.

However, although a commitment to democracy does not entail acceptance of simplistic majoritarianism, there remains the question of: why in nations generally committed to democratic values, a minority should have a special claim to promote its interests outside the political process (Sandalow, 1977)? This is particularly true because the state in a true liberal democracy should not impose any one conception of the good and should not be seen to value or endorse any comprehensive value system in particular. This presents the judiciary's role of the protection of minorities as controversial and undemocratic. Despite this, we can use the Rawlsian theory of the veil of ignorance as a thought experiment because anyone could be in a minority group, so surely in a self-interested fashion we would want to protect the rights of minorities in a liberal democracy as we could all find ourselves in need of that protection. This is in stark contrast to the philosophy of utilitarianism and can be seen in the practical example of rulings against female genital mutilation. The use of the judiciary is particularly effective in this example otherwise we could be legislating this extraordinarily damaging practice, which is legitimised in certain religious practices.

Ultimately, these examples display the judiciary's key function in the protection of different conceptions of the good life and this is vital to a peaceful and truly democratic society.

Why judiciary review is more important than ever before

The basic principles and purpose of the judiciary are renowned for its many controversial aspects and these aspects are particularly prominent in liberal states, as they have a specific commitment to democracy. However, the protections it can provide for those with alternative conceptions of the good life and minority groups outweigh these limitations. The judiciary is completely necessary and useful to create a fairer, more just and more humane world where everyone has access to adequate protections. This view of the role of the judiciary completely falls in line with Rawlsian philosophy of the theory of justice, as all interests would be taken into consideration to improve the quality of lives and aide people in their pursuit of the good life.

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REDESIGNING EDUCATIONAL INSTITUTIONS THROUGH THE PRISM OF RAWLSIAN THEORY TO BETTER ACCOMMODATE DYSLEXIC INDIVIDUALS

ISOBEL EDGLEY

In the United Kingdom and other Western societies, qualifications and both internal and external assessments are currently based on linear learning and timed exams in primary and secondary educational institutions. However, these assessment methods are not befitting to all students; for example, students with dyslexia, as this article seeks to explain in further detail. One definition of dyslexia by Dr. Neil Alexander-Passe, a dyslexic himself¹ and researcher of special needs in secondary education is, ‘a learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling...difficulties in phonological awareness, verbal memory and verbal processing speed’. Alexander-Passe goes on to state, ‘It is best thought of as a continuum, not a distinct category, and there are no clear cut off points’ (Alexander-Passe, 2016). The concept of dyslexia is difficult to define as it is a generalised, umbrella term, covering a range of different lived experiences among dyslexics. Another factor that adds to the complexity of reaching a universally accepted definition is the dyslexia debate, where some argue against the existence of dyslexia completely (Collinson, 2019). These complexities arise as dyslexia can be considered a socially constructed label.

As a consequence, individuals with dyslexia face ‘Othering’ and may underperform within the education system as a result of pre-conceived, normative beliefs regarding how individuals learn. Othering is the act of excluding a certain individual or group outside of an accepted ‘norm’. It is embedded in teaching methods and specific learning styles focused on the skillsets of reading and writing. As stated by Chanock, ‘it is a common cause, among teachers at all levels, that writing is indispensable to learning – that it is through writing that students work out their ideas, elaborate their discussions, and shape the texts by which they are assessed’ (2008). Furthermore, there is also stigma attached to the label of ‘dyslexia’. For example, many believe that it is connected to, or associated with, lower levels

1 Many dyslexic individuals themselves prefer identity-first language e.g. I am dyslexic when describing dyslexia rather than people-first language, e.g. the person with dyslexia. The latter puts an individual before diagnosis, whereas the first suggests that it forms an integral part of their identity.

of intelligence. One figure highlighting a lack of fairness in educational institutions is the number of self-made millionaires with dyslexia. A survey published by CEO magazine in 2019, suggests that out of 69,000 self-made millionaires, 40% of entrepreneurs were found to show signs of dyslexia' (Toesland, 2019). This significant figure sheds light on how dyslexics were able to find success after leaving school by discovering for themselves which transferable skills work most effectively for their individual learning style and talents.

Otherring of certain students leads to social exclusion and limited access to social goods. These two factors are the fundamental core of Rawls's views of justice. Rawls, in his book *A Theory of Justice*, addresses the issue of distributive justice and access to goods. He created the hypothetical model of the veil of ignorance and the original position to rectify these social issues, as will be explained later in more detail in relation to dyslexia.

This article seeks to view Rawls's veil of ignorance as a theoretical framework for reconceptualising educational institutions and systems to create fairer practises and address prominent othering. By using this framework, it highlights unfairness in educational institutions, as discussed later. Through the use of this hypothetical experiment, a proposal of what fairer educational institutions might look like is put forth. Below, I will first consider entrenched bias in current educational institutions, followed by the hypothetical experiment drawing on Rawls's veil of ignorance to redesign instructional practices. Next, I discuss the strengths and limitations of using this specific model. I conclude that as a theoretical framework, Rawls's veil of ignorance is invaluable in terms of highlighting inherent bias, in particular towards minority groups, in current educational practices.

Lexism in current educational practise

Craig Collinson, a dyslexic himself, favours the term 'Lexism' to describe othering of dyslexics. Lexism is summarised by Collinson as 'normative assumptions and practises of literacy which 'others' and discriminates against those who do not meet those particular norms'. Collinson further states how 'dyslexics exist because of Lexism...dyslexia is a Lexist theory to hide societal prejudices and maintain the status quo of the education system which is favoured by non-dyslexic elites'. There is controversy over the word lexism because its very existence challenges norms within education; hence, some may deny its existence to protect the status quo. This is the case as it highlights the deeply embedded discrimination in educational systems towards minorities due to the normalisation of certain learning styles. This provides further evidence that a new future of educational institutions needs to be developed. In Collinson's article, 'Ordinary Language use and The Social Construction of Dyslexia' he concludes by rejecting dyslexia in favour of lexism. Through his argument, Collinson highlights bias towards dyslexics in educational institutions that 'societal assumptions and beliefs of literacy are normative in nature'. In summary, the word 'dyslexic' is a social construction. It has been created by elites to purposefully 'other' and discriminate students who do not thrive in educational institutions that are built on the normative idea of literacy that suits majority groups. Collinson's argument provides further evidence of how unjust current educational institutions are towards dyslexics (Collinson, 2019).

Alternatively, Collinson makes the point that dyslexia as a label is used for students so they can receive additional support, for example, extra time in external exams, which will aid learning. This is a valid point; however, the process of determining if a student has dyslexia exacerbates 'othering' and anxiety for the individual in question of being 'different'. A series of tests are needed for the individual to be confirmed and medically diagnosed with having dyslexia. This echoes the work of Hacking, a sociologist who highlights how creating categories of people creates tension and anxiety for those who are seen as different from a supposed norm (Hacking, 2012). In Collinson's conclusion, he states some individuals may 'self-oppress and long cling to the definition of dyslexia' (Collinson, 2019). which forms an integral part of their identity. This is in a more positive favour of the umbrella term, which must be taken into consideration. By redesigning educational institutions, however, this will not deny individuals the right to claim the definition and will ultimately decrease feelings of othering towards dyslexics.

In their essay 'universal instruction design in higher education -an approach for inclusion' Silver, Bourke and Strehorn (1998) argue in favour of the need for universal instructional design (UID) and diversification of education. UID refers to the construction or amendment of removing any barriers to education in schools and creating greater accessibility, for example, individuals with a disability. UID provides further evidence that changing educational institutions so that they become more equitable to students would be of considerable benefit to society and not just for dyslexics. As an example, linked to a physical impairment, for an individual who uses a wheelchair, a ramp is necessary to ensure that the individual can access a building with stairs. This ramp will also be useful for an individual with a suitcase, the elderly, or a mother with a pram – ultimately helping create even more accessibility for more members of society. How UID would be beneficial for dyslexics is it could benefit individuals who do not have dyslexia too and decrease Othering. 'Most students can use these strategies [UID for dyslexics] to gain knowledge and skills related to the specific content areas'(Silver, Bourke & Strehorn, 1998). Hence, by implementing UID as a cornerstone of the redesigning of educational institutions, this creates accessibility for a broader sector of society. An example of this includes offering all students some form of educational testing in order to calculate the learning style that suits the individual student the best. This way, different learning styles will be normalised and significant othering decreased.

Silver, Bourke & Strehorn (1998) explain that their study focused on UID in universities in the US where 13 faculty members in a learning difficulties support service group identified both positives of the implementation of UID in educational institutions but also unearthed some limitations. The following barriers were listed; time, lack of awareness in universities, traditional colleges refusing to change, lack of training for pedagogical methods and diverse learning systems. Staff indicated there needed to be a 'transformation in approaches resulting in all-new ways of teaching and learning with the university environment, specific strategies need to be presented to faculty, and the system needs to find new ways to benefit all students'(Silver, Bourke & Strehorn, 1998). Despite these barriers, the benefits of UID

are extensive, and the authors provide robust evidence of the benefits of UID and how it would be a crucial factor in the redesigning of educational institutions.

Hypothetical experiment: Re-thinking educational institutions through the prism of Rawlsian theory

The value of considering what constitutes as fair education from behind the veil of ignorance is to offer a framework of how the institutional, educational system can be changed to become a more equitable environment without bias of normative beliefs. Moreover, literacy is critical as it serves as a means to access work and financial security. Without it, the individual will suffer in the labour market. One example which highlights the consequences of an inability to access literacy is literacy rates in prisons. In a Guardian article published in 2017 it stated ‘50% of prisoners in the UK are functionally illiterate. This means half of the 85,000 people currently incarcerated have a reading age of 11 or lower – with 20% falling well short of that mark. Many prisoners are completely illiterate’ (Moss, 2017). From this, we can conclude that an inadequate education results in many turning to a life of crime and pursuing jobs in the informal sector. By redesigning educational institutions, the effects would be hugely beneficial to society and more students could be offered the ticket to future stability and deterred from a life of crime. This could also be developed in the workplace to ensure a continuation of equality.

In this hypothetical experiment through the prism of Rawlsian theory of justice and the veil of ignorance, this article seeks to show how we can draw on Rawls’s theory to create a framework to redesign educational institutions. In the original position, all individuals are stripped of any personal information about themselves and only given a certain amount of general knowledge, and the decisions made should be for the benefit of the majority. For this specific model, the individuals will be aware of lexism, dyslexia, and the othering this causes. As no one person knows if they will have dyslexia, the individuals would be forced to conclude making educational institutions fairer for dyslexic students, creating a fairer environment and encouraging more UID in primary and secondary schools.

The strengths of using Rawls’s theory of justice and veil of ignorance is that it offers a model and new perspective on how we could attempt to redesign educational institutions, to establish fairness and decrease othering towards certain students. Furthermore, depending on the general information those under the veil of ignorance will be made aware of due to the individuals in the original position aiming for a majority consensus, this would mean the needs of dyslexics would be taken into consideration, providing further evidence of the need to implement UID and helping to create a more fair and just educational system. As Charles Frankel writes ‘when they [individuals in the original position] turn to consider what the principles of ideal justice are, their judgements will not be warped by antecedent philosophic biases or considerations of personal advantage’ (Frankel, 1974). Hence, the veil of ignorance is particularly useful in helping to establish more fairness for minority groups, in this example, those with dyslexia.

However, this hypothetical experiment has several limitations. Firstly, the consensus the individuals would reach under the veil of ignorance would depend on the general information they were given beforehand. The individuals would need to have a certain amount of knowledge to come to a decision. If they were not informed about the position of the dyslexic individual and othering that takes place, it would be highly likely that the outcome produced would be similar to the educational institutions of today which are designed to be fair towards the majority, excluding minorities. Hence, for this framework, the outcome of the experiment would be contingent upon the information those in the original position are given.

Sandel makes a strong communitarian counterargument against Rawls's theory of justice. Buchanan discusses this in his article 'in this sense the [veil of ignorance and the original position] encourages a view of the self as radically unattached – or rather radically unattachable' (Buchanan, 1989). Sandel states 'Rawls' apparent view that no one can properly be said to deserve anything, and the connection of this view with the notion of the self as 'essentially unencumbered' emerges more fully in his discussion of legitimate expectations and moral desert. He begins by acknowledging that justice as fairness... runs counter to common sense' (Matravers, Pike 2003). To become an unencumbered version of oneself, this involves a separation from your religion, culture, history and anything that forms a core part of your identity. Sandel highlights that this is virtually an impossible fate to do, showing that Rawls's theory is very much an idealistic one not based on realistic virtues. However, despite the limitations of this model, overall this hypothetical experiment still outweighs these disadvantages.

Concluding thoughts: a future for education without Lexism

To conclude, in current educational institutions, normative assumptions regarding reading and writing has resulted in the othering and underperforming of individuals who find accessing traditional literacy challenging. This is highlighted with the figure of self-made dyslexic millionaires. Rawls advocated for distributed fairness and justice. It is evident we need to make adjustments to educational institutions; to reduce the stigma attached to normative beliefs of dyslexia. As summarised by Collinson how 'the beliefs of our society construct dyslexia as a disorder'.

Rawls's theory of justice provides a glimpse of what educational institutions could be like with increased fairness and addressing the problem of 'othering' towards dyslexic students. While the theory has noted limitations and criticisms (as highlighted by Sandel) its importance in highlighting an alternative way of approaching educational instruction is incredibly valuable and useful, in particular with positive evidence to encourage the proactive implementation of universal instructional design measures to the benefit of all learners.

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GLOSSARY

Conception of the good life – the ideas that an individual holds in relation to how they ought or want to live in line with (subjective) ideas of morality, religion, ethics and / or philosophy.

Contextualism – the belief that the right thing to do can only be decided upon when the context is taken into account.

Ideal speech situation – a situation where participants would be able to evaluate the assertions and beliefs of one another based solely on reason and logic uninfluenced by personal biases.

Judicial review – the process by which a court decides upon the outcome of a case.

Lexism – discrimination against those who do not possess what is regarded as “normal” literacy ability.

Liberal racism – the modern development of racism whereby racist thought and action is implicit rather than explicit.

Moral universalism – the belief that there is a moral ethic that applies universally to all people.

Original position – a hypothetical situation in which one does not know what their place is in society. From this position, one can fairly judge how society should be structured and how justice should be achieved.

Parliamentary sovereignty – the constitutional principle which states that the UK parliament has supreme legal authority over all other legislative bodies in the UK.

Reflective equilibrium – the idea that moral reasoning consists of testing our deep intuitions about fairness, equality and the like against a variety of moral theories.

Universal instructional design – an educational framework designed to increase the accessibility of education for all students, including students with disabilities.

Veil of ignorance – the hypothetical barrier which segregates the original position from real life.

THE PEER REVIEW PROCESS

BLIND PEER REVIEW PROCESS	OUR MODIFIED VERSION
<p>1. Submit manuscript to editor, editor decides whether to reject or send out for peer review.</p>	<p>1. Submit manuscript to the supervising editor. They will either get back with comments immediately if there are substantial issues with the manuscript or send it out directly for peer review.</p>
<p>2. Manuscript goes through peer review. Experts in the field (usually 3-5) will make detailed comments on the manuscript and make an overall decision to:</p> <p>A: REJECT</p> <p>B: ACCEPT</p> <p>C: REVISE – MINOR REVISIONS (very minor things, 3 typos or so)</p> <p>D: REVISE – MAJOR REVISIONS (substantial changes including improving argument, adding in detail, further sources etc.)</p>	<p>2. Peer review. Carefully review each other's manuscripts and formulate a response, stating constructive criticisms. How can the manuscript be improved? This might be bringing in counter-arguments, improving the overall message of the article, correcting spelling or highlighting where the author's language could be clearer, or suggesting other research they might consider..</p> <p>Group your responses in terms of major and minor revisions.</p> <p>Send your response back to the supervising editor who puts the responses together and returns them to the author with a verdict (e.g. REVISE).</p>
<p>3. The author reviews the manuscript and makes adjustments attempting to respond to the suggestions of the peer reviewers. Then they re-submit the manuscript.</p>	<p>3. Author reviews their manuscript and makes edits in line with the comments from the peer review.</p> <p>They then resubmit the manuscript to the supervising editor along with a response to the reviewers stating how they have responded to suggestions.</p>
<p>4. The editor decides whether to send it out for a second peer review (usually the case if the verdict was major revisions) but not the case if it was minor revisions.</p>	<p>4. The supervising editor sends the manuscript out for a second cycle of peer review.</p>
<p>5. Possible second round of peer review, and comments resulting in a final decision made by the editor.</p>	<p>5. Each peer reviewer checks whether they feel the author has responded to their comments in the first review cycle and gets back to the supervising editor with any further comments and a verdict.</p> <p>VERDICT:</p> <ul style="list-style-type: none"> • ACCEPT • FURTHER REVISIONS

We have all found that the peer review process brings greater quality of work, as the insights gained from the constructive feedback of peers allows you to critique the content, structure and grammar of your work. In submitting (and re-submitting) our essays, we have all produced some of our best work, and it would not have been possible without this process.

We would highly recommend that pupils interested in an academic challenge try this method as it takes your work to an excellent standard, and as an author, you become both analytical and self-evaluative.

The technique is best suited to Year 12 students and it can be done for any subject. However, to get the most out of the process, it is best to do it in small groups with peers who share similar academic research interests. This way it creates a positive environment where all participants have studied similar things and are able to bring their own viewpoints to debates.

Please feel free to use our process and apply it to your discipline. We would love to see future editions of The Close Review.