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## **John Rawls: Justice as Fairness behind the Veil of Ignorance**

### **Abstract**

John Rawls is one of the most prominent American political and ethical philosophers of the 20th century. His major work is “*A Theory of Justice*” where he set the foundations of his most discussed conception of *justice as fairness*. Rawls projects a society consisted of free citizens that hold equal basic rights and cooperate within the framework of an egalitarian economic system. The citizens are under “the veil of ignorance” in the ‘original position’ when they access the hypothetical social contract and when the principles of justice are created. Rawls’s construction of the original position considers that the people or hypothetical contractors of the social contract are placed behind a ‘veil of ignorance’, which makes them unaware of their particular circumstances. Justice as fairness is a sophisticated version of the well-known idea of social contract, presented by Rawls. His ideas were considered highly ambitious and progressive. They won enormous praise and inspired many authors to generate literature based on his texts. Besides that, critics have followed Rawls’ works, detecting weaknesses on certain aspects of his theory of justice.

**Key words:** justice, fairness, veil of ignorance, original position, social contract

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## Introduction

John Rawls is widely considered as the most prominent political and ethical philosophers of the 20th century in America. This Harvard University professor belongs to the liberal tradition and his views on egalitarian liberalism became best known by his major work "*A Theory of Justice*" (1971). Recently, on November 24, 2012 students and scholars gathered to honor the 10th anniversary of John Rawls' passing, in memory of his work and life at Yale University Philosophy Department. If there is an existing dilemma who should take the second place as the most influential philosopher of the twentieth century in America, there is no doubt about the first place. Rawls is considered by many to be the most important political philosopher of the 20th century and a powerful advocate of the liberal perspective. His work continues to have a major influence in the fields of ethics, law, political science and economics and it has been translated into 27 languages.<sup>1</sup>

Rawls was born and went to school in Baltimore, Maryland, where his father was one of the most prominent attorneys. Besides the fact that he was raised in a family with comfortable means and good connections, he survived two tragedies during his childhood. In two successive years, two of his younger brothers contracted an infectious disease from him and died. Rawls's vivid sense of the arbitrariness of fortune may have stemmed in part from this early experience.<sup>2</sup> As a college student, Rawls was interested in studying for priesthood and he focused on writing religious senior thesis. After he fought in the Pacific during World War II and witnessed the horror of killing people and the Holocaust, his Christian faith was lost. He publicly spoke against America's military actions in Vietnam and this conflict has inspired him to analyze and criticize the American political system that has led to an unjust war from which the citizens were unable to protect themselves and resist involvement.

During his studies in Princeton, he was strongly influenced by his Wittgensteinian friends and mentors and later by H.L.A. Hart. As a Fulbright Fellow in Oxford, he moved from conceptual analysis toward more practical conception of moral philosophy influenced by H.L.A. Hart and Isaiah Berlin. After teaching at two universities, he joined the philosophy department at Harvard in 1962, where he spent over 30 years as university professor, devoting significant time to his teaching. In the lectures on political and ethical philosophy, he focused on the great philosophers from the past. By doing that, he has inspired many students to become prominent and influential interpreters of their philosophy.

Rawls' best-known work is "*A Theory of Justice*," nominated for a National Book Award, where he set the foundations of his most discussed theory of *justice as fairness* that projects a society consisted of free citizens that hold equal basic rights and cooperate within the framework of an egalitarian economic system. The basics of his theory were reworked and occurred in his subsequent publications that include

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<sup>1</sup>Gewertz Ken, 'John Rawls, influential political philosopher, dead at 81: Author of "*A Theory of Justice*" was James Bryant Conant University Professor Emeritus' in: *Harvard Gazette Archives*. Accessed on January 25, 2013 <http://www.news.harvard.edu/gazette/2002/11.21/99-rawls.html>

<sup>2</sup>*Internet Encyclopedia of Philosophy*, 'John Rawls (1921-2002)'. Accessed on January 20, 2013. <http://www.iep.utm.edu/rawls/#H1>

"Political Liberalism" (1993), "The Law of Peoples" (1999), "Collected Papers" (1999), "Lectures on the History of Moral Philosophy" (2000) and "Justice as Fairness: A Restatement" (2001).

### **Justice as fairness**

Justice as fairness is a sophisticated version of the old well-known idea of the social contract. The key difference between Rawls and the previous authors that championed the idea of social contract lies in the existing fundamental difference in their aims.<sup>3</sup> Rawls bases his theory on the equal distribution of social goods, but he considers as social goods the following five kinds:

(i) The basic rights and liberties: freedom of thought and liberty of conscience and the rest. These rights and liberties are essential institutional conditions required for the adequate development and full and informed exercise of the two moral powers.

(ii) Freedom of movement and free choice of occupation against a background of diverse opportunities, which allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.

(iii) Powers and prerogatives of offices and positions of authority and responsibility.

(iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.

(v) The social bases of self-respect, understood as those aspects of the basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.<sup>4</sup>

This indicates that Rawls has identified and ideologically protected different social goods from his predecessors that were dominantly focused on finding arguments to justify certain legal systems or regimes. In his most prominent work "*A Theory of Justice*", Rawls expresses his objective - carrying the social contract to a higher level of abstraction. To do so, we should not think about the original contract as one where we enter a particular society or set up a particular form of government, but that the principles of justice for the basic structure of society are the object of the original agreement.<sup>5</sup> It refers to the principles that any free and rational person would accept to apply in order to fulfill his interests if the persons are in a so-called initial position of equality as defining the fundamental terms of their association. These principles would establish the basis and regulate all further agreements, specifying the types of social cooperation and the

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<sup>3</sup>McLeod Ian, *Legal Theory*, 4<sup>th</sup> ed. Palgrave Macmillan, 2007, p. 177.

<sup>4</sup>Rawls John, *Justice as Fairness: A Restatement*, Harvard University Press, 2001, p.59.

<sup>5</sup>Wacks Raymond, *Philosophy of Law*, Oxford University Press, 2006, p.70.

forms of government that can be established. The way of treating the principles of justice Rawls calls '*justice as fairness*'.

In the heart of his theory of justice as fairness are two key elements he relies on: the 'original position' and the 'veil of ignorance'. Rawls believes that the way to find out which principles of justice are fair is to think about what principles would be chosen by people who do not know how they are going to be affected by them. Rawls presents an imaginary picture of people in the 'original position', behind a 'veil of ignorance', debating the principles of justice. By the 'original position', Rawls considers the position before the principles of justice are formulated and by 'veil of ignorance' he means the circumstances that disqualify the individuals who are formulating those principles from knowing how their content will affect individual cases.<sup>6</sup>

In this tough experiment, the main idea is to make us think what would happen if the people were deprived of all the characteristics that serve to distinguish them from one another (gender, race, age, social or economic class, income, talents, wealth, abilities etc.) and were put together to decide how they want to organize their society. In this case, Rawls' idea is not to present the concepts of the 'original position' and the 'veil of ignorance' as concepts that reflect and represent the factual reality. He considers the process that lies in the heart of his theory as 'hypothetical and non-historical'<sup>7</sup> and the people that worked on formulating the principles of justice as 'artificial persons merely inhabitants of our device of representation: they are characters who have a part in the play of our thought-experiment'.<sup>8</sup>

If we try to apply these concepts on a hypothetical and imaginative social contract in reality where every person in the society would agree to access the contract, we would consider it as impossible. Practically, this means that everyone agrees to pay certain amount of taxes in the society and there are no different interests among poor and rich people, so that everyone signs the social contract without any objection. However, this is not the reality - we are aware that poor would ask for less taxation for them (or not at all) and higher taxes for the rich people in order to increase welfare benefits. There would be a dispute and an unanimous consent for signing the social contract would be impossible to achieve. Rawls expects that the point of the theory of justice is attempting to resolve such dispute.

According to Rawls, justice should be understood as that which would emerge as the content of a hypothetical contract or agreement arrived at by people deprived of the kind of knowledge that would otherwise make the agreement unfair.<sup>9</sup> The Rawls' idea is to emphasize the link between the fairness and ignorance: depriving people of particularizing knowledge means that they will choose fair principles rather than allowing that knowledge to affect the choice of principles in their own interest. It is practically similar to the case when you divide a

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<sup>6</sup>Rawls John, *A Theory of Justice*, Oxford University Press, London, 1971, p. 179.

<sup>7</sup>Rawls John, *Political Liberalism*, Columbia University Press, 2005, Lecture VII.

<sup>8</sup>Rawls John, *Justice as Fairness: A Restatement*, Harvard University Press, 2001, p.83.

<sup>9</sup>Swift Adam, *Political Philosophy*, 2<sup>nd</sup> ed., Polity Press, 2007, p.22.

cake and you do not know which piece you are going to get. In that case, you try to cut same size pieces. However, in case you know which piece you are going to get, you might not have the egalitarian approach in dividing.

When accessing the hypothetical social contract, the parties are ignorant about their talents and social position. Second, they do not know their conception of the good - what to believe in, what is valuable, whether to be religious or not etc. The things they know and are aware of are, according to Rawls, 'the capacity to frame, revise and pursue a conception of the good'. This capacity is regarded as one of the most important things that they try to protect and provide conditions for its exercise, when they engage in the process of deciding what principles should regulate their society.

Rawls's construction of the original position considers the people or hypothetical contractors of the social contract as placed behind a 'veil of ignorance', which makes them unaware of their particular circumstances. However, this is oversimplification of the real society, which would be ruined by the first contact with the real existence and differences appearing among individuals. People have different moral, philosophical, religious views and different ethnic and social background. Even when they belong to same categories and positions, they often have different views about what the good society should be like. However, people in the original position exist without any differences and have no conception of the good, neither they know their 'special psychological propensities', according to Rawls.

The critics focused mainly on this idea of keeping a distance between a human being and its knowledge on its position in the society, its desires and relations with other members of its environment. This is a process of erasing personal identity, which cannot occur in real life. The question that is opened in this case is: what is left behind a man when the identity does not exist anymore? Can we survive under the 'veil of ignorance' in the 'original position'? This position is different and, at some points, it is even more difficult to imagine, than imagining oneself in the state of nature. Rawls considers his theory as conceptually different from the theory of personal identity, but as a test of fairness ensuring an equal distribution of goods in the society.

In fact, Rawls considers the hypothetical social contract as a way of embodying a conception of equality, just regulation and equal distribution by removing sources of bias. In this case, Rawls has an optimistic approach, expecting that the hypothetical social contract would be unanimously accepted and acceptable for everyone, because it would be based on the premise that each person would be treated as free and equal being. Even if we consider the Rawls's idea as a tool for providing equality, we may ask critical questions like: can we provide 'veil of ignorance' as a psychological condition? Are the 'original position' that is 'intended to represent equality between human beings as moral persons' and the resulting principles of justice as those which people 'would consent to as equals when none are known to be advantaged by social and natural contingencies'<sup>10</sup> realistic at some point?

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<sup>10</sup>Kymlicka Will, *Contemporary Political Philosophy*, 2<sup>nd</sup> ed., Oxford University Press, 2002, p. 63.

Alternatively, is the hypothetical social contract historically accurate according to Rawls or at least predictive when it is going to happen? Nevertheless, these questions cannot be considered as crucial for the existence of the Rawls' theory - it is not about whether the original position could ever exist in reality, but it is more about which principles should be chosen in order to be fair and provide equality.

### **Rawls' Principles behind the 'Veil of Ignorance'**

How do people behave in the case of original position when they act behind the 'veil of ignorance'? This is what inspires Rawls to create hypothetical cases in order to monitor the human behavior. In the state of almost perfect ignorance, the individuals are required unanimously to choose the general principles that will define the terms under which they will live as a society and join the social contract. Rational self-interest leads the people's behavior when making choices. People choose the greatest opportunity of accomplishing one's conception for good life, which is very individual and relative.

Rawls claims that people in the original position act according to the '*maximin*' principle on the gain-lose scale. This means that rational individuals would select principles that ensure the least undesirable of the available options when the 'veil of ignorance' is lifted, in case they find themselves in the worst position. According to Rawls, the '*maximin*' principle is a rational choice, so you maximize what you would get if you end up in the minimum or the worst off position. He claims that 'this is like proceeding on the assumption that your worst enemy will decide what place in the society you will occupy'.<sup>11</sup> As a result, people select a scheme that maximizes the minimum share allocated under the scheme. Practically, the distribution scheme among three persons has this shape:

- i) 10 : 9 : 1
- ii) 8 : 7 : 2
- iii) 5 : 4 : 4

Rawls predicts that rational person according to his theory would choose iii). His theory relies on the fact that each person tends to provide security and satisfy its self-interest. In this context, people would tend to get the iii) position because even if they do not gain the maximum, they will find themselves in a better position than in a case where they can get more, but also lose more. He considers that the human nature tends to act in a secure manner. In the first two cases, there is higher average utility, but if you are on the worst position it is worse than the worst position in case iii). People tend to avoid the unsatisfactory position in their lives and they are ready to give up from reaching the maximum in order to provide less, but to gain more security for the worst.

Therefore, even if the individual ends up on the bottom of the social order, he/she will try to choose the alternatives of best interest.

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<sup>11</sup>Rawls John, *A Theory of Justice*, Oxford University Press, London, 1971, p. 152-153.

According to Rawls, the principles that stand behind the 'veil of ignorance' in the 'original position' are:

1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
2. Social and economic inequalities are to be arranged so that they are both:
  - a) To the greatest benefit of the least advantaged, consistent with the just savings principle, and
  - b) Attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>12</sup>

The most basic distinction between the two principles of justice introduced by Rawls is that the first deals with constitutional fundamentals, while the second, which itself has two limbs, deals with the operation of those fundamentals.<sup>13</sup>

The meaning of his first principle could be interpreted in way that the society should provide the set of basic liberties for everyone in a just manner. Particularly, Rawls believes that the first principle covers the traditional freedoms, such as the freedom of thought, conscience and association, the freedom of the person and the interests protected by the rule of law.

Analyzing Rawls's principles, we will realize that the first principle that concerns the equal basic liberties has dominant position compared to the second principle that refers to the social and economic inequalities. Rawls call this 'lexical priority' of the first principle over the second. One of the reasons for the priority of the first principle over the second is the fact that constitutionally guaranteed liberties are product of the highest form of political power, namely 'the power of the people to constitute the form of government', which may be in contrast with 'the ordinary power exercised routinely by officers of a regime'.<sup>14</sup> Another argument is the fact that 'basic liberties' to which it refers exist in order to 'protect fundamental interests that have a special significance'.<sup>15</sup>

Rawls used his principles to emphasize the idea that liberty stands before equality - nobody wants to lose the liberty when the veil is lifted. After that, if there are any existing social and economic inequalities, the society will intervene in order to ensure that all citizens enjoy equality of opportunity in the process by which they come to achieve the unequally gained positions. At the end, the society will allow inequalities just in cases where its members tend over the time to reach the maximum of the worst off position - maximizing the minimum.

Rawls' expectations are pessimistic in this case - he expects that people are permanently afraid that they might find themselves in the worst off position and that they will avoid risk. The critics focus on the issue: would people in the original position really decide to choose and rely on these principles? Many of them would not choose that, because

<sup>12</sup>Swift Adam, *Political Philosophy*, 2<sup>nd</sup> ed., Polity Press, 2007, p. 24.

<sup>13</sup>McLeod Ian, *Legal Theory*, 4<sup>th</sup> ed., Palgrave Macmillan, 2007, p. 182.

<sup>14</sup>Rawls John, *Justice as Fairness: A Restatement*, Harvard University Press, 2001, p. 46.

<sup>15</sup>Ibid.

they are ready to risk and to maximize the gain they can achieve (like choosing the cases i) and ii)). In this respect, Rawls offers various arguments in defense of his 'maximin' concept as the most rational way of behavior in facing the uncertainty in life. One of the Rawls arguments, which invokes 'the strains of commitment' is:

It matters that all those living in a society endorse it in a way that means they will be committed to it – rather than seeking to change things. If the difference principle is in operation, those who are at the bottom of the pile will know that the rules are working to ensure that they are as well off as they could be. So, even they will be committed to the society.

Subject of another objection was Rawls' concept of giving 'priority to liberty'. According to this concept, parties of the hypothetical social contract would not trade off their liberties for economic gain. The 'priority to liberty' does not mean that liberty has greater weight in case there are some trade-offs, but it refers to the fact that liberties cannot be traded. This concept depends on Rawls' claim that people have different capacity to 'frame, revise and pursue their conception of the good and the way in which the basic liberties are essential to the exercise of that capacity'.<sup>16</sup>

This claim can be easily tested in practice. If we are into position of trading certain traditional liberties (such as the freedom of thought, conscience and association) in return for money, the dilemma is whether we are ready to risk and give up some liberties to gain certain amount of money? Usually, the answer is dependent on the financial status of the person deciding - if the person is poor, it is more likely that he/she will trade the liberties for the money. If the poor person is into a position to choose between food and liberties, it is more likely that food would be chosen. Rawls' arguments opposing this objection focus on his assumption that everyone in a society has gained certain position of economic well-being and financial independence before accessing the hypothetical social contract. Only if this pre-condition is fulfilled, the 'priority of liberty' concept can be fully enforced.

His second principle is consisted of two limbs, which are known as 2(a) 'the difference principle' and 2(b) 'the fair opportunity principle'. According to Rawls, 'the fair opportunity principle' has priority over the 'difference principle'.

The second principle in general intends to secure the interests of the least advantaged people in the society, and this is done by introducing two important limitations. First, he introduces the 'just savings principle' ('the difference principle') that requires the people in the original position to ask themselves how much would they be willing to save at each level of the advance of their society, on the assumption that all other generations will save at the same rate. These people are not aware in which stage of development is the civilization and probably they will decide to save money for the upcoming generations in the future. The second limitation included in the 'fair opportunity principle'

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<sup>16</sup>Swift, Adam. *Political Philosophy*. 2<sup>nd</sup> ed., Polity Press, 2007, p. 25.



refers to the fact that all offices and positions, or jobs in general, should be available to all.

Rawls' idea of justice as fairness is extended among generations, instead of being created only for contemporaries. The 'just saving principle' clearly shows the idea for inter-generational equity<sup>17</sup> that, according to Rawls, requires each generation to see itself as being merely one stage in general progression through all the generations of history. In his latter work, "*Political Liberalism*", Rawls claims that in its final version the 'correct principle' becomes:

That which the members of any generation (and so all generations) would adopt as the one their generation is to follow and as the principle they would want preceding generations to have followed (and latter generations to follow) no matter how far back (or forward) in time.<sup>18</sup>

Besides his ideas on inter-generational equity included in the 'difference principle', this principle has attracted most of the debates and controversies regarding the Rawls' concept on distributive justice. This principle is considered as broadly egalitarian in the sense that, for Rawls, there is a general presumption in favor of an equal distribution of goods among all citizens. The powerful criticism that has been raised against egalitarianism is the fact that there is no room for incentive.

One of the key questions that have been raised was: how could inequalities tend to maximize the position of the worst off? Inequalities might be very useful in economy. They might serve as a driving force for people's incentives to do one job instead of another. If everyone receives the same amount of money for any job, then the interest for competitiveness and productivity would be lost. Everyone would tend to get non-demanding job, many posts will be closed due to labor force redistribution on the market and that would generate an inefficient and stagnant economy. In the opposite case, when people receive different rewards for their job, some of them are ready to do harder jobs for extra rewards. The hard work of the highly productive is capable of creating benefit for many, either directly through new job and consumption opportunities, or indirectly through raised tax revenues.

These arguments oppose the Rawls' egalitarian approach, which has been criticized as irrational and inefficient. But Rawls accepts the conditional statement that *if* an inequality is necessary to make everyone better off, and, in particular, to make the worst off better off than they would otherwise be, then it should be permitted.<sup>19</sup>

### Rawls and his critics

Rawls' ideas were considered as highly ambitious and progressive. They won enormous praise and had inspired many authors

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<sup>17</sup>McLeod Ian, *Legal Theory*, 4<sup>th</sup> ed., Palgrave Macmillan, 2007, p. 184.

<sup>18</sup>Rawls John, *Political Liberalism*, Columbia University Press, 2005, p. 231.

<sup>19</sup>Wolff Jonathan, *An Introduction to Political Philosophy*, Oxford University Press, 1996, p. 175.

to generate literature on the basis of his texts. Besides that, critics have followed Rawls' works and focused on certain aspects of his theory of justice. Some have criticized the 'original position' as an artificial position, because people cannot be deprived of all the knowledge and values they own. Others have opposed the idea of patterned distribution of social goods. Some do not agree with the content of the social goods that Rawls defines. Others criticize this hypothetical social contract that cannot be signed unanimously by all members of the society or wonder why should everyone agree with the Rawls' position that liberty has priority over equality.

The first weakness detected in his theory of justice that considers the justice as fairness is the claim that whatever the expected outcome of the hypothetical social contract is, it would be just. This is not always true and, in many fictional contracts, this can be easily denied. Rawls' claims focus on the fact that his hypothetical contract has a special, privileged status because every element of the contracting situation can be fair. This is because the contract is concluded in the 'original position' and, according to him, this position is 'a device of representation'. Every party accessing the contract is under the 'veil of ignorance' and is not aware of the personal characteristics, values and opinions. In this case, we can notice two different constraints on the original position. One is that all assumptions about the knowledge and ignorance in the original position must reflect certain moral beliefs that are shared by almost all and are relatively uncontroversial. The other constraint refers to the social contract, which must be achievable. In fact, people in the original position must possess certain characteristics, which will make them come to a mutual agreement.

Another criticism is focused on the scope of primary goods and Rawls' justification for requiring people to choose liberties, opportunities, wealth, income and the social bases of self-respect. In fact, primary goods were introduced by Rawls in order to make people ignorant about their conception of the good. However, even in the case where people were behind the 'veil of ignorance' they had to make choices and by that to make preference of certain goods. Rawls assumes that people want primary goods and that they prefer more of them to less. He considers this as a rational behavior of the people who normally choose universal goods and therefore are neutral for the different conceptions of the good. The critics often focus on the issue of neutrality toward different goods, because in the modern society based on the principles of capitalism there is certainly a priority of goods, in particular those that are of greater value and make profit.

One more criticism focuses on the fact that Rawls tends to make the contracting parties ignorant of their natural and social assets. This might be a necessary pre-condition in order to reach an agreement between the parties, but it does not really share a moral belief that we all have to share. Rawls' arguments on this issue are that one's possession of natural and social assets is 'arbitrary from a moral point of view'. Rawls claims that we make natural assets 'common assets': things from which all members of society gain a benefit. This means that no one deserves the benefit from his/her talent, strength, intelligence, wealth, good look by the accident of birth, so the people have to be ignorant on all of them in the 'original position'. This argument is not a convincing

one because many people work on the development of their talent or skill and only then, they receive a reward for them. Rawls considers even that the ability to make an effort, or strive conscientiously towards a given goal, is so much influenced by social and natural factors beyond one's control that one cannot even claim that developed talents deserve reward.<sup>20</sup>

Guided by the idea to respond to some of the criticism, Rawls published another book in 1993, titled "*Political Liberalism*", in which he refines and modifies many of his original ideas presented in his previous works. In "*Political Liberalism*", Rawls explains that 'justice as fairness' is not intended to provide a universal standard of social justice.<sup>21</sup> His theory is a practical one that can be applied in modern constitutional democracies and his conception of justice is more political and practical than metaphysical.

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<sup>20</sup>Wolff Jonathan, *An Introduction to Political Philosophy*, Oxford University Press, 1996, p. 189.

<sup>21</sup>Rawls John, *Political Liberalism*, Columbia University Press, 2005, p. 153.

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