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An Islamic Approach to the Veil of Ignorance and the Original Position

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Abstract

One critique of John Rawls' theory of justice is the inconceivability of the "original position," as it is impossible to conceive of a self without all particular features. When this problem is considered, we try to imagine the position of contracting parties with no definite idea of the good, helping us understand the correspondence between the conditions of the original position and the contracting parties' ideas of the good. This article focuses on the unacceptability of the conditions of the original position, with its implicit veil of ignorance, as it is related to Islam. Islamic thought cannot accept Rawls' conditions due to Islam's universal command to follow the dictates of God and specific religious norms. Alternatively, the international original position presented in *The Law of Peoples*, with access to particular types of the good, is more appropriate for the Islamic context, exemplified through the idea of Kazanistan, with its Islamic form of government and membership in the Society of Peoples.

Keywords

Rawls – theory of justice – Islam – normative inconceivability – Islamic law

نظرية "حجاب الجهل" و"الموقف الأصلي" في ضوء الإسلام

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الملخص

إن أحد الانتقادات الموجهة إلى نظرية "جون راولز (John Rawls)" للعدالة هو استحالة تصور "الموقف الأصلي"، وذلك لأنه من المستحيل تصور الذات بدون كل سماتها الخاصة. وعندما نفكر في هذه المشكلة، فإننا نحاول أن نتخيل موقف الأطراف المتعاقدة اجتماعيًا دون تصور مشترك للخير، وهو ما يساعدنا في فهم التطابق بين شروط الوضع الأصلي وتصورات هذه الأطراف للخير. ويرفض هذا البحث قبول شروط الموقف الأصلي في الإسلام، بما تحمله من حجابٍ ضمني من الجهل. فلا تستطيع رؤية الإسلام قبول شروط راولز بسبب حثه على اتباع أوامر الله وبعض التصورات للأحكام الشرعية. ومن ناحية أخرى، فإن الموقف الدولي الأصلي المقدم في كتاب قانون الشعوب، مع إمكانية الوصول إلى أنواع متعددة من الخير، هو أكثر ملاءمة للسياق الإسلامي، والذي يتجلى في الفكرة الافتراضية لـ"كازانستان"، مع صبغتها الدينية في نظام الحكم ومشاركتها في جمعية الشعوب.

الكلمات المفاتيح

راولز - نظرية العدالة - الإسلام - عدم القدرة على التصور المعياري - الشريعة الإسلامية

Introduction

John Rawls's (d. 2002) ideas regarding the just foundations of the "basic structure of society" have fundamentally influenced the development of political philosophy. Contemporary works on liberalism cannot disregard his legacy, and his ideas have become a starting point for finding new approaches in the field.¹ In *A Theory of Justice*, published in 1999, Rawls presented the idea of the "original position," a hypothetical situation where contracting parties must

1 Paul Kelly, "Justifying Justice" in *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly (London: Routledge, 1994), 242.

arrive at principles of justice shared by all. During this process, the parties are deprived of knowledge of particular facts such as social status, historical facts, and political or religious beliefs. This hypothetical situation is thus a simulation of the possible course of reasoning for contracting parties.

One essential argument against the “original position” is that it is an overly individualistic conception of the self. Communitarians argue that the absence of a primary connection to a certain type of moral good under the veil of ignorance renders the self empty. Humans can fundamentally reconsider their life plans without changing their basic identity. Whatever type of good one chooses, one can immediately abandon it and return to the conditions of the original position. As a result, the moral good becomes something that can be possessed and changed when needed.² Thus, from a communitarian perspective, Rawls’s model for defining the principles of justice presupposes a notion of a self devoid of content. It is impossible to conceive of a self devoid of all particular features. The inconceivability of the original position implies its impossibility. Impossibility here is not understood in a factual sense since Rawls himself points out at the outset that this is a hypothetical situation. What is meant is the logical inconsistency of the original position or that the kind of inconceivability underlying the argument violates the relation between the epistemic and modal domains, that is, between conceivability and possibility.³

This paper will analyze the extent to which the requirement to leave all religious beliefs and sources behind the veil of ignorance is conceivable from the Islamic point of view. Islam’s focus on using sources such as the Qur’an in formulating the validity of legal provisions makes Islam an important example of how the original position is conceivable for a particular religious group.⁴

1 The Original Position and Accepting Its Conditions

The original position and the embedded veil of ignorance are important to ensure procedural justice, without which no agreement can be reached on the just foundations of society’s basic structure. Epistemologically, the original

2 Michael Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 2010), 62.

3 David Chalmers, “Does Conceivability Entail Possibility?” in *Conceivability and Possibility*, ed. TS Gendler and J. Hawthorne (New York: Oxford University Press, 2002), 159.

4 Mohammad Fadel, “Istihsan is Nine-Tenths of the Law: The Puzzling Relationship of Usul to Furu’ in the Maliki Madhhab,” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 161; Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2004), 68.

position is a definite tool “that enables us to envision our objective from afar” and considers ideas and principles insofar as they meet the criterion of impartiality so that private interests do not take precedence over considerations of justice.⁵ Having satisfied all the principles of the original position regarding lack of access to particular knowledge, the contracting parties will adopt two principles of justice.⁶

One trend in decision theory aims to show that utilitarianism, not the principle of difference, is chosen in the original position.⁷ The original position concept also has practical applications. For example, it can serve as a rhetorical tool in support of compassionate solidarity, thereby influencing the guiding principles of healthcare organizations.⁸ An equally important area of research is how the orientation of the original position has been transformed in Rawls's later writings. The notion of “public reason,” which is fundamental to *Political Liberalism* and *The Idea of Public Reason Revisited*, changes the original position in the theory of justice. Citizens engaged in certain political activities must justify their decisions on fundamental political issues by appealing only to public values and norms. Therefore, it becomes possible to limit the rights of a particular group or individual to maintain an equal scheme of basic liberties for all.⁹ These restrictions were not adopted under the conditions of the original position, but such decisions are made based on public reason.

In all these works, the conditions of the original position and the veil of ignorance are implicitly accepted. After accepting these conditions, it is important to study which principle of justice is chosen, how real problems can be solved using the original position as a thought experiment, or by tracing how

5 John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1999), 19.

6 Rawls defines these two points as (1) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all, and (2) Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and (b) They are to be to the greatest benefit of the least-advantaged members of society. See John Rawls, *The Law of Peoples: With 'The Idea of Public Reason Revisited'* (Cambridge, MA: Harvard University Press, 2001), 42–43.

7 Johan Gustafsson, “The Difference Principle Would Not Be Chosen Behind the Veil of Ignorance,” *Journal of Philosophy* 115, no. 11 (2018), 588–604; Hun Chung, “When Utilitarianism Dominates Justice as Fairness: An Economic Defence of Utilitarianism from the Original Position,” *Economics & Philosophy* 39, no. 2 (2018), 308–33; Thijs De Coninck and Frederik Van De Putte, “Original Position Arguments and Social Choice under Ignorance,” *Theory and Decision* 94, no. 2 (2023), 275–98.

8 Michał Zabdyr-Jamróż, “The Veil of Ignorance and Solidarity in Healthcare: Finding Compassion in the Original Position,” *Diametros* 43 (2015), 79–95.

9 Jon Mandle, *Rawls's 'A Theory of Justice': An Introduction* (Cambridge: Cambridge University Press, 2009), 80.

the position of the original position itself undergoes a change in real policy. Even the classical communitarian argument accepts the condition that the contracting parties must abandon their comprehensive doctrines as part of the thought experiment, thereby agreeing to carry it out, but the original position cannot be conceived because it contains a contradictory conception of the person, and for this reason the original position is inconceivable.

This study will take a different approach to the original position and its conceivability. How do the contracting parties, as representatives of citizens with comprehensive doctrines, agree to accept the conditions of the original position and the veil of ignorance as an instrument for choosing the principles of justice? This is especially true of comprehensive doctrines that rely on religious texts, like the Qur'an or Bible, that would be inaccessible behind the veil. This paper uses Islam as an example of such a doctrine for which specific religious texts are fundamental. Islam contains not only prescriptions for personal worship but also principles of justice for society as a whole.¹⁰

Demonstrating that the impossibility of access to religious texts fundamentally connected to this group's notion of justice and their identity can prove the normative inconceivability of the original position for this group. This stands in contrast to the original international position presented by Rawls in *The Law of Peoples*, where access to the content of comprehensive doctrines and religious texts is available, which would be normatively conceivable for Muslims.

The question of identity is a fundamental one. When one attempts to conceive the original position according to the classical communitarian argument, one must imagine that the contracting parties have no definite idea of the good. This paper asks its readers to go back to the stage of trying to conceive of the original position itself, to the stage where a particular group with its comprehensive doctrine agrees to the terms of this thought experiment as a precursor to the attempted conceiving. It is important to distinguish this stage as separate because the classical communitarian argument is formulated from the original position only after agreeing to its conditions. Separating the stages helps to look from the outside at the acceptance of the terms of the original position by a particular comprehensive doctrine. Will Muslims accept the conditions of the original position? One must understand the relationship between specific religious textual sources and their abandonment because of the veil of ignorance to answer this question.

10 'Alī al-Māwardī, *al-Aḥkām al-Sultāniyya* (Damascus: Dār al-Ḥadīth, 2007), 13.

2 Foundations of the Islamic Approach to Justice and Normative Conceivability

The Islamic approach to justice and law is based on two verses of the Qurʾān; the first is: “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.”¹¹ The second verse is: “O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.”¹² These verses are devoted to Islamic politics and government and discuss the need to fulfill the duties entrusted to rulers concerning ordinary people properly. People, in turn, must obey the rulers, but with the condition that their rule is by the laws of Allah and the Sunna of the Prophet.¹³

Islamic law is founded on two basic sources: the Qurʾān and the Sunna.¹⁴ The provisions of Islamic law are derived from the Qurʾān as the primary source of divine revelation. For example, the answer to the legality of usury is: “But Allah has permitted trading and forbidden interest.”¹⁵ The Qurʾān explains the basic and universal provisions of religion, creed, and law. The Sunna explains specific provisions, conditions, and restrictions. For example, in the Qurʾān, one finds the command to pay the obligatory tax (*al-zakā*), while the Sunna provides the exact amount of the tax and the property from which it is paid. For this reason, these two sources are inseparable, for one cannot be fully understood without the other.

A Muslim must follow the norms and principles of Islamic law in all areas of life: family life, economics, politics, and so on. This applies not only to specific laws or court rulings but also to the basic structure of society. For a Muslim, abandoning Islamic law is tantamount to abandoning the Qurʾān and Sunna. This leads to a blurring of the essence of Islam and makes it contradictory for a person to identify as a Muslim while simultaneously denouncing Islamic law.¹⁶ The following verse emphasizes the need to return to the two foundations of

11 Qurʾān, 4:58.

12 Qurʾān, 4:59.

13 The Sunna refers to the words, traditions, and practices of the Prophet Muḥammad (peace be upon Him).

14 Hallaq, *An Introduction*, 16; John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh: Edinburgh University Press, 1990), 9–10.

15 Qurʾān, 2:275.

16 ʿAlī al-Shurbajī, et al. *al-Fiqh al-Manhajī ʿala Madhhab al-Imām al-Shāfiʿī*, 3 vols. (Cairo: Dār al-Kutub, 2012), 1:20.

Islam in solving all legal problems and issues, as they are the only just and good ones: “But no! By your Lord, they will never be [true] believers until they accept you [O Prophet] as the judge in their disputes, and find no resistance within themselves against your decision and submit wholeheartedly.”¹⁷

In *A Theory of Justice*, Rawls mentions one of Locke’s fundamental principles: if one person has a Creator, he must obey Him. The principle of obeying God’s commands in the Lockean sense is universal because it does not presuppose any particular religious denomination, legal system, or text. Therefore, there is no violation of the criterion of universality in the sense of the original position.¹⁸ Here, one can observe a crucial difference between the universal approach to following God’s commands mentioned by Rawls and the Islamic approach to law. In Islam, following God’s commands is understood in a specific and universal sense. The universal, understood in the way that Rawls mentions, is always given specific content. For example, the injunction not to engage in usury cannot be derived *a priori* but only by reference to specific, definite sources: the Qur’an and the Sunna.¹⁹

The unification of the universal and the specific raises the question of the conceivability of the original position not in the epistemic and modal keys but in the normative one. What is important is not the question of the conceivability of the parties in the original position with the constraints imposed by the veil of ignorance but the first step of agreeing to the conditions of this hypothetical situation or thought experiment. In Islam’s case, the original position’s inconceivability begins with normative issues. A formalized argument can be presented as follows:

1. The original position is a hypothetical situation similar to a thought experiment.
2. The original position implies the rejection of particular types of good for the basic structure of society.
3. The original position is the criterion of objectivity and justice of the principles chosen by contracting parties.
4. The testimony that only the norms of Islamic law are genuinely just and must be implemented is fundamental to Islamic identity.
5. Conceiving the original position is a rejection of implementing Islamic legal norms into the basic structure of society.
6. The original position is normatively inconceivable for a Muslim.

17 Qur’an, 4:65.

18 Rawls, *A Theory of Justice*, 114.

19 It is important to note that the particular in the case of Islam is understood as divine revelation, not the derivation of specific principles in the tradition of natural law.

The argument from normative inconceivability is based on the example of Islam, but it can be universalized to apply to comprehensive doctrines for which specific texts are fundamental.²⁰ The difference between this argument and the argument from the epistemic inconceivability and modal impossibility of the parties in the original position lies in the different stages of consideration. The classical argument proceeds from the inconceivability of the parties in isolation from specific conceptions of the good. The argument presented in this article focuses on the unacceptability of the conditions of the original position itself, with its implicit veil of ignorance. The result of the latter argument is not simply the “emptiness” of the identity of the contracting parties, but the unacceptability of the conditions of the original position and the normative rejection of the stage of conceiving the situation itself by a particular religious group.

In other words, the very process of agreeing to such a thought experiment is invalid. An important difference between this argument and the classical communitarian argument from inconceivability is that normative inconceivability does not imply modal impossibility. Normative inconceivability concerns only the particular group that refuses to participate in this thought experiment, which does not mean that the original position itself is normatively inconceivable or logically inconsistent for other groups or that it is modally impossible in general.

It is important to understand how ideas concerning the basic features of Islam relate to specific legal relationships. The parties in the original position cannot know “the particular comprehensive doctrines of the persons they represent.”²¹ In Islam, there is the law of delegation and representation (*wakāla*), whereby the delegate acts on the authority of the principal to perform a certain type of action.²² One of the conditions for the validity of representation is the observance of the permissibility of the matter entrusted. The representation of Muslims in the context of the original position cannot fulfill this condition. Muslims cannot normatively implement non-Islamic principles into the basic structure of society. The inadmissibility of this action on the part of Muslims also means that it is impossible to appoint a representative who could make such a decision. According to the original position, particular principles of comprehensive doctrines cannot be introduced into the basic

20 In Jewish law, for example, the need to consult the Talmud to resolve a legal issue is fundamental to Orthodox Judaism. See Joseph David, *Jurisprudence and Theology in Late Ancient and Medieval Jewish Thought* (Cham, Switzerland: Springer, 2014), 27.

21 Rawls, *A Theory of Justice*, 15.

22 al-Shurbajī, *al-Fiqh al-Manhajī*, 3:320.

structure of society. Thus, Muslims as a group would not be represented at all in the original position.

The argument presented is also more broadly applicable. In *Political Liberalism*, the discourse focuses on maintaining the stability of a just society and how to achieve it, rather than on ideal theoretical constructs.²³ One of the book's main questions is: "How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?"²⁴ The answer must solve the problem of stabilizing a just political regime in the midst of plurality and contradiction of different doctrines. Such pluralism is a particularly acute problem in contemporary societies. The concept of "overlapping consensus," already introduced in *A Theory of Justice*, is the way to achieve the desired just stability.²⁵

Maintaining a socially just society, from Rawls's perspective, requires refusing to incorporate any particular comprehensive doctrine into the basic structure of society. The "generic" liberal principles (including the two principles of justice) underlying society must be metaphysically, epistemologically, and morally neutral. Citizens may fully engage in various particular "higher-order" religious, cultural, and other practices outside the political sphere. The distinction between the equality of citizens based on a neutral conception of political justice and the possession of particular comprehensive doctrines allows us to identify the "higher-order interest" as the primary realm of human self-fulfillment.

Through overlapping consensus, this distinction can be preserved in the face of reasonable pluralism. Citizens who hold particular rational doctrines will support the stability of a society based on a neutral conception of justice for reasons derived from the principles of their comprehensive doctrines. For example, Protestants may support liberal political principles because of the principle of separation of civil and religious authority, while virtue ethicists may support government assistance to the poor.²⁶ Whether the principles of justice are upheld depends on the content of particular comprehensive doctrines.

Overlapping consensus allows citizens to freely practice reasonable comprehensive doctrines while leaving the underlying principles of society neutral.

23 John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005).

24 *Ibid.*, 4.

25 Rawls, *A Theory of Justice*, 387.

26 Samuel Freeman ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2002), 36.

According to Rawls, this relationship between freedom and neutrality allows for stability. This neutrality means that both the overlapping consensus and the original position are political, not metaphysical since it is not a question of accepting the truth of any particular doctrine. The aim is to create a society with neutral principles of justice at its foundation, where particular beliefs cannot be part of its basic structure and undermine its stability and overlapping consensus.

Whether we interpret *Political Liberalism* as a continuation or a departure from the ideas of *A Theory of Justice*, we must agree that the importance of the original position and the veil of ignorance for overall intention has been reduced.²⁷ At the same time, the relevance of the argument that there is a gap between the epistemic and modal domains with respect to the parties of the original position loses its relevance. The focus is not on the representation of the contracting parties according to the criteria of the veil of ignorance but on the notion of overlapping consensus, which does not involve this kind of thought experiment.

In this respect, the argument from the normative inconceivability of the original position is not valid. One can imagine a society in which Muslims accept its basic principles, where access to specific religious texts and the principles of the comprehensive doctrine will be ensured. It is even possible to imagine that these principles would even be supported by specific principles of Islam. However, this argument has a different application to overlapping consensus.

Achieving the stability of a liberal society through an overlapping consensus must be distinguished from a simple consensus as a *modus vivendi*. The mere acceptance of basic principles of justice on the basis of the current social balance of power is not sufficient. In this case, there can be no question of stability, because the acceptance of basic, neutral principles of justice occurred because of contingent circumstances. The question is whether overlapping consensus can be achieved in the case of Islam. The original argument can be modified and formalized as follows:

1. Overlapping consensus is the acceptance of the justness of liberal society's basic neutral principles by comprehensive doctrines.
2. Overlapping consensus is distinct from *modus vivendi* as the actual balance of social forces.
3. The testimony that only the norms of Islamic law are truly just and must be implemented is fundamental to Islamic identity.
4. Increasing the scope of Islamic law is mandatory for a Muslim.

²⁷ Mandle, *Rawls's*, 23.

5. Overlapping consensus is a refusal to apply comprehensive doctrines to the basic structure of society.
6. Overlapping consensus in the case of Islam is unattainable.

In the case of overlapping consensus, it is necessary to achieve recognition of the justness of the basic liberal principles underlying society. In this context, recognition means refusing to incorporate particular principles of comprehensive doctrines into the basic structure. If one agrees with the neutral character of the justness of these principles, then one must refuse to implement comprehensive doctrines into the basic structure. Universal and specific principles, in the case of Islam, are inextricably linked. The universal injunction to follow the commandments of God finds application in specific legal decisions in various spheres of society: politics, economics, family law, and so on. Muslims should strive for maximum implementation of the norms of Islam in these areas.

There is an inversion of the basic ideas underlying the overlapping consensus.²⁸ Comprehensive doctrines precede the liberal concept in the acceptance of justice. In the case of Islam, all provisions, whether universal or about a particular statute, must be reconsidered if they do not conform to the comprehensive doctrine. The political interpretation of the original position and the overlapping consensus do not negate the need to examine the compatibility of each individual statute with Islamic principles and the requirement to broaden its scope whenever possible. For this reason, the need to respect the *modus vivendi* neutrality of the overlapping consensus is not valid in the case of Islam.

This argument does not imply that consensus is impossible. It is only a matter of overlapping consensus, while the possibility of consensus in the *modus vivendi* format is one of the arguments' results. Both arguments against normative conceivability and the attainability of overlapping consensus emphasize an important feature of Islamic political theory: the permanent normative primacy of Islamic legal principles, both concerning the basic structure of society and specific legal rulings.²⁹

3 The Particularistic Approach to the Argument

In contrast to the communitarian argument from the inconceivability of parties in the original position, the argument presented here proceeds from a particular comprehensive doctrine. This approach has its epistemological

28 Rex Martin, "Overlapping Consensus" in *The Cambridge Rawls Lexicon*, ed. John Mandle and David Reidy (Cambridge: Cambridge University Press, 2014), 591.

29 Burton, *Sources of Islamic Law*, 14.

peculiarities. One of the most important is that it does not prove a universal but a particular inconceivability of the original position and the unattainability of an overlapping consensus from an Islamic point of view.

However, this approach has important implications for universal argumentation. In the original position as a hypothetical situation and thought experiment, it becomes clear that some groups cannot be represented there since the implementation of specific features of comprehensive doctrines and access to them is impossible by default. This impossibility of implementation entails the unattainability of overlapping consensus. Only consensus as *modus vivendi* is valid for some groups.

The need for correspondence between comprehensive doctrines and the basic principles of justice in a liberal society in *Political Liberalism* makes it necessary to examine the internal content of comprehensive doctrines. If in the case of Islam, their compatibility with the overlapping consensus format is unattainable, then the question arises as to which other comprehensive doctrines are also incompatible. Creating such a complete table of compatibility or incompatibility for most comprehensive doctrines might show that the original idea of stability for a liberal society requires the exclusion of a large number of social or religious groups. Ultimately, Rawls's argument might conclude that comprehensive doctrines with liberal underpinnings can provide stability for a liberal society. This result seems far from the original goal where most non-liberal comprehensive doctrines would provide stability and be part of an overlapping consensus.

4 The Law of Peoples and Two Steps of the Veil of Ignorance

The need to achieve stability on the right grounds changes the features of the veil of ignorance. In *Political Liberalism*, the idea of overlapping consensus links the acceptance of principles of justice to the content of comprehensive doctrines, thereby making the approach more dependent on contingent circumstances than *A Justice Theory*. Moving to the level of international relations, Rawls continues to give greater agency and importance to comprehensive doctrines.

In order to solve the global problems of poverty, wars, and unjust governments, Rawls presents a modification of the principle of the veil of ignorance in *The Law of Peoples*. The veil of ignorance in the local original position deprives all parties of particular knowledge about their comprehensive doctrines. In the case of Islam, this ignorance leads to the impossibility of implementing the principles of Islamic law in the basic structure of society, which makes the

original position normatively inconceivable for a Muslim. The international original position requires two steps.

The first stage in the case of a liberal society is the local choice of principles of justice behind the veil of ignorance. In the second stage, the representatives on the international stage are again behind the veil of ignorance. However, they no longer represent groups but peoples. They do not know the strength, prosperity, and amount of land held by the peoples they represent, but the fundamental difference from the local original position is the knowledge of the principles of justice implemented in the basic structure of the represented peoples.³⁰ They know whether they represent a liberal people or the hypothetical "Islamic people of Kazanistan."

The existence of different approaches to the definition of justice and the need to create international just institutions that could solve the problems of war, hunger, and human rights violations leads to the introduction of a new category of political regime: decency. Kazanistan is an example of a decent people. It protects basic human rights: life, property, freedom of religion, speech, and so on. But unlike liberal people, where comprehensive doctrines cannot be the basis of politics, in Kazanistan the principles of the basic structure of society are Islamic. The enumerated human rights are interpreted in the light of the Qurʾān and Sunna and apply to all areas of society. For example, freedom of speech does not include blasphemy and, despite freedom of religion, only Muslims can hold some public offices.

Recognizing certain people as decent requires meeting two criteria. The first is that war should not be a means of resolving foreign policy issues. Negotiation, economic cooperation, and goodwill should guide foreign policy. The second consists of three points. First, the possession of a decent consultation hierarchy where all social and religious groups are represented as institutional layers to ensure that the rights of all members of society are respected. Second, "a decent system of law must be such as to impose bona fide moral duties and obligations."³¹ It is the existence of a legal system that will regulate relations between people. The third point is the existence of an administrative and judicial system that will guide decision-making "by a common good idea of justice."

Kazanistan fulfills all the necessary criteria. It is a non-military people, as it accepts diplomacy as the basis for resolving foreign policy issues. The incorporation of Islamic law into the basic structure of society entails the recognition of fundamental human rights. The requirement that all laws and judicial

³⁰ Rawls, *The Law of Peoples*, 32.

³¹ *Ibid.*, 65.

decisions conform to the principles of the Qur'ān and the Sunna means that these sources of law must not be transgressed, which entails the independence of the judiciary in the face of executive authorities.³²

By describing the structure of decent peoples, one can understand why Kazanistan would adopt the following principles of the Society of Peoples:³³

1. People are free and independent, and their freedom and independence are to be respected by others.
2. People are to observe treaties and undertakings.
3. People are equal and are parties to the agreements that bind them.
4. People are to observe a duty of non-intervention.
5. People have the right to self-defense but no right to instigate war for reasons other than self-defense.
6. People are to honor human rights.
7. People are to observe certain specified restrictions in the conduct of war.
8. People have a duty to assist others living under unfavorable conditions that prevent them from having a just or decent political and social regime.

This article will not elaborate on the correlation of each principle with the internal structure of Kazanistan. In the context of the argument from normative inconceivability, the article is interested in the difference between the veil of ignorance in *The Law of Peoples* and *A Theory of Justice*.

The fundamental difference between the two approaches to the veil of ignorance is that there are two stages. There is an initial local stage of the veil of ignorance for liberal peoples where all knowledge of particular conceptions of the good is absent. In the second stage, representatives of liberal peoples are aware of the liberal foundations of their societies. The first stage of the original position with the veil of ignorance does not occur in the case of Kazanistan. Kazanistan is represented in the international arena with the knowledge that this society is Islamic and has a particular concept of justice.

All people don't need to be liberal for the principles of international relations proposed by Rawls to be realized. They can be decent. The absence of such a requirement makes the whole project a "realistic utopia." Otherwise, it would only be a utopia. The idea that the norms of Islamic law are just and must be implemented is fundamental to Islamic identity. To expect a rejection of implementation in favor of the veil of ignorance would contradict the whole approach of the project.

³² 'Alī al-Māwardī, *al-Aḥkām al-Sultāniyya*, 115.

³³ Rawls, *The Law of Peoples*, 37.

For Rawls, the principles of international relations presented here are “the ideals and principles of the foreign policy of a reasonably just liberal people.”³⁴ It is important to note that they are as liberal as decent. The possibility of interpreting each provision in terms of a local conception of the good does not make them exclusively liberal. They might be described as Islamic, such as in the case of Kazanistan, or Christian in a case where that religion is at the heart of politics.

The possibility of recognizing these principles as Islamic in the case of Kazanistan is closely linked to the judicial system, where the interpretation of international relations principles is made in the light of the Qurʾān and the Sunna. Examples of specific interpretations of human rights in Kazanistan could be where freedom of religion means that non-Muslims can be excluded from holding certain public offices.

The fact that these principles are Islamic and liberal means that the international original position with its veil of ignorance is not normatively inconceivable, as it does not fulfill the requirement of rejecting particular approaches to the good. Kazanistan is an Islamic people and is aware of the normative primacy of the Qurʾān and the Sunna over other sources of law. Acceptance of the Law of Peoples principles comes after they correlate with these sources. Thus, the veil of ignorance proposed by Rawls for international relations is more appropriate to the Islamic approach to justice, law, and politics. This applies not only to the international original position but also to the local original position. The local original position should also have this structure, namely the possibility of access to particular sources of law.

For the local original position to be normatively conceivable for Muslims, it is necessary to allow for the possibility of appealing to particular sources of law behind the veil of ignorance. At the same time, the lack of knowledge about wealth, social status, and historical facts is not normatively inconceivable. If it is possible to arrive at common principles in the international arena under such conditions, it is also possible at the local level.³⁵ Access to Islamic legal sources, which play a fundamental role in determining the validity of a particular approach to justice at the local level, leads to the normative conceivability of the local original position.

34 *Ibid.*, 10.

35 The problem arises when transferring federal principles of international relations with territorially defined actors to the local level. In the local original position, the parties do not have their own territory. However, the non-territorial approach to federalism can solve this problem. Different actors with a generalized political system can exist without territorial division. For example, Muslims can have access to Shariʿa courts in certain cases. See Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1995).

However, in the context of the argument from normative inconceivability, it is interesting to look at one clause of the international agreement enumerated above: people have a duty to assist others living under unfavorable conditions that prevent them from having a just or decent political and social regime. The actors who accept these principles are liberal and decent peoples. They are well-ordered because they have the necessary political and legal institutions to be considered just or decent. There are also outlaw states, societies burdened by unfavorable conditions, and benevolent absolutist societies. These peoples are not a part of the Society of Peoples.

The task of well-ordered peoples is to help other societies in difficulties to develop basic liberal or decent institutions and to become part of the international community of well-ordered peoples. Liberal and decent peoples must help develop such institutions.³⁶ The question is whether these basic institutions will be liberal or decent. Since only the norms of Islamic law are truly just and must be implemented, the scope of Islamic law must be expanded. This includes peoples living under unfavorable conditions. Kazanistan will try to implement Islamic principles rather than liberal ones when helping such societies.

The absence of a direct conflict between liberal and decent peoples can mean that peoples living under unfavorable conditions can become the site of conflict (not necessarily armed conflict). If a liberal society does not have a comprehensive doctrine implemented in its basic structure, decent peoples do. This can lead to the desire to spread this comprehensive doctrine to peoples living under unfavorable conditions. At the same time, for Rawls, the principles of the Society of Peoples are primarily liberal, and a liberal foreign policy may insist on the implantation of liberal institutions in societies without a stable, just, or decent political system.³⁷

From a theoretical point of view, it is important for Rawls's conception that everyone has a liberal or decent basic structure. The desire to extend a particular comprehensive doctrine or liberal institutions need not necessarily have negative consequences. It may lead to an intensification of the obligation to help other less fortunate people. If this ultimately leads to the establishment of sustainable liberal or decent basic institutions, then the principles of *The Law of Peoples* will be fulfilled. In this respect, it is equivalent for Rawls whether these societies become Islamic or liberal.

36 Gillian Brock, "Decent Societies," in *The Cambridge Rawls Lexicon*, John Mandle and David Reidy, eds. (Cambridge: Cambridge University Press, 2014), 185.

37 Rawls, *The Law of Peoples*, 60.

Conclusion

Rawls's political philosophy is valuable for its fundamental yet clear assumptions, such as the original position or overlapping consensus. This clarity makes it possible for other political theories to elucidate their positions by comparing them with these principles. Thus, applying Islamic principles, where the Qur'an and Sunna are basic legal sources, to the original position or overlapping consensus makes it possible to highlight the notion of normative inconceivability. It is expressed in the unacceptability of conceiving a situation in which non-Islamic principles would be chosen as the basis of the political structure of society. This inconceivability also finds its basis in the more practical foundations of the social contract, where Muslims themselves cannot be represented under the conditions set out by Rawls.

The critique of Rawls from the position of a particular comprehensive doctrine differs from the universal critique from an epistemological point of view. However, such a critique exposes weaknesses in the original argument. Increasingly, such particularistic critiques from inconceivability by different comprehensive doctrines can show that the chosen approach cannot achieve its goals, whether it is adopting neutral principles of justice or achieving stability through overlapping consensus.

There is a transformation of the veil of ignorance in *The Law of Peoples*.³⁸ Decent peoples with a consultation hierarchy where the rights of social and religious groups are protected do not go through the local original position. Various comprehensive doctrines are implemented in the basic structure of such societies. Rawls gave the example of Kazanistan, which has an Islamic form of government. A representative of Kazanistan in the international original position is not aware of the level of economic or military prosperity. Still, he is aware of the Islamic principles of justice that underlie the society.

Such knowledge preserves the normative primacy of Islamic sources of law in adopting Rawls's principles of international relations. This approach to the veil of ignorance is more appropriate for representing Islam and Muslims both internationally and locally. For this reason, the argument proposed in the article against the local original position with the veil of ignorance is not valid for the Society of Peoples.

Well-ordered societies should help people living under unfavorable conditions to establish liberal or decent primary institutions. In such a case, the normative primacy of Islamic principles for Kazanistan in the sense of the

38 *Ibid.*, 10.

proposed argument would lead to desire to establish Islamic institutions in such societies. Rawls's description of the structure and principles of the Society of Peoples as an extension of the liberal theory of justice could lead to a conflict of interests. However, from a theoretical perspective, it does not matter in this sense whether Islamic or liberal principles are implemented since they will ultimately lead to fulfilling the principles and provisions of the Society of Peoples.

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