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## Rawls' 'Justice as Fairness': Not only Political but also Metaphysical

Rawls'un "Hakkaniyet Olarak Adalet": Sadece Politik Değil Aynı Zamanda Metafiziksel

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## Rawls' 'Justice as Fairness': Not only Political but also Metaphysical

### Abstract

In his book *A Theory of Justice*, John Rawls develops an account of justice, 'justice as fairness' (JAF, henceforth). In his later works, he claims that JAF is supposed to depend on neither philosophical nor religious claims but on political claims. So, the conception of justice he wishes to defend is political but not metaphysical. This political (as well as moral in a specific sense) conception of justice is supposed to apply to political, social, and economic institutions. By presenting JAF, Rawls aims to show how free and rational persons would hold the same conception of justice he defends if they have been invited to construct a just social contract. This would be the case, Rawls reasons, only if those persons determine the principles of justice as if they are in a purely hypothetical situation. Rawls calls this situation 'the original position' and thinks that in the original position, parties and decision makers can be fair and impartial to construct a social contract if they can stand behind 'The Veil of Ignorance' which is the main feature of the original position. The parties (free and rational persons) who stand behind the veil of ignorance know nothing about their place, class position, social status, intelligence, abilities, and the like in society. They do not know their conceptions of the good either. Since the parties are rational and capable of having a sense of justice, the fundamental agreement they could make behind the veil of ignorance with respect to the principles of justice will be fair. Rawls also develops an account of law (the Law of Peoples) to show that the principles of justice will be universal in its reach. He claims that both reasonably just liberal and decent hierarchical peoples (like the Muslim peoples of the utopian state, Kazanistan) would accept the principles of justice. Rawls argues, however, that since a decent hierarchical society does not consider its members as free and equal citizens as a liberal society does, it cannot be as reasonable and just as a liberal society. So, liberal peoples must encourage decent peoples to recognize the advantages of having liberal institutions and try to convince them to become more liberal in order to have a reasonably just society. In this paper, I will argue that Rawls's accounts of the original position and the Law of Peoples show that unlike what Rawls contends, JAF is not only political but also metaphysical. I will suggest that since Rawls's accounts of JAF and person require some metaphysical assumptions, theists who necessarily hold comprehensive metaphysical claims on justice and person have a good reason to reject that they should step behind the veil of ignorance in order to construct a just social contract.

**Key Words:** Religious Studies, Liberalism, Justice, Social Contract, Theism.

### Rawls'un "Hakkaniyet Olarak Adalet"i : Sadece Politik Değil Aynı Zamanda Metafiziksel

#### Öz

John Rawls, *A Theory of Justice* adlı eserinde 'hakkaniyet olarak adalet' kavramını geliştirmektedir. Sonraki eserlerinde ise hakkaniyet olarak adaletin felsefi ya da dini iddialara değil de siyasi iddialara dayandığını öne sürmektedir. Dolayısıyla Rawls'un savunmak istediği adalet kavramı metafiziksel değil de siyasidir. Bu siyasi (aynı zamanda özel bir manada ahlaki olan) adalet kavramının siyasi, sosyal ve ekonomik kurumlara uygulanması beklenir. Rawls hakkaniyet olarak adalet kavramını ileri sürerek özgür ve rasyonel bireylerin adil bir sosyal anlaşma kurmaya davet edilirse aynı adalet kavramına sahip olacaklarını göstermeyi amaçlamaktadır. Rawls'a göre bu durum ancak bireylerin tamamıyla farazi bir durum içerisindeymiş gibi adaletin ilkelerini belirlemeleri halinde mümkündür. Rawls bu durumu 'orijinal pozisyon' olarak adlandırır. Ona göre eğer partiler ve karar alıcılar orijinal pozisyonun temel özelliği olan 'Bilgisizlik Peçesi'nin arkasında kalabilirlerse orijinal pozisyonda hakkaniyetli ve tarafsız bir sosyal anlaşma yapabilirler. Bilgisizlik Peçesi arkasında duran partiler (özgür ve rasyonel insanlar) toplum içindeki yerlerini, sınıfsal pozisyonlarını, sosyal statülerini, zekalarını, kabiliyetlerini ve benzerlerini bilmezler. İyi kavramına da sahip değillerdir. Partiler, rasyonel oldukları ve adalet kavramına sahip olmaya muktedir oldukları için bilgisizlik peçesi arkasında yapacakları temel anlaşma adaletin temel prensipleri açısından hakkaniyetli olacaktır. Rawls aynı zamanda adaletin prensiplerinin sınırlarının evrensel olduğunu göstermek amacıyla bir hukuk tanımlaması (İnsanların Hukuku) geliştirir. Rawls makul bir şekilde liberal olan ve iyi hiyerarşik insanların da (Kazanistan ütopyasının Müslümanları gibi) adaletin temel prensiplerini kabul edeceğini ileri sürer. Ancak Rawls, iyi hiyerarşik bir toplumun kendi üyelerini liberal bir toplum kadar özgür ve eşit görmediği için onun liberal bir toplum gibi makul olamayacağını savunur. Böylelikle Rawls'a göre liberaller, iyi insanları liberal kurumlara sahip olmanın avantajlarını fark etmeye teşvik etmeli ve onları makul adaletli bir toplum için daha fazla liberal olmaları gerektiğine ikna etmelidirler. Bu makalede Rawls'un orijinal pozisyon ve İnsanların Hukuku kavramlarının onun ulaşmak istediği sonucun aksine, hakkaniyet olarak adalet kavramının sadece siyasi değil aynı zamanda metafiziksel olduğunu gösterdiğini savunuyorum. Rawls'un adalet ve ferde dair görüşlerinin metafiziksel varsayımlar gerektirdiği için adalet ve fert üzerine metafiziksel iddialara zorunlu olarak sahip olan teistlerin adil bir sosyal anlaşma yapma amacıyla bilgisizlik peçesi ardına geçmeyi reddetmeye dair iyi bir sebebi bulunmaktadır.

**Anahtar Kelimeler:** Dini Araştırmalar, Liberalizm, Adalet, Sosyal Anlaşma, Teizm.

## Introduction

In his book *A Theory of Justice*, John Rawls develops an account of justice, ‘justice as fairness’ (JAF, henceforth). Rawls suggests that JAF is political but not metaphysical because unlike other metaphysical and religious comprehensive accounts of justice, his JAF applies to only political, social, and economic institutions.<sup>1</sup> It is also a moral conception but in a limited sense as it is intended to apply to those institutions.<sup>2</sup> To construct a modern constitutional democracy, he reasons, free and rational persons would need a conception of justice by which a just social contract can be produced. Rawls suggests that JAF is the best candidate for such an aim. He invites us to imagine that free and rational persons find themselves in a hypothetical situation and they are supposed to construct a social just contract. Rawls calls this situation ‘the original position’ and argues that in the original position, free and rational persons step behind ‘The Veil of Ignorance’ to be fair and impartial decision makers. Standing behind the veil of ignorance provides a unique opportunity to the decision makers to construct the contract: they know nothing about their place, social status, intelligence, religious views, conceptions of the good, and the like. Since those rational decision makers have a sense of justice, the fundamental agreement they could make behind the veil of ignorance will be fair.<sup>3</sup> One, however, might worry that the principles of justice considered by the decision makers in the original position will be too restricted in its reach. After all, they are intended to construct a constitutional democracy. Rawls develops an account of law (the Law of Peoples) and claims that the principles of justice he considers will be universal in its reach. He suggests that not only reasonably just liberal peoples (or societies) but also decent hierarchical peoples (like the Muslim peoples of the utopian state, Kazanistan)<sup>4</sup> would accept those principles. Endorsing the same principles of justice with respect to international relationship, however, cannot make a decent hierarchical society as reasonable and just as a liberal society. For Kazanistan, for instance, does not treat its members as free and equal citizens as a liberal society does.<sup>5</sup> What liberal peoples can do with respect to keeping the principles of justice among nations is simple: encouraging other decent societies like Kazanistan to become more liberal in order to have a reasonably just society.<sup>6</sup> In this paper, I will argue that unlike what Rawls contends, his accounts of justice and person are not only political but also metaphysical.

In the following section, I will summarize Rawls’s accounts of JAF (along with the original position and the veil of ignorance). I will then explain his account of the Law of Peoples with respect to his utopia named Kazanistan. I will finally attempt to show that since JAF and Rawls’s conception of person in fact depends on metaphysical claims, the theist cannot see why it would make sense to step behind the veil of ignorance. And this would require a liberal Rawlsian to reject or modify Rawls’s two claims: the principles of justice Rawls presents are universal in its reach and JAF is political not metaphysical.

### 1. Rawls’s Original Position and the Law of Peoples

Rawls presents a conception of justice to which our knowledge of historical or particular facts about people and societies are supposed to be morally irrelevant. Rawls invites us to imagine a

<sup>1</sup> John Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* 14/3 (1985), 223-251; John Rawls, “The Idea of an Overlapping Consensus”, *Oxford Journal of Legal Studies* 7/1 (1987), 1-25.

<sup>2</sup> Rawls, “Justice as Fairness: Political not Metaphysical”, 224.

<sup>3</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), 11.

<sup>4</sup> John Rawls, *The Law of Peoples with “The Idea of Public Reason” Revisited* (Cambridge, MA: Harvard University Press, 2000), 59-88.

<sup>5</sup> Rawls, *The Law of Peoples*, 83.

<sup>6</sup> Rawls, *The Law of Peoples*, 62.

hypothetical situation in which free, rational, and reasonable people attempt to determine the fundamental principles of justice which will be a determining factor in constructing a just social contract. Since being fair and impartial about fundamental principles of justice requires that the parties (free, rational, and reasonable persons) should step behind the veil of ignorance, they lack the knowledge of the followings in that position:

No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain.<sup>7</sup>

The veil of ignorance, then, implies that if the parties or citizens who design their society know their religious beliefs, social status, abilities, races, etc., they cannot avoid considering those circumstances; and this might lead them to suggest some subjective principles of justice based on their particular positions. The parties, by stepping behind the veil of ignorance, will be able to propose objective principles of justice to construct a just society. The fundamental principles of justice are as follows:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.<sup>8</sup>

While the first principle must precede the second, in the second principle, (a) is prior to (b).<sup>9</sup> He claims that liberties, basic rights, and opportunities are ensured by these principles as they apply to the basic structure of society.<sup>10</sup> These objective principles are general, universal, and public.<sup>11</sup> Also, the conception of right in the original position "must impose an ordering on conflicting claims."<sup>12</sup> Lastly, the principles of justice are final principles, so there are no higher standards that can override them.<sup>13</sup>

In the original position, every person can regard himself as free and equal; and as free and equal citizens, they need some primary goods to live a complete life<sup>14</sup> and "to advance their permissible conceptions of the good."<sup>15</sup> These primary goods are basic rights and liberties, freedom of movement and free choice of occupation, powers and opportunities, income and

<sup>7</sup> Rawls, *A Theory of Justice*, 11.

<sup>8</sup> Rawls, *A Theory of Justice*, 53.

<sup>9</sup> John Rawls, *Justice As Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 43; Rawls, "Justice as Fairness: Political not Metaphysical", 227.

<sup>10</sup> Rawls, *A Theory of Justice*, 53.

<sup>11</sup> Rawls, *A Theory of Justice*, 113-115.

<sup>12</sup> Rawls, *A Theory of Justice*, 115.

<sup>13</sup> Rawls, *A Theory of Justice*, 116-117.

<sup>14</sup> Rawls, *Justice As Fairness: A Restatement*, 58.

<sup>15</sup> Rawls, *Justice As Fairness: A Restatement*, 61.

wealth, and conditions for self-respect.<sup>16</sup> I shall note here that when Rawls says that the parties do not know their conceptions of good, he does not mean that they do not know about these primary goods. Rather, since the two principles of justice require these primary goods, the parties shall construct their social contract with respect to them.

As noted above, Rawls argues that JAF is universal in reach. He develops an account of realistic utopia in his *The Law of Peoples* to show that JAF can be applied to international laws. Unlike its traditional meaning, the term “law of peoples” Rawls uses has a specific meaning:

By the “Law of Peoples” I mean a particular political conception of right and justice that applies to the principles and norms of international law and practice. I shall use the term “Society of Peoples” to mean all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations. These peoples have their own internal governments, which may be constitutional liberal democratic or non-liberal but decent governments.<sup>17</sup>

Considering different types of domestic societies, Rawls proposes that only reasonable liberal peoples and decent peoples are well-ordered peoples.<sup>18</sup> These well-ordered societies accept and follow the Law of Peoples; so, they deserve to have a membership in a Society of Peoples.

Rawls invites us to imagine a nonliberal decent hierarchical Muslim society named ‘Kazanistan.’ Kazanistan is supposed to satisfy two criteria: first, it does not seek influence with aggressive aims. So, it does not violate other societies’ religious and civil liberties while attempting to have influence on them.<sup>19</sup> Second, it satisfies three conditions. The first condition is that its social system protects human rights such as “the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).”<sup>20</sup> The second condition is that their system of law must impose moral duties and obligations for all members of their society. And the third condition is that the officials who are responsible for administrating the legal system must defend the law and thus “the common good idea of justice.”<sup>21</sup>

Rawls believes that had the representatives of the decent hierarchical society been in the original position, they (as being decent and rational) would have adopted the same liberal principles of the Law of Peoples.<sup>22</sup> They are eight principles:

- “1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.

<sup>16</sup> Rawls, *Justice As Fairness: A Restatement*, 58-59; Rawls, *A Theory of Justice*, 54.

<sup>17</sup> Rawls, *The Law of Peoples*, 3.

<sup>18</sup> Rawls, *The Law of Peoples*, 4. For why he uses the term “peoples” instead of “states” or “nations”, see: Rawls, *The Law of Peoples*, 24-27.

<sup>19</sup> Rawls, *The Law of Peoples*, 64.

<sup>20</sup> Rawls, *The Law of Peoples*, 65.

<sup>21</sup> Rawls, *The Law of Peoples*, 66-67.

<sup>22</sup> Rawls, *The Law of Peoples*, 69-70. He notes that an original position argument can be used for decent hierarchical societies only at the Law of Peoples level but not necessarily at the domestic level. This means that even if decent hierarchical societies do not need to advocate liberal principles of justice for their own societies, they need to honor those principles with respect to international laws. For a critical survey of this view, see: Thomas V. Pogge, “The Incoherence Between Rawls’s Theories of Justice”, *Fordham Law Review* 72/5 (2004), 1739-1759.

3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.”<sup>23</sup>

Further, in Kazanistan, other religions and associations are allowed to seek influence and to flourish their cultural life. Given the adaptation of the principles of the Law of Peoples, Kazanistan is not as reasonable and just as a liberal well-ordered society but still a decent society that meets moral and legal requirements to have a membership in Society of Peoples.

## **2. Situating the Problem: Are Rawls's Conceptions of Justice and Person only Political?**

Rawls's theory of justice has been criticized from different aspects. For instance, it is not obvious that the parties in the original position will not have moral disagreements which might threaten Rawls's conception of justice.<sup>24</sup> It seems also problematic to claim that Islam can offer Kazanistan as its best model.<sup>25</sup> Or it is not clear why we should accept Rawls's account of public reasoning which requires that religion (for instance, Islam) and politics should be separated.<sup>26</sup> Though these are genuine objections (whether they are right or not) that a Rawlsian should answer, I aim to focus on what I take a more fundamental problem with Rawls's account of justice: whether he is right that his accounts of justice and person do not depend on metaphysical claims.

An obvious problem for Rawls's account of justice, as he himself admits, is that it seems to presuppose (a) metaphysical conception of the person with respect to the parties in the original position and (b) a conception of justice depending on a philosophical doctrine. (a) seems to be the case because JAF holds a liberal conception of person as it sees persons as citizens first. (b) seems to be the case because the fundamental principles of justice applied to the basic structure of society and the international laws presuppose liberal rights. (a) would be a problem for Rawls's account because any metaphysical conception of the person (realist, idealist, materialist, and the like) in the original position would have implications regarding the principles of justice, human rights, obligations, etc. Since Rawls's account of justice seems to presuppose “an overly individualistic conception of persons”<sup>27</sup> (for they are citizens first), he is supposed to provide some arguments for the view that we should be willing to accept an individualistic conception of persons. (b) would also be a problem for his account because if JAF is intended to apply to the basic structure of society as a general moral conception but not as a practical political conception, a proponent of a general moral doctrine such as a utilitarian might push back and question why we cannot take a utilitarian principle like the principle of utility as a

<sup>23</sup> Rawls, *The Law of Peoples*, 37.

<sup>24</sup> Ryan Muldoon et al., “Disagreement Behind the Veil of Ignorance”, *Philosophical Studies* 170/3 (2014), 377-394.

<sup>25</sup> Antoine Hatzenberger, “Kazanistan: John Rawls's Oriental Utopia”, *Utopian Studies* 24/1 (2013), 105-118.

<sup>26</sup> Abdullahi Ahmad An-Na'im, “Islamic Politics and the Neutral State: A Friendly Amendment to Rawls?”, *Rawls and Religion*, ed. Tom Bailey and Valentina Gentile (NY: Columbia University Press, 2014), 242-265.

<sup>27</sup> Jean Hampton, “Should Political Philosophy be Done Without Metaphysics?”, *Ethics* 99/4 (1989), 794.

central principle to construct a social contract. This again would have some implications with respect to constructing a social contract.

Rawls argues that the argument for (a) fails because he proposes a moral conception of the person as an application of his political conception of justice. He is not developing a comprehensive general moral conception of person that can be seen in philosophical or religious approaches. And the argument for (b) fails because again, what he attempts to show is that an “informed and willing political agreement between citizens viewed as free and equal persons”<sup>28</sup> requires a conception of justice that is political and practical but not metaphysical. So, his JAF, unlike other traditional conceptions of justice which are not only political but also metaphysical, secures a willing and just agreement between citizens.

But what is wrong with defending a metaphysical conception of person and justice? Rawls holds that no general moral conception (philosophical or religious) of person or justice can provide an overlapping consensus that is needed for a constitutional democracy.<sup>29</sup> Given their nature, philosophy and religion necessarily present disputed questions and claims that political approaches cannot resolve. What makes JAF different from a philosophical or religious doctrine with respect to the conceptions of justice and person is then as follows: the former holds that given that there are “many conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons, so far as we can ascertain within a workable political conception of justice.”<sup>30</sup> the citizens should affirm this political feature of a democratic society. And since persons are citizens, a philosophical or religious conception of person cannot secure a willing and rational agreement between citizens. The latter, however, contends that since there is only one rational conception of the good which might depend on utilitarian, religious, or the like moral assumptions, the rational citizens should affirm only that conception of the good. Rawls’s endorsement of the former then has a certain motivation: defending a reasonable pluralism in and between societies. As Wenar has pointed out, Rawls’s hope is as follows:

The religious, moral, and philosophical doctrines that citizens accept will themselves endorse toleration and accept the essentials of a democratic regime. In the religious sphere, for example, a reasonable pluralism might contain a reasonable Catholicism, a reasonable interpretation of Islam, a reasonable atheism, and so on. Being reasonable, none of these doctrines will advocate the use of coercive political power to impose religious conformity on citizens with different beliefs.<sup>31</sup>

The citizens who accept universal primary goods are reasonable citizens. Even if reasonable citizens have their own comprehensive doctrines such as Judaism, Christianity, or Islam, they do not impose them on others. As free and equal citizens, they accept *the burdens of judgment*.<sup>32</sup>

In the following section, I will argue that unlike what Rawls claims, his conceptions of justice and person have metaphysical assumptions. This presents a good reason for the theist (particularly for the theist who takes the notion of God as central for constructing a just social contract) to

<sup>28</sup> Rawls, “Justice as Fairness: Political not Metaphysical”, 230.

<sup>29</sup> Rawls, “The Idea of an Overlapping Consensus”, 1.

<sup>30</sup> Rawls, “Justice as Fairness: Political not Metaphysical”, 248.

<sup>31</sup> Leif Wenar, “John Rawls”, *The Stanford Encyclopedia of Philosophy* (Access Date August 30, 2023).

<sup>32</sup> Wenar, “John Rawls”.

reject the notion of the veil of ignorance and thus the liberal assumptions that Rawls provide for his conceptions of justice and person.

### **3. A Counterargument: Why A Theist Should not Step Behind the Veil of Ignorance?**

As we have seen, Rawls argues that since there are many incommensurable conceptions of the good that can be rationally held, we need to have a conception of justice that can help to construct a just social contract in order to have a democratic regime in which the basic rights of the citizens are protected. And since the general philosophical, religious, or moral doctrines present disputed claims that might threaten the possibility of a political agreement among citizens, any conception of justice depending on these comprehensive doctrines will not secure (if not destroy) a just political agreement. JAF, as a conception of justice that applies only to political, economic, and social institutions, can secure such an agreement as it presents a unique conception of justice that can be adopted by any reasonable community (either liberal or non-liberal one like decent Muslim community, Kazanistan).

I think a theist who takes God to be central for any moral claim and individual rights and considers human beings as beings created in God's image has some good reasons to reject Rawls's conceptions of justice and person.<sup>33</sup> For this commitment has certain metaphysical implications that necessarily conflict with some liberal claims. Let's start with Rawls's conception of justice. Notice that though he claims that his conception of justice is political and does not depend on any comprehensive philosophical view including liberalism, I think he is mistaken for several reasons.

First, Rawls's account of justice assumes a hierarchy among societies. Notice that even though Rawls holds that there are many incommensurable conceptions of the good, he suggests that there are five types of societies: "reasonable liberal peoples," "decent hierarchical peoples," "outlaw states," "societies burdened by unfavorable conditions," and "benevolent absolutisms."<sup>34</sup> Rawls sees a hierarchy between these societies: the first type is the most reasonable society and the fifth one is the most unreasonable.<sup>35</sup> As noted in the first section of this paper, he proposes some liberal criteria and then determines the type of the given society (like Kazanistan) by considering whether it satisfies those criteria. The less a society satisfies a liberal criterion, the more it is unreasonable. A Rawlsian might claim that those criteria do not depend on liberalism in a comprehensive sense; rather, since they, as criteria of justice, apply to political institution, they are intended to be practical and moral in a specific sense. But then one might rightly ask what makes Kazanistan which satisfies those criteria along with eight principles of the Law of Peoples less reasonable than a liberal society. If the criteria Rawls proposes are sufficient to determine reasonability of a society, Kazanistan (a society that satisfies those criteria) should be considered as reasonable as a liberal society. The reason why Rawls considers Kazanistan as less reasonable than a liberal society, I think, should be clear: his criteria regarding basic rights and liberties depend on liberalism in a comprehensive sense. Since Kazanistan does not satisfy all other liberal principles, Rawls does not consider Kazanistan as

<sup>33</sup> In this paper, I will not attempt to show why political philosophy cannot be done without metaphysics. My aim is twofold: first, Rawls's accounts of JAF and person are incompatible with his view that JAF is political but not metaphysical; second, the theist has a good reason to reject those accounts given that they require metaphysical claims. For the investigations whether political philosophy can be done without metaphysics, see: Hampton, *Should Political Philosophy be Done Without Metaphysics?*, Patrick Neal, "Politics/Metaphysics", *A Companion to Political Philosophy. Methods, Tools, Topics*, ed. Antonella Besussi (New York: Routledge Press, 2016), 79-89, and Robert Stern, "The Relation between Moral Theory and Metaphysics", *Proceedings of the Aristotelian Society, New Series* 92 (1992), 143-159.

<sup>34</sup> Rawls, *The Law of Peoples*, 63.

<sup>35</sup> Rawls, *The Law of Peoples*, 74.



reasonable as a liberal society.<sup>36</sup> But notice that if Rawls is right that JAF is political not metaphysical (i.e., not depending on liberalism in a comprehensive sense), those liberal principles should not play any role in determining whether a society is reasonable or not.<sup>37</sup> It seems then that his endorsement of liberalism in a comprehensive sense also determines his principles of justice that are supposed to apply only to politics. His JAF, then, is not only political but also metaphysical.

One might suggest that the liberal principles play such a role only in a political sense. A liberal society, for instance, is more reasonable than Kazanistan because it has more political good and thus political justice. After all, JAF is not intended to show why liberalism is more reasonable than other philosophical or metaphysical views in a general sense. I think, this is mistaken. For we might rightly wonder why we should isolate the notion of justice as if it is limited to only political good. Since this limitation itself presupposes a metaphysical claim on justice, Rawls's account of JAF cannot be secured without embracing some metaphysical views which would threaten his claim that JAF is political but not metaphysical.

Second, even though Rawls argues that JAF, unlike comprehensive conceptions of justice, is not teleological, I think it is. For it aims to encourage societies to make reforms in liberal direction both at the domestic and the international levels. So, it attempts to maximize liberal values. There are two problems with this liberal aim. The first problem is that as noted in the previous section, Rawls himself proposes that there are “many conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons.”. What does this mean? Incommensurability between values suggests that there is not a common measure by which the ranking or comparison of these values is possible:

Values or bearers of value are then incommensurable only when not even an ordinal comparison or rankings are possible. On this interpretation, incommensurability is defined as the relation that holds between two items when neither is better than other nor are they equally as good.<sup>38</sup>

This is indeed compatible with Rawls's defense of reasonable pluralism. If there are incommensurable conceptions of the good adopted by citizens or societies, the ranking or comparison of those conceptions of the good is not possible (at least in political sense). We can then accept the burdens of judgment. But if this is the case, it does not make sense for a Rawlsian to have the given aim: encouraging citizens and societies to make reforms in liberal direction. For, if there are incommensurable conceptions of the good and if each is compatible with the rationality of human persons, then why not leave societies like Kazanistan as they are instead of encouraging them to make liberal reforms. Even such hope does not seem to have a rational explanation. For one might claim that having incommensurable conceptions of the good adopted by different societies (either liberal or decent) would serve liberal political principles better by promoting toleration. It seems then that if JAF is political but not teleological (and

<sup>36</sup> We have the same problem with other types of societies. Why, for instance, should a benevolent absolutist society that secures some basic human rights and liberties but not political rights such as voting be considered a fully unreasonable society? Why should voting rights be an essential criterion to determine whether a society is reasonable or not if we are not endorsing liberalism in a comprehensive sense?

<sup>37</sup> Rawls claims that an original position argument can be used for Kazanistan only with respect to international laws but not necessarily at the domestic level. So, Kazanistan does not have to adopt liberal principles of justice at the domestic level. But if that is the case, Kazanistan, by honoring the principles of justice at the international level, must satisfy the criteria for being reasonable as a liberal society does.

<sup>38</sup> Nien-hê Hsieh and Henrik Andersson, “Incommensurable Values”, *The Stanford Encyclopedia of Philosophy* (Access Date August 30, 2023).

thus not metaphysical), Rawls does not have a good explanation for why liberal societies should encourage other nonliberal societies in order to make liberal reforms. But if this liberal aim has a rational explanation, that must be JAF's inherent teleological motivation.

Further, Rawls argues that liberal societies don't (and shouldn't) have a comprehensive conception of the good. Only citizens and associations in those societies might have comprehensive conceptions of the good.<sup>39</sup> If this is the case and if liberal societies should encourage other nonliberal societies that adopt comprehensive conceptions of the good in a liberal direction, Rawls indeed proposes a claim that is both political and metaphysical: reasonable societies should not have comprehensive conceptions of the good. So, if JAF has a teleological motivation, that motivation cannot make sense without its metaphysical motivations. For the teleological motivation of JAF directed to political good will necessarily force metaphysical issues to arise: do liberal values outweigh other nonliberal values?, are there incommensurable conceptions of the good in general sense or in political sense?, would it be justified or reasonable for nonliberal societies to encourage other societies to make reforms in nonliberal direction at both domestic and international levels?, and the like.

Third, Rawls suggests that we should admit the fact of reasonable pluralism both at the domestic and the Law of Peoples (international) levels. This is indeed compatible with his view that the principle of toleration should be applied to philosophy itself. Now it is one thing to suggest that there are many conceptions of good and thus pluralism regarding comprehensive conceptions of justice and good, it is another thing to claim that there are many reasonable comprehensive conceptions of justice and good. The former only asks to recognize a fact while the latter asks to accept a metaphysical claim. As a religious society, Kazanistan, for instance, might recognize that since there are citizens and associations adopted different comprehensive conceptions of justice and good, it should secure some basic rights such as freedom of religion. But since Kazanistan holds that there is only one rational conception of the good and justice, it cannot accept Rawls's metaphysical claim that there is a reasonable pluralism regarding good and justice. This has some certain implications: unlike what Rawls demands, the representatives of religious societies cannot (either at the domestic or the international level) "ignore any knowledge of the people's comprehensive conception of the good."<sup>40</sup> Further, their deliberations cannot proceed as if they are situated behind the veil of ignorance which require only liberal conception of justice. It seems then that what Rawls asks nonliberal societies to endorse is a metaphysical claim, the claim that there are many reasonable comprehensive conceptions of justice.

If I am right, the theist has some good reasons to reject the view that reasonable societies and their representatives should step behind the veil of ignorance in order to construct a just social contract. First, stepping behind the veil of ignorance is to accept that liberal society is more reasonable than any other type of society. This is to claim that liberalism is the most reasonable comprehensive view. Second, it is to accept that the principles of justice regarding both domestic and international laws should be determined in favor of liberal values. This would require for a religious society to open its comprehensive conceptions of the good and justice to the threat of another comprehensive view, liberalism. Third, it is to abandon one of the central theistic claims: there is only one rational conception of the good and justice.

<sup>39</sup> Rawls, *The Law of Peoples*, 34.

<sup>40</sup> Rawls, *The Law of Peoples*, 34.

Let's now evaluate Rawls's conception of person. Rawls, as a liberal, considers persons citizens first. He also suggests that he is not developing a comprehensive conception of person that can be seen in philosophical or religious approaches. It is intended to apply to political institutions.<sup>41</sup> I doubt that. Notice that Rawls is inviting us to isolate the conception of person from all essential metaphysical claims on persons (what is personhood, are we created by a supreme being?, if so, what moral obligations do we have to execute?, is there an afterlife for us?, is a fetus a person?, if it is, what basic rights does it have?, and the like) and then asks us to imagine an original position in which only constructing a just social contract matters. This is no different from asking to consider persons citizens first. So, we are invited to hold the priority of the basic political rights of individuals over their other essential rights. From a theistic perspective, however, the essential metaphysical questions and their answers are prior to the question of how we can construct a social contract. For the very possibility of constructing a just social contract depends on these metaphysical questions. As it is not sufficient to accept that there is the fact of reasonable pluralism just because there is the fact of pluralism regarding justice or good, merely referring to the fact that we are born into societies and that we need a political agreement is not sufficient to accept Rawls's conception of person and thus to make sense of stepping behind the veil of ignorance. We need some additional arguments to consider persons citizens first. I cannot see how a Rawlsian can provide the needed arguments without applying to some metaphysical claims. For any definition of person will necessarily require some metaphysical claims. And any metaphysical conception of person will necessarily have some political implications. Starting from the fact that we are born into societies, thus, can provide a complete picture of personhood neither in metaphysical sense nor in political sense. The theist, then, cannot see itself or her representatives as justifiably stepping behind the veil of ignorance.<sup>42</sup>

One might suggest that Rawls's main idea is not to take persons to be citizens first in a general sense. What he asserts is that both liberal and decent societies should consider persons citizens first in political sense. Even though they might have different and even conflicting conceptions of persons in a general sense, given that they have rational decision makers, they might have the same account of justice and person supposed to apply to only political institutions. But again, this does not seem to be acceptable for the theist. For he is invited to hold that political aspect of justice and thus person can be isolated from its metaphysical aspect. We, however, have seen that this invitation itself presupposes a metaphysical claim.

## Conclusion

In this paper, I first summarized Rawls's account of justice and his arguments for the original position. I then explained how he proposes his account of justice for both liberal and nonliberal religious societies in order to show that his conceptions of justice, good, and person are universal in reach, and they are political but not metaphysical. I have argued that unlike what Rawls claims, his conceptions of justice and good are not only political but also metaphysical. I

<sup>41</sup> For some examples of criticisms of the liberal conception of person according to which persons are citizens and thus political beings first, see: Charles Taylor, "Atomism," *Powers, Possessions and Freedoms: Essays in Honor of C. B. Macpherson*, ed. Alkis Kontos (Toronto: University of Toronto Press, 1979), 39-61, and Michael J. Sandel, "The Procedural Republic and the Unencumbered Self", *Political Theory* 12/1 (1984), 81-96.

<sup>42</sup> Though Rawls admits that decent societies do not have to adopt his conception of person at domestic level, he demands that the representatives of decent societies should adopt that conception at the Law of Peoples level. This is, I think, only postponing the problem. For any comprehensive view holding that there is only one rational conception of person requires that we should have the same conception of person at international level as well.

have also suggested that a theist who holds a comprehensive view on justice, goodness, and personhood has some good reasons to reject Rawls's liberal theory of justice.

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