Reaching fair moral principles requires placing oneself behind a Veil of Ignorance.

**Rawls 74** writes[[1]](#footnote-1)

One should not be misled, then, by the somewhat unusual conditions which characterize the original position.  The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on those principles themselves.  Thus **it seems reasonable** and generally acceptable **that no one should be advantaged** or disadvantaged **by natural fortune** or social circumstances in the choice of principles.  **It also seems widely agreed that it should be impossible to tailor principles to** the circumstances of **one’s own [circumstances]** case. We should insure further that particular inclinations and aspirations, and persons’ conceptions of their good do not affect the principles adopted.  The aim is to rule out those principles that it would be rational to propose for acceptance, however little the chance of success, only if one knew certain things that are irrelevant from the standpoint of justice.  For example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle. **To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information.  One excludes the knowledge** of those contingencies **which sets men at odds and allows them to be guided by their prejudices**.

Only the original position respects the will of all people in society.

**Rawls 74** writes[[2]](#footnote-2)

**No society can**, of course, **be a scheme of cooperation which men enter voluntarily in a literal sense;** each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects.  **Yet a society satisfying** the principles of **justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair.**  In this sense its members are autonomous and the obligations they recognize self-imposed. (11-2)

In a criminal justice context, the perspectives of the hip hop community come first under the Veil of Ignorance. **Butler 4** writes[[3]](#footnote-3)

How would these ideas contribute to a theory of punishment? In a sense the hip-hop nation, and especially its black and Latino citizens, are [is] best situated to design a punishment regime. The philosopher John **Rawls suggests that law is most just when** it is **made by people who don’t know how they’ll fare under it.** It is impossible, of course, to actually live in Rawls’ netherworld. As Rawls recognized, our instinct is to assess public policy from the standpoint of our individual interest. **Since**, however, **minority members of the hip-hop community are the most likely to be** arrested and **incarcerated for crimes** – and also the most likely to be victims of crimes – they get closer to the netherworld than most of us. Ideally **their theory of punishment will value** both **public safety and fairness to lawbreakers.** This project is not intended to suggest that hip-hop culture has explicitly constructed a theory of punishment. The claim is more limited, but still, I hope, profound. **Thousands of hip hop songs consider crime and punishment.** These voices are worth listening to – they evaluate criminal justice from the bottom up. Our current punishment regime has been designed from the top down, and that, in part, explains why many perceive it to be ineffective or unfair. **We might punish better if** the **ghetto philosophers and** the **classic philosophers met.** They address many of the same issues in punishment, including causation, harm, responsibility, excuse and justification.

The hip hop community requires prioritizing retribution in the criminal justice system. 2 reasons.

(a) Consistent message in rap lyrics proves. **Butler 4** writes[[4]](#footnote-4)

**Hip hop lyrics exhibit a strong conviction that wrongdoers should suffer consequences** for their acts**. In the words of Jay-Z: “Now if you shoot my dog, I’ma kill yo’ cat/Just the unwritten laws of rap – know dat/ For every action there’s a reaction.” The culture abounds with narratives about** revenge, **retaliation, and avenging wrongs.** The narrator in Eve’s *“Love is Blind”* kills the man who abuses her close friend. Likewise, Nelly warns “if you take a life, you gon’ lose yours too.”

(b) The hip hop community values retribution out of respect for free choice, while accounting for social conditions that cause crime. **Butler 4** writes[[5]](#footnote-5)

**The most important** civic **virtue in** the **hip hop** nation **is respect. One of the culture’s contributions to** the **English** language **is the verb “dis**,**” which means “to disrespect.”** To dis someone is worse than to insult them – it is to deny his or her humanity. Hip hop vocabulary also includes the term “props” – to give props is to afford proper respect. The misogyny and homophobia in some hip hop makes it difficult to claim a universal value of respect for all persons. **Virtually all hip hop**, however, **connotes** a **respect for the dignity of lawbreakers.** In attempting to reconcile **hip hop’s impulse for righting wrongs with its respect for dignity**– even the dignity of criminals– a criminal law scholar immediately **thinks of retribution.** This justification of punishment is premised on the idea of “just deserts.” When one harms another, justice requires that he or she be harmed in return. Retributivists believe that **punishment communicates respect for the criminal by recognizing him as a moral agent** and respect for the victim by avenging his harm. The Bill of Rights codifies the retributive concern for the criminal's humanity. The Eighth Amendment prohibits the state from punishing criminals in a manner that is inconsistent with their dignity. The Supreme Court has also interpreted the Eighth Amendment as requiring that criminals not be punished disproportionately to their crime, although it has given lawmakers wide latitude in determining what proportionate punishment is.115 How would a profound respect for the humanity of criminals change the way we punish them? It might require a more meaningful concept of proportionate punishment than the Supreme Court has currently endorsed.116 Harsh sentences for drug crimes, for example, are premised on utilitarian, not retributive, justifications.117 Such penalties have been the subject of much criticism in the hip-hop community. They have been defended by police and lawmakers on the ground that they keep drugs out of low-income and minority communities. If this assertion is true, it would not persuade retributivists, who require proportionality even when disproportionate punishment is socially useful.118 While I will later suggest that the hip-hop nation probably would not punish drug users, if it did, its embrace of retribution means they would be punished significantly less than they are now. 119 Hip-hop theory would reject or modify some elements of retribution. Assaultive retribution, for example, is premised on hate of the criminal, which is the opposite of the hip-hop perspective.120 More significantly, however,some theories of retribution are premised on a world in which benefits and burdens are distributed equally; it is just to punish the criminal, the argument goes, when he upsets the balance.121 **The hip-hop nation** does not share this world view; it **sees** benefits and burdens as allocated in an uneven and racialist manner. Through this lens, **the "choice" of a poor person to sell drugs** has a **[as] different** and less blameworthy social meaning **than the choice of a middle class person to engage in**, say, **insider trading.**122 In "Dope Man,'" Jay-Z raps, "I grew where you hold your blacks up/ Trap us, expect us not to pick gats up/ Where you drop your cracks off by the Mack Trucks/ Destroy our dreams of lawyers and actors/ Keep us spiralin', goin' backwards."123 **Hip-hop culture, like retributive philosophy, emphasizes the importance of** moral autonomy and **free agency.**124 Both posit that people who freely choose to do wrong should be punished. Where hip-hop theorists and traditional retributivists diverge, however, is on how to determine responsibility for individual acts. Hip-hop culture emphasizes the role of environment in determining conduct, whereas classic retributivist theory focuses on individual choice. In essence, hip-hop culture discounts responsibility when criminal conduct has been shaped by a substandard environment. OutKast, for example, asserts "knowing each and every nigger sellin', but can you blame/ The fact the only way a brother can survive the game."125 The **hip-hop analysis does not deny that the poor are moral agents; it is instead a[n]** quasiscientific or **empirical claim about the nature of free choice. In the words of NWA: nigga wit' nothin' to lose/One of the few who's been accused and abused/Of the crime of poisonin' young minds/But you don't know shit 'til you've been in my shoes.**

1. Rawls, John (Prof @ Harvard). *A Theory of Justice*. Revised ed. Cambridge: Harvard U Press, 1974. [↑](#footnote-ref-1)
2. Rawls, John (Prof @ Harvard). *A Theory of Justice*. Revised ed. Cambridge: Harvard U Press, 1974. [↑](#footnote-ref-2)
3. Paul Butler, Professor of Law, The George Washington University Law School. “Much Respect: Toward a Hip-Hop Theory of Punishment,” This Article was presented as a work-in-progress at Washington University School of Law and at a Stanford Law Review Symposium. April 2004. http://condor.depaul.edu/dwrd/moore/images/wrd104/butler\_hiphop\_punishment.pdf [↑](#footnote-ref-3)
4. Paul Butler, Professor of Law, The George Washington University Law School. “Much Respect: Toward a Hip-Hop Theory of Punishment,” This Article was presented as a work-in-progress at Washington University School of Law and at a Stanford Law Review Symposium. April 2004. http://condor.depaul.edu/dwrd/moore/images/wrd104/butler\_hiphop\_punishment.pdf [↑](#footnote-ref-4)
5. Paul Butler, Professor of Law, The George Washington University Law School. “Much Respect: Toward a Hip-Hop Theory of Punishment,” This Article was presented as a work-in-progress at Washington University School of Law and at a Stanford Law Review Symposium. April 2004. http://condor.depaul.edu/dwrd/moore/images/wrd104/butler\_hiphop\_punishment.pdf [↑](#footnote-ref-5)