



Youngmevittaya, Wanpat (2021) *Rawlsian secularism: A critique*. PhD thesis, University of Glasgow.

<http://theses.gla.ac.uk/82382/>

Copyright and moral rights for this work are retained by the author

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge

This work cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given

Enlighten: Theses  
<https://theses.gla.ac.uk/>  
[research-enlighten@glasgow.ac.uk](mailto:research-enlighten@glasgow.ac.uk)



# **Rawlsian Secularism: A Critique**

**Wanpat Youngmevittaya**

**Submitted in fulfilment of the Requirements  
of the Degree of Doctor of Philosophy (Politics)**

**School of Social and Political Sciences  
College of Social Sciences  
University of Glasgow**

**June 2021**

## **Abstract**

This thesis addresses three main questions concerning the relation between state and religion: What is the secular state? Is the secular state coherent? Is the secular state morally desirable? Specifically, this thesis claims that some significant characteristics of the political philosophy of John Rawls could be articulated as a particular version of secularism – Rawlsian secularism. This thesis argues that Rawlsian secularism should be used as the definition of the secular state, and proposes to deal with those three questions by examining Rawlsian secularism.

This thesis argues that Rawlsian secularism is incoherent. The premise of Rawlsian secularism is that for the state to be religiously neutral it must be neutral toward all reasonable comprehensive doctrines, religious or not. In other words, it would fail to be religiously neutral if it fails to be neutral toward any comprehensive doctrine even if it does not endorse any particular religion explicitly. This thesis claims that, in constructing his political conception of the person, Rawls cannot avoid some controversial debates about human characteristics. And, in dealing with fundamental political questions, he cannot avoid some metaphysical or comprehensive moral questions, which go beyond the limit of Rawlsian public reason.

This thesis also argues that Rawlsian secularism is morally undesirable. Rawls' idea that the state should leave people's actual comprehensive identity and doctrine aside when deciding on a matter of justice is morally undesirable. His idea may be desirable in some cases, but it may be not in some other cases. Rawlsian secularism rules out the possibility for the state to engage in some controversial moral issues in the first place, which is morally undesirable in some cases.

## Table of Contents

<b>Abstract</b>	<b>2</b>
<b>List of Figures</b>	<b>6</b>
<b>Acknowledgements</b>	<b>7</b>
<b>Author's Declaration</b>	<b>8</b>
<b>Introduction</b>	<b>9</b>
 <b>Part I Rawlsian Secularism</b>	 <b>16</b>
<b>Chapter 1 Rawlsian Secularism</b>	<b>17</b>
1.1 Introduction	17
1.2 Rawlsian Secularism: Rawls' Conception of Neutrality	17
1.2.1 Political and Comprehensive Doctrines	18
1.2.2 Religious and Nonreligious Comprehensive Doctrines	27
1.2.3 The Asymmetry Between Disagreements about a Matter of Justice and Comprehensive Moral Questions	31
1.2.4 Political Liberalism	35
1.3 The Status of Religion in Rawls' International Political Theory	43
1.4 Summary	48
 <b>Chapter 2 The Non-Secular State</b>	 <b>50</b>
2.1 Introduction	50
2.2 The Religious State	50
2.2.1 The Characteristic of the Religious State	51
2.2.2 The Justification of the Religious State	54
2.3 The Anti-Religious State	56
2.3.1 The Characteristic of the Anti-Religious State	57
2.3.2 The Justification of the Anti-Religious State	60
2.4 The Comprehensive Liberal State	63
2.4.1 The Justification of the Comprehensive Liberal State: A Religious Comprehensive Doctrine	64
2.4.2 The Justification of the Comprehensive Liberal State: A Nonreligious Comprehensive Doctrine	66

2.5 Summary	67
<b>Chapter 3 Some Alternative Versions of Secularism</b>	<b>69</b>
3.1 Introduction	69
3.2 Laborde's Argument	70
3.2.1 The Accessibility Condition	71
3.2.2 The Personal Ethics Condition	89
3.3 Audi's Argument	91
3.4 Summary	97
<b>Part II A Critique of Rawlsian Secularism</b>	<b>99</b>
<b>Chapter 4 Rawls' Political Conception of the Person</b>	<b>100</b>
4.1 Introduction	100
4.2 Rawls' Political Conception of the Person	101
4.3 A Conception of the Person as the Foundation of Justice As Fairness	108
4.4 A Critique of Rawls' Political Theory of the Person	112
4.4.1 What's Wrong With Rawls' Hypothetical Design?	112
4.4.2 Rawls' Weak-Strong Argument	121
4.4.3 Rawls' Worst-Case Scenario Argument	134
4.5 Summary	138
<b>Chapter 5 Rawlsian Public Reason</b>	<b>139</b>
5.1 Introduction	139
5.2 The Outline of Rawlsian Public Reason	140
5.2.1 The State Level	141
5.2.2 The Civil Society Level	146
5.2.3 The Private Level	155
5.3 The Incoherence Objections	157
5.3.1 The Silence Objection	157
5.3.2 The Disguise Objection	162
5.4 Summary	183
<b>Chapter 6 The Moral Limits of Rawlsian Secularism</b>	<b>184</b>
6.1 Introduction	184
6.2 Moral Particularism	185

6.3 The Importance of Reason	206
6.4 Summary	214
<b>Conclusion</b>	<b>216</b>
<b>List of References</b>	<b>218</b>

## **List of Figures**

<b>Figure 1-1:</b> Rawls' Political-Comprehensive Doctrine Distinction	27
<b>Figure 1-2:</b> Neutrality Toward All Kinds of Comprehensive Doctrines	30
<b>Figure 3-1:</b> The Criteria of a Definition of Religion	95
<b>Figure 4-1:</b> A Comprehensive-Political Conception of the Person	106
<b>Figure 4-2:</b> Rawls' Procedure for Justice As Fairness	108

## **Acknowledgements**

This PhD thesis would be impossible without help and support of many people. First of all, I would like to thank my supervisors: Dr Carl Knight, who has been reading my work and giving me very detailed comments throughout my three-year PhD study; Dr Craig Smith, who came to supervise me in my second year and has always been giving me helpful comments and encouragement; and Dr Myrto Tsakatika, who gave me useful comments, though I had an opportunity to work with her only in my first year. Their comments and criticisms significantly shape this thesis. Working with them not only helps improve my philosophical argument, academic knowledge, and English writing, but also my understanding of academic culture.

I would like to give special thanks to my parents, Boonsong and Sirirat Youngmevittaya, for their unconditional love and invaluable support. They always support me in every way they could. I would like to thank my wife, Nattanan Sirisup, for her love and support which are crucial for my spiritual life. She helped me pass through many crises during my PhD life.

I would like to devote my PhD thesis to them all.



## **Declaration**

I declare that, except where explicit reference is made to the contribution of others, this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Printed Name: Wanpat Youngmevittaya

Signature: Wanpat Youngmevittaya

## Introduction

In this thesis, I want to address the normative relationship between state and religion by asking three questions: What is the secular state? Is the secular state coherent? Is the secular state morally desirable? Instead of taking for granted the meaning of the secular state, I will examine what this term should really mean. Only after we could answer this question, we would be able to ask if such a secularism is morally desirable.

As C. Taylor (1998: 31) says, it is unclear what “secularism” really means as there are more than one definition under the same name. The definition of “secularism” should be discussed seriously before we could elaborate further whether “secularism” is desirable. It would be useless discussion if I simply take my definition of “secularism” for granted (as if everyone already agrees with me on the definition) and argue that such a “secularism” is coherent (or incoherent) desirable (or undesirable), because my readers may not have the same target of criticism as mine.

My concern regarding the relation between state and religion is about state neutrality rather than freedom of citizens: my question is not whether the state can and should guarantee religious freedom but whether it can and should be neutral religiously. My unit of analysis is “state” (or between state and religion) rather than “ordinary citizens” (or between citizens and religion). For the latter case, the questions would be as follows: Should citizens have religious freedom? Should citizens be allowed to use religious language in public discussion? Why or why not? On what condition should religious argument be allowed in public discussion? And so on. Although I will touch upon the relation between citizens and religion at some point, my primary concern is about the state.

Specifically speaking, among many different versions of secularism, I would propose that Rawlsian secularism, a version of secularism influenced by the political theory of John Rawls (1921-2002), one of the leading political philosophers of the 20<sup>th</sup> century, is the most appropriate definition of secularism (or the secular state).<sup>1</sup> I intentionally use “Rawlsian secularism” rather than “Rawls' secularism” because my target is a particular

---

<sup>1</sup> In this thesis, I will use “secularism” and “the secular state” interchangeably.

version of secularism inspired and implied by the political thought of John Rawls rather than a version of secularism explicitly provided by Rawls himself.

As Rawls himself never discussed and articulated systematically his version of secularism, it is difficult to say that there is Rawls' secularism, and so we cannot know exactly whether Rawls himself would agree with what I call "Rawlsian secularism." Whether Rawls himself would agree with what I call "Rawlsian secularism," I can claim that it is implied by Rawls' theory in one way or another.

I do not claim that Rawlsian secularism is based on Rawls' direct comments on secularism, but on some elements of Rawls' theory, which may have nothing to do with secularism directly. My focus is, therefore, on "Rawlsian secularism" rather than "Rawls' secularism," and my target of criticism is a particular version of secularism (Rawlsian secularism) rather than all versions of secularism.

This thesis is designed to start from the less controversial topic (What is a definition of the secular state?) to the more controversial topics (Is Rawlsian secularism coherent?; Is Rawlsian secularism morally desirable?); from the less controversial argument (Rawlsian secularism is the most appropriate definition of secularism) to the more controversial arguments (Rawlsian secularism is incoherent; Rawlsian secularism is morally undesirable). However, one may even consider my argument controversial at the beginning as, in some places, I not only explain Rawls' philosophy as understood by many scholars but also reinterpret Rawls' philosophy in a way that even Rawls himself may not be aware of.

Readers would see that I refer to some political philosophers like John Locke, John Stuart Mill, Jeremy Bentham, Karl Marx, and so on. I need to state in advance that although these names would be mentioned at some points, it is not my primary aim to explain their philosophies systematically; instead, in many places, I just cite *some* of their ideas to back up some general arguments.

For instance, when I argue that the comprehensive liberal state could be supported by Locke's liberalism, I mean to say that some of Locke's arguments could be used to support such a state rather than to say that Locke himself explicitly supports such a state. Or when

I say that some ideas of Locke's conception of toleration could be used to justify the comprehensive liberal state, I just mean to show that we may endorse the toleration regime on controversial reasoning (God's rule, etc.) rather than to argue that Locke himself proposes to tolerate every religious sect or even atheism because I realize that Locke himself does not even tolerate atheism.

Moreover, particularly in Chapter 2, I sometimes refer to some actual states (Thailand, Saudi Arabia, Iraq, etc.) just to illustrate what many forms of state regarding religion could look like rather than to argue that those countries still have certain forms of state in the present. For instance, when I say that the Thai state is the modest religious state, I only mean that there was a period of time where the characteristics of the Thai state could be used as a representative of the modest religious state; I do not mean that the Thai state is still like this even in the present time.

The structure of this thesis is as follows. I will dedicate Part I (*Rawlsian Secularism*), including three chapters, to the first question (what is the secular state?). I will explain what I mean by Rawlsian secularism, and argue why I think that it should be the very definition of the secular state.

Chapter 1 (*Rawlsian Secularism*). This chapter provides the characteristics of what I call “Rawlsian secularism” – a version of secularism influenced by some of Rawls' philosophy. According to Rawlsian secularism, religion is nothing special but a particular comprehensive doctrine just as other nonreligious doctrines; there is no need to sharply distinguish between religious and nonreligious doctrines. Utilitarianism, Kantianism, Marxism, Buddhism, Christianity, Islam, and so on could be treated under the same category “comprehensive doctrine,” and the secular state must be neutral toward them all.

The secular state must be the liberal and neutral state; it must be neutral toward competing conceptions of the good life (ways of life) and controversial reasonings (justifications) of laws and public policies. In other words, the secular state must be neutral in terms of characteristic (not giving legal and financial support to any particular ways of life, religious or not) and justification (not endorsing any controversial justification, religious or not).

Chapter 2 (*The Non-Secular State*). This chapter examines many types of the non-secular state in order to make it clearer what the secular state should look like. Sometimes we should understand what it is by understanding what it is not. The non-secular state may have different forms, ranging from the repressive religious state where people are deprived of religious freedom to the liberal state where people's religious freedom is guaranteed; while some forms of state are clearly non-secular, some of them are very close to be called secular.

I will illustrate their characteristics. I start with a form of state which is very easy to identify as the non-secular state, and then with some which is more complex and harder to tell the difference between the non-secular and secular state. Again, we would see the difference between the non-secular and secular state, according to Rawlsian secularism, only if we take state neutrality in terms of justification into account seriously. This chapter also refers to some actual states as an example of the non-secular state.

Chapter 3 (*Some Alternative Versions of Secularism*). This chapter examines some alternative versions of secularism to Rawlsian secularism. I deal with Cécile Laborde's conception of minimal secularism – the secular state may justify state actions by appealing to some comprehensive doctrines as long as they are accessible to public reasons and do not force people to pursue any particular conception of the good life that is contradictory to their personal ethics.

While Rawlsian secularism insists that the secular state must be neutral toward all comprehensive doctrines, Laborde's minimal secularism allows that the secular state may not be neutral toward some comprehensive doctrines. However, I argue that the differences between Rawls and Laborde might be less significant than it might first appear. Some elements of Laborde's minimal secularism may be used to support Rawlsian secularism rather than to offer an alternative version to Rawlsian secularism. And its some elements may be incompatible with the characteristics of the secular state compared to Rawlsian secularism. As a matter of the definition of the secular state, I argue that Rawlsian secularism is more convincing than Laborde's minimal secularism.

I also examine Robert Audi's argument. I do not deal with Audi's argument as a whole, but only with his specific claim that the secular state may be neutral toward all religious

comprehensive doctrines, but may be not toward nonreligious comprehensive doctrines. I argue that his claim is based on the negative attitude toward religion, in which the secular state cannot take his view if it needs to be called secular. Again, I claim that, as a matter of definition, Rawlsian secularism insisting that the state must be neutral toward all comprehensive doctrines, religious or not, is more appropriate.

After I examine many forms of state regarding religious matters, and argue that Rawlsian secularism is the most appropriate definition of the secular state, I now set Rawlsian secularism as my target of criticism in Part II (*A Critique of Rawlsian Secularism*), which includes three chapters. I will deal with my second and third question (Is Rawlsian secularism coherent? Is Rawlsian secularism morally desirable?). Part II has the following structure.

Chapter 4 (*Rawls' Political Conception of the Person*). This chapter examines what Rawls calls “a political conception of the person” – the claim that the characteristics of the hypothetical person in the original position are an example of how the state should perceive people when deciding about a matter of justice. They are assumptions for the thought experiment rather than the description of real humans or an ideal type for people in private, and Rawls claims that these assumptions could be reasonably accepted by everyone (uncontroversial).

Given this, Rawls believes that his conception of justice is not based on any controversial comprehensive or metaphysical doctrine because it is constructed from certain premises that Rawls claims that everyone could reasonably accept. However, I argue that even his political conception of the person cannot avoid the involvement in controversial claims in one way or another; it is not neutral toward controversial comprehensive and metaphysical claims.

Chapter 5 (*Rawlsian Public Reason*). This chapter moves from Rawls' *specific* claim that his principle of justice is political to Rawls' *general* claim that his principle of justice is simply one of the political conceptions which could be acceptable to everyone. Rawls now claims that one may endorse some other conceptions of justice and other public reasons than what Rawls himself endorses, given that they fall under what Rawls calls “the family of reasonable political conceptions” (or a freestanding view).

One may claim that although Rawls' specific public reason is problematic, his general idea that there could be some other political conceptions/reasons independent of any comprehensive doctrine is still possible. So, I need to move from Rawls' specific theory (Rawls' own public reason) to Rawls' general theory (Rawlsian public reason). However, I argue that Rawlsian public reason, even in a general form, is still incoherent because one may not be able to separate between political and comprehensive moral questions as Rawls would assume.

Chapter 6 (*The Moral Limits of Rawlsian Secularism*). This final chapter argues that Rawlsian public reason is morally undesirable. The foundation of Rawlsian public reason – the state is required to separate comprehensive considerations (including comprehensive identity) from thinking and deciding on a matter of justice – is morally undesirable. This chapter shows how it is possible and plausible to reject Rawlsian secularism without justifying dictatorship, cultural relativism, and other human rights violations.

I defend the idea that the state may take actual comprehensive identities into account when deciding on a matter of justice. The state should be able to promote or encourage certain people to do certain things they may not want to do. I claim that the Rawlsian state may be unable to protect the person, defined by my conception of moral particularism. I argue that the state should be able to engage in controversial claims in some moral cases, to deal with social norms, and even to encourage or discourage some comprehensive doctrines even if they may be compatible with Rawlsian public reason.

Although this thesis focuses particularly on Rawlsian secularism, I hope that this will be also of interest to discussion on state and religion in general, and will help challenge the way we understand the secular state. At least, I hope, this thesis will illustrate how complicated discussion on secularism should be. For example, secularism is not concerned merely about religious freedom but also religious neutrality, and religious neutrality is also interpreted so deeply that it includes public justification. And I hope to show that even discussion on public justification could be more complex than many Western liberal scholars would understand.

To reject secularism does not necessarily mean to reject religious freedom or to endorse a

state religion; instead, it could only mean to reject state neutrality in terms of public justification. I hope to illustrate the relation between state and religion which is not secular but may be morally desirable.



## **Part I Rawlsian Secularism**

## **Chapter 1 Rawlsian Secularism**

### **1.1 Introduction**

This chapter will discuss what I call “Rawlsian secularism” – a particular version of secularism inspired by the political theory of John Rawls, especially Rawls' conception of neutrality. I aim to show that although there are many versions of secularism, Rawlsian secularism should be viewed as the best definition of the secular state. The conception of neutrality that this thesis is interested in focuses on the role of state or government toward citizens, regarding religious matters. After I discuss Rawlsian secularism, I will touch briefly on Rawls' international political theory because it seems to suggest something contradictory with what I mean by “Rawlsian secularism.”

This chapter has two main sections. First, I will explain what I mean by Rawlsian secularism. Second, I will justify my exclusion of Rawls' international political theory from Rawlsian secularism.

### **1.2 Rawlsian Secularism: Rawls' Conception of Neutrality**

This section will focus on four characteristics of Rawlsian secularism inspired by Rawls' conception of neutrality. First, a comprehensive doctrine is not just a conception of the good life, but also controversial claims like metaphysics, epistemology, psychology, and so on. The criteria of the political-comprehensive distinction is not only based on a matter of scope, but also a matter of justification, and the secular state is neutral toward only comprehensive doctrines, not political doctrines.

Second, the secular state is neutral toward all kinds of reasonable comprehensive doctrines, religious or nonreligious. Third, the secular state treats disagreements about a matter of justice and disagreements about comprehensive questions differently. Finally, the secular state justifies conceptions of justice without appealing to comprehensive doctrines. I will explain these in turn.

### 1.2.1 Political and Comprehensive Doctrines

A distinctive characteristic of Rawlsian secularism is that it treats religion in the same way it treats all other comprehensive doctrines. Religion is nothing special but one of the comprehensive doctrines. So we should begin with the definition of comprehensive doctrine. According to Rawls (1993: 13), a comprehensive doctrine is a doctrine that applies to all areas of one's life: “conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole.” In other words, a doctrine is comprehensive if it deals with controversial questions about the good life. And as moral, philosophical, and religious doctrines deal with these questions, they are all called comprehensive.

Rawls (1993: 10, 27, 100, 126-27, 144) insists that his principles of justice are neither metaphysical nor epistemological because they do not deal with controversial questions concerning metaphysical and epistemological claims. Rawls himself does not say that metaphysical and epistemological doctrines are comprehensive doctrines, but for the sake of simplicity, I will hold that they are also one of the comprehensive doctrines because Rawls' main point is that a conception of justice must be neutral toward all those doctrines at all; to call them all *comprehensive* would not violate this purpose.

Therefore, in this thesis, “comprehensive” doctrine is defined not only as a conception of the good life, but also a conception of metaphysics, epistemology, and so on because they are too controversial, cover all areas of one's life, and discuss the truth of the world.

Apart from the simplicity reason, I also think that this definition could capture the roles of religion and moral philosophy. As a matter of fact, religion not only teaches about the moral life, but also about the truth of the world, human nature, and so on. Religions explain that the moral life is not only to live in a certain way but also to live in accordance with the nature of the world. For example, saying that humans should live as God says implies that the good life is connected to a conception of metaphysics (the existence of God).

The claim of an atheological religion like Buddhism that human should live as the

Dhamma<sup>2</sup> dictates implies that the good life is linked to a conception of epistemology (the knowledge of the truth of the world). The claim of utilitarianism that human should live in a way that maximizes happiness implies that the good life is based on a conception of metaphysics (human nature). Thus, if the state wants to be religiously neutral, then it cannot just confine itself to be neutral toward discussion of the good life but it must also extend to discussion of metaphysics, epistemology, and so on.

The definition of comprehensive doctrine will be seen clearer if we compare it to the meaning of political doctrine. A “political” doctrine refers to a moral conception unrelated to religious, metaphysical, epistemological doctrines and so on, which are controversial among citizens. A “comprehensive” doctrine, in contrast, refers to a moral conception related to religious, metaphysical, epistemological doctrines and so on, that are irreconcilable and cannot be acceptable to everyone. The neutral state may embrace a political doctrine but cannot embrace any particular comprehensive doctrine.

For example, the state is said to embrace a “political” doctrine if it takes the view that the good life is a good thing and everyone should be able to pursue what they see as the good life, or the view that everyone should respect other people's rights. Although the state takes a conception related to the good life, it is still neutral because the notion can be acceptable to everyone. In contrast, the state is said to embrace a “comprehensive” doctrine if it, for instance, takes the view that the good life is to maximize utility or to believe in God, because it is irreconcilable and cannot be acceptable to everyone.

In my view, Rawls has two accounts of the political-comprehensive distinction: one is to separate between the “political” and “comprehensive” on *a matter of scope*; another is to separate them on *a matter of justification*. Let me discuss them in turn.

The first account: a matter of scope or a matter of purpose. A moral doctrine is “political” when it is limited to certain areas (e.g., political agreement, the public sphere, the basic structure of society), whereas a moral doctrine is “comprehensive” when it is extended to all areas of one's life. For instance, Rawls (1993) writes that

---

<sup>2</sup> The “Dhamma” is, according to Buddhism, “the truth of the way things are” – the truth of the world. As the Buddha claims to discover the Dhamma, his teachings are named as the Dhamma (Chah, 2002: 58, 398).

“While such a [*political*] conception is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions” (11)

“This contrast will be clearer if we observe that the distinction between a political conception of justice and other moral conceptions is a matter of scope: that is, the range of subjects to which a conception applies and the content a wider range requires. A moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated. Many religious and philosophical doctrines aspire to be both general and comprehensive” (13)

“It can happen that in their personal affairs, or in the internal life of associations, citizens may regard their final ends and attachments very differently from the way the political conception supposes” (31)

According to this account, the state must not engage in any comprehensive moral doctrines as they are involved in the private life of individuals. But the state can embrace a moral conception if it limits the scope to the public life of individuals. In this sense, Rawls (1988: 260-61) insists, the Rawlsian state needs to be neutral toward only any *comprehensive* doctrines rather than all moral doctrines.

The second account: a matter of justification. A moral doctrine is “political” when it is reconcilable and can be acceptable to everyone, whereas a moral doctrine is “comprehensive” when it is irreconcilable and cannot be acceptable to everyone. In other words, a doctrine is political only if everyone can accept it. For example, Rawls (1993) writes that

“A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens” (xvi)

“Since there is no reasonable religious, philosophical, or moral doctrine affirmed by all citizens, the conception of justice affirmed in a well-ordered

democratic society must be a conception limited to what I shall call “the domain of the political” and its values” (38)

“Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification” (137)

According to this account, the state must not engage in any comprehensive doctrine as they cannot be acceptable to all reasonable citizens. But the state can embrace a moral doctrine only if it expresses the conception that all reasonable citizens can accept.<sup>3</sup> At this point, Rawls would agree with Wall and Klosko (2003: 12) who argue that almost every advocate of state neutrality does not claim to be neutral toward any moral doctrine at all; instead, they claim to be neutral toward only controversial moral doctrines, but they could appeal to “shared ideals and values.”

It is very important to understand that, for Rawls, and for many political liberals, the claim of neutrality is *not* the claim of value-free judgment. Instead, Rawls insists that even his political liberalism (or a conception of neutrality) always makes judgment, e.g., one's actions are legally permissible, one's actions are acceptable. It is misleading to argue that Rawls fails to be neutral just because he makes judgment.

For instance, only the fact that the Rawlsian state punishes a religious person who uses their religious principle to violate other people's rights cannot be used as an indicator of Rawls' incoherence because Rawls may easily reply that although such a punishment is a moral judgment, it is not based on a controversial (comprehensive) judgment; it punishes the person because of “political” reason, not because of the wrongness of their religion.<sup>4</sup>

According to Rawls, since everyone could not agree upon the same comprehensive view, any comprehensive views cannot be “political.” Moreover, the state must not justify conceptions of justice by appealing to controversial reasonings as they are also treated as comprehensive doctrines. A doctrine could be political only if it satisfies a matter of scope *and* a matter of justification.

<sup>3</sup> According to Rawls, public reason is not required to be accepted by everyone, but only by whom Rawls calls “reasonable citizens.” However, for the sake of simplicity, I would use “citizens” instead of “reasonable citizens.” Rawls' concept of reasonable citizens will be discussed more in Chapter 5.

<sup>4</sup> This is to argue, in advance, that my argument against Rawls' concept of neutrality in this thesis will not use this naïve argument.

They are related and inseparable. If a doctrine meets the test of a matter of scope, but fails a matter of justification, then it could be called “a comprehensive conception of justice”: a conception of justice which aims to deal with fundamental political questions but as it appeals to controversial justification,<sup>5</sup> it also engages in comprehensive moral questions. Ultimately speaking, Rawls calls such a comprehensive conception of justice as a comprehensive doctrine.

Rawls (1993: xv-xvi) uses his own conception of justice presented in *A Theory of Justice* (*Theory*) as an example of a comprehensive conception of justice:

“Note that in my summary of the aims of *Theory*, the social contract tradition is seen as part of moral philosophy and no distinction is drawn between moral and political philosophy. In *Theory*, a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice. Nothing is made of the contrast between comprehensive philosophical and moral doctrines and conceptions limited to the domain of the political ... although the distinction between a political conception of justice and a comprehensive philosophical doctrine is not discussed in *Theory*, once the question is raised, it is clear, I think, that the text regards justice as fairness and utilitarianism as comprehensive, or partially comprehensive, doctrines”

Rawls (1997: 807) confirms that “justice as fairness is presented there [*Theory*] as a comprehensive liberal doctrine (although the term “comprehensive doctrine” is not used in the book [*Theory*]).” According to Rawls, his conception of justice presented in *Theory* is certainly a conception of justice, but he thinks that it is also comprehensive because it is still “general in scope”: it is a part of moral philosophy.

Rawls (1993: xv-xvi) argues that what makes *Theory* comprehensive is from his discussion in Part III of *Theory* where he argues as if everyone could accept his principles of justice on the basis of moral philosophy. Rawls thinks that it is a matter of scope that makes *Theory* comprehensive: although his *Theory* does not deal with questions about the good life, it partially discusses human nature in Part III.

What he tries to do in Part III is to show why his conception of justice should be accepted and supported by everyone, and he answers that this is because, psychologically speaking,

---

<sup>5</sup> In fact, Rawls (1993: xv) uses the term “a moral doctrine of justice” to contrast it with “a strictly political conception of justice.” But to make this contrast clearer, I would use the term “a comprehensive conception of justice.”

every human has a natural inclination (a sense of justice) to accept his conception of justice. Later on, Rawls (1993, 1997) eliminates this controversial discussion, but still insists that everyone has a duty to accept and support his conception of justice for *political* reasons.

In this sense, what his conception of justice in *Political Liberalism* requires from everyone does not change from *Theory*, that is, they must accept and support his conception of justice. What changes is the way the state reasons: in *Theory*, the reason is based on an account of human psychology, in *Political Liberalism*, the reason is based on democratic culture. He introduces the term “political” in front of “conception of justice” to make it differ from “comprehensive” conception of justice presented in *Theory*. I will discuss the changes between *Theory* and *Political Liberalism* in detail in Chapter 4.

According to Rawls, a doctrine could be political not just because it must deal with political questions (a matter of scope) but it must also answer with uncontroversial reasons everyone could accept (a matter of justification). Given the exclusion of Part III of *Theory*, Rawls now would say that his conception of justice is fully political because it is limited to political questions only, *and* the way he presents (justifies) it is also uncontroversial. Rawls (1971: 129; 1993: 27) believes that his hypothetical conception of the person is political not only because it is presented as a hypothetical assumption but also because the assumption itself is uncontroversial.

Rawls believes that his assumption that people are disinterested and can detach themselves from religion is uncontroversial as ordinary people could easily accept it as a minimal and general claim. Instead, he rather thinks that an assumption that, for example, people are God's creature or benevolent is controversial as not everyone could accept it as a minimal and general claim. In this sense, Rawls could claim that although such a claim is used as an assumption to work out a conception of justice (political questions), it is still comprehensive rather than political because it cannot be acceptable to everyone. This is a matter of justification.

However, although a matter of scope and a matter of justification would be inseparable as the criteria of the political-comprehensive distinction, for the sake of discussion, it is worth to discuss the difference between these two criterions. That a comprehensive



doctrine covers all areas of one's life does not necessarily mean that it must compel people to practice the same comprehensive doctrine; instead, this could only mean that it deals with comprehensive moral questions, and it allows people to practice other doctrines.

Let's assume that the state implements the same conception of justice as Rawls does, and guarantees individual freedom, but state justification is based on religious reason, e.g., the authority of God. Although the state embraces the religious reason, it does not demand that such a religious doctrine must be applied to the whole life of individuals, and individuals are free to interpret themselves according to their comprehensive doctrine (let's call this the religious liberal state). Does the state use a comprehensive doctrine?

As a matter of scope, the state uses a comprehensive doctrine even if it does not compel people in their daily life to view themselves that way, because the state still engages in the controversial claim (i.e., God exists). As a matter of justification, the state uses a comprehensive doctrine because the religious reason is irreconcilable and cannot be acceptable to everyone. In this case, we cannot see the significant difference between these two criteria.

Now let's assume that the state implements both the same conception of justice and method of rational reflection<sup>6</sup> as Rawls does, except that, as a matter of method, it uses *different* hypothetical assumptions in the original position. For example, while Rawls assumes that the hypothetical person in the original position is disinterested and has no religion, the state may assume that the hypothetical person is benevolent, a God's creature, and so on.

I would claim that, in this case, only a matter of scope cannot make us say that the state uses a comprehensive doctrine; instead, we need to use a matter of justification. Some might wonder why only a matter of scope cannot make us call this state comprehensive because it argues that God exists, while a political doctrine should not say anything about this.

I would say that this is because, according to Rawls, a matter of scope means that we must not discuss the ultimate truth, but we may appeal to some metaphysical claim only if they

---

<sup>6</sup> This method will be explained later in this chapter.

are used as hypothetical assumptions. For instance, Rawls would claim that he may employ certain metaphysical claim (e.g., the person can detach themselves from religions, the person is disinterested, etc.) without discussing the ultimate truth. He thinks that this is possible because he uses them simply as the hypothetical assumptions to work out a conception of justice, rather than using them to discuss the ultimate truth.

In this sense, one may argue as Rawls does but employs different hypothetical assumptions (e.g., the person is a God's creature, the person is benevolent, etc.), and claims that they are used as assumptions rather than the ultimate truth. My point is not that one should do so, but that, according to a matter of scope, if one does so, this should be called political rather than comprehensive, because it does not discuss comprehensive questions. Rawls (1993: 27) writes that

“As a device of representation its abstractness invites misunderstanding. In particular, the description of the parties may seem to presuppose a particular metaphysical conception of the person; for example, that the essential nature of persons is independent of and prior to their contingent attributes, including their final ends and attachments, and indeed their conception of the good and character as a whole. I believe this to be an illusion caused by not seeing the original position as a device of representation. The veil of ignorance, to mention one prominent feature of that position, has no specific metaphysical implications concerning the nature of the self; it does not imply that the self is ontologically prior to the facts about persons that the parties are excluded from knowing”

In this passage, Rawls argues that his theory does not presuppose any metaphysical claim *just because* it is used an assumption for a thought experiment. He seems to imply that it is first a particular metaphysical conception of the person, but *because* he simply uses it as an assumption, therefore, it is not metaphysical (let's call this the assumption argument). Rawls implies that, without the assumption argument, his hypothetical conception of the person also presupposes a metaphysical claim.

As a matter of scope, then, one may claim that a hypothetical conception of the person that presupposes *other* metaphysical claims (e.g., God's creatures) could be political as it is used as an assumption just as Rawls claims. But if one argues that such a conception of the person is metaphysical because it assumes that God exists, then Rawls' conception would also be metaphysical because it assumes that humans can detach themselves from religion,

and so on.<sup>7</sup> And if one says that Rawls' claim is not metaphysical because it is just used as an assumption, then one should be able to say this with other hypothetical conceptions (e.g., God's creatures).

As a matter of scope, then, we cannot call such a hypothetical conception of the person comprehensive because it does not aim to discuss comprehensive questions. But it would be counterintuitive to call this assumption political, and I agree that this assumption is comprehensive rather than political. My point is just that what makes this assumption comprehensive is only because it fails the test of a matter of justification rather than a matter of scope.

Rawls (1971: 129) would argue that this assumption is unacceptable because such a conception of the person, even if only used as an assumption, is too strong for ordinary people to accept; so, it is comprehensive rather than political. And if this is the case, then it means that we must use a matter of justification rather than a matter of scope in testing if a particular doctrine is political or not.

As I argued, if Rawls can say that a *particular* metaphysical claim is not metaphysical *because* it is treated as an assumption, then others should be able to say that other *particular* metaphysical claims are not metaphysical only if they are treated as an assumption. But if one wants to insist that a particular metaphysical assumption is political while other particular metaphysical assumptions are not, then one needs to show how different they are, in which I think that one must use a matter of justification. For example, one must show that this is because it is a *general* assumption everyone could accept.

We might summarize Rawls' political-comprehensive doctrine distinction as follows:

---

<sup>7</sup> I would add that, know it or not, Rawls' hypothetical conception of the person also assumes that, whether God exists or not, He cannot have power on human affairs because, as Rawls insists, any conception of justice must be based on the idea of social contract that something would be just only if it is agreed by every rational person. In this sense, even Rawls' hypothetical conception of the person says something about God. This is not to say that Rawls presupposes something about God, but that his hypothetical conception of the person which assumes something about God can be made political, as a matter of scope, only by claiming that it is used as an assumption for a thought experiment.

Scope	+	Justification	=	Doctrine
Non-Political Questions		Controversial Reason		Comprehensive Moral Doctrine
Political & Non-Political Questions		Controversial Reason		Comprehensive Conception of Justice
Political Questions		Controversial Reason		Comprehensive Conception of Justice
Political Questions		Acceptable Reason		Political Conception of Justice

**Figure 1-1:** Rawls' Political-Comprehensive Doctrine Distinction

A doctrine is fully comprehensive if it copes with all areas of one's life whose justification is controversial (e.g., moral, philosophical, and religious doctrines that deal with questions about the good life, psychology, metaphysics, and epistemology). A doctrine is comprehensive if it primarily deals with political questions and also appeals to controversial claims like psychology, metaphysics, epistemology, and so on (e.g., Rawls' *Theory*, Locke's liberalism, Kant's liberalism). A doctrine is also comprehensive if it deals with political questions but uses controversial reason (e.g., a conception of justice which presupposes controversial assumptions). A doctrine is fully political only if it deals with political questions and uses acceptable reason (e.g., Rawls' *Political Liberalism*).

### 1.2.2 Religious and Nonreligious Comprehensive Doctrines

Some scholars propose that the secular state may treat religious and nonreligious comprehensive doctrines differently: the secular state needs to be neutral toward religious doctrines, but it may be not toward nonreligious ones. These scholars may have different reasons to support the notion. For instance, Audi (2000: 34, 39) supports the notion on the ground that as the former tends to be more authoritarian than the latter, the state should not appeal to religious doctrines which pose more serious problems than nonreligious ones.

Others may justify the notion on the reason that as *some* nonreligious reasons are accessible to public reasons but religious reasons are not, the state should not appeal to religious doctrines. Whatever reasons they may provide, they have something in common: they believe that there is some significant difference between religious and nonreligious comprehensive doctrines; as they are significantly different, the state may treat them

differently.

But Rawls does not make a clear and sharp distinction between *religious* and *nonreligious* comprehensive doctrines at all because, according to him, the objective of the neutral state is to be neutral toward not only religious but also nonreligious controversies such as philosophy, secular morality, and so on. Rawls (1993: xxiv, xxxviii, 37, 144, 440, 445, 451, 457) argues that the state must treat religious and nonreligious comprehensive doctrines in the same way: conceptions of justice must be independent of any religious and nonreligious comprehensive doctrines. In this sense, even if we cannot clearly distinguish between religious and nonreligious comprehensive doctrines, we can still propose that the state should be neutral toward them all.

The reason for this, Rawls argues, is that since nonreligious comprehensive doctrines, like religious comprehensive doctrines, however reasonable, are irreconcilable among citizens, so they are unsuitable to serve as “public reason” acceptable to all citizens. In other words, nonreligious comprehensive doctrines are on the same level with religious comprehensive doctrines in the sense that they are *all* “irreconcilable” and cannot be “acceptable” to all citizens. Rawls (1993) writes that

“The differences between citizens arising from their comprehensive doctrines, religious and nonreligious, may be irreconcilable” (445)

“We must distinguish public reason from what is sometimes referred to as secular reason and secular values. These are not the same as public reason. For I define secular reason as reasoning in terms of comprehensive nonreligious doctrines. Such doctrines and values are much too broad to serve the purposes of public reason. Political values are not moral doctrines, however available or accessible these may be to our reason and common sense reflection. Moral doctrines are on a level with religion and first philosophy. By contrast, liberal political principles and values, although intrinsically moral values, are specified by liberal political conceptions of justice and fall under the category of the political” (451)

“A view often expressed is that while religious reasons and sectarian doctrines should not be invoked to justify legislation in a democratic society, sound secular arguments may be. But what is a secular argument? Some think of any argument that is reflective and critical, publicly intelligible and rational, as a secular argument; and they discuss various such arguments for considering, say, homosexual relations unworthy or degrading. Of course, some of these arguments may be reflective and rational secular ones (as so defined). Nevertheless, a central feature of political liberalism is that it views all such arguments the same way it views

religious ones, and therefore these secular philosophical doctrines do not provide public reasons. Secular concepts and reasoning of this kind belong to first philosophy and moral doctrine, and fall outside of the domain of the political” (457)

According to Rawls, the secular state must treat religious and nonreligious comprehensive doctrines similarly. C. Taylor (2011) believes that his “radical redefinition of secularism” suggests an alternative to Rawls' definition of secularism. But, indeed, as I have shown above, his proposal is anticipated by Rawls. C. Taylor (2011: 36-37) proposes that the point of secularism is not about the relation between state and religion, but between state and diversity, religious or nonreligious; the secular state must be neutral toward religious and nonreligious doctrines as there is nothing special about religious doctrines.

Although his secularism is also the same thing as Rawls', C. Taylor (2011: 49, 53) believes (wrongly) that his proposal differs from Rawls' because he misunderstands that Rawls' idea of public reason, while perceiving religious language as inaccessible to all citizens, perceives secular (nonreligious) language as accessible to everyone. C. Taylor (2011: 54) uses Kantianism and utilitarianism as an example of what he calls secular language, and he argues that secular language as such is not significantly different from religious language. He concludes that the secular state must be neutral toward secular and religious doctrines.

In fact, for Rawls, as for C. Taylor, even secular doctrines like Kantianism and utilitarianism are irreconcilable and cannot serve as public reason. Thus, C. Taylor, know it or not, becomes an advocate of Rawlsian secularism on this point. I agree with both Rawls' and Taylor's definition of the secular state, and the following is the reason why I think that their definition is appropriate.

If the secular state is the state that is religiously neutral in the sense that it must not engage in any religious controversy at all *not* because religion is wrong or unworthy in itself *but* because of the notion that since different individuals hold different religious views, the state should leave them to be discussed by individuals themselves, then the secular state would contradict its own premise if it fails to apply the same argument to any other conceptions which share the same characteristic.

The question is if it is the case that different individuals also hold different *nonreligious* views, then how could the state conclude that, following the same logic, the state should

not leave them to be decided by individuals themselves? How could the state reach the very different conclusion, despite that the two cases share the same characteristic? How could, in the case of *religious* doctrines, the state conclude that the state should not engage and cannot take a particular religious comprehensive doctrine on the ground that since different individuals hold different religious views, the state should leave them to be discussed by individuals themselves, but in the case of *nonreligious* doctrines, the state conclude that the state could engage and may take a particular *nonreligious* comprehensive doctrine, despite that different individuals also hold different *nonreligious* views?

I would argue that if the secular state wants to make its premise logically consistent, then it must apply the same argument to every case that shares the same characteristic. If the state is not neutral toward *nonreligious* comprehensive doctrines, then the state must rule out the notion that since different individuals hold different views, the state should leave them to be discussed by individuals themselves. The question is why, in the case of *religious* comprehensive doctrines, the state does not rule out the same notion?

I cannot think of other reasons than because the state already judges that nonreligious comprehensive doctrines are better than religious comprehensive doctrines; the state already judges the contents of religion which is contradictory to its own premise; religious citizens would be treated as second-class citizens because they may not accept the state's endorsement of nonreligious doctrines (MacLure and Taylor, 2011: 13).

Let's think of the following example. There are nonreligious and religious comprehensive doctrines. Apart from the fact that one is nonreligious and another is religious, they share the same characteristic – different people hold those different views (Pluralism). Let's assume that their being nonreligious and religious are characterized as “Characteristic A” and their Pluralism is characterized as “Characteristic B” as shown in the following figure:

	<b>Nonreligious</b>	<b>Religious</b>
Characteristic A	Nonreligious	Religious
Characteristic B	Pluralism	Pluralism

**Figure 1-2:** Neutrality Toward All Kinds of Comprehensive Doctrines

It is easy to understand that if the state is not neutral toward religious comprehensive doctrine, then we could say that the state fails to be religiously neutral because the state prefers a religious comprehensive doctrine over others. But it is harder to understand why if the state is neutral toward religious comprehensive doctrine but fails to be neutral toward nonreligious ones, then we should say that the state also fails to be religiously neutral.

Figure 1-2 could explain this. If the secular state is the state that is neutral toward religious comprehensive doctrines on the ground that different people hold different views (Pluralism), then the state should be neutral toward nonreligious comprehensive doctrines for the same reason because they all share the same characteristic (Pluralism). But if the state chooses to be neutral only toward the former but not the latter, that means that the state uses Characteristic A instead of Characteristic B as the reason of their judgement. And this also means that the state is biased against religious comprehensive doctrines. Therefore, following Rawls' logic, there is no need to make a sharp distinction between *religious* and *nonreligious* comprehensive doctrines as the secular state must be neutral toward them all.

### **1.2.3 The Asymmetry Between Disagreements about A Matter of Justice and Comprehensive Moral Questions**

So far we can see that, for Rawls, the state should be neutral toward comprehensive doctrines, religious or nonreligious, not because those doctrines are right or wrong in themselves but because they are all “irreconcilable” and cannot be “acceptable” to all citizens; in other words, because they are all based on the same characteristic (irreconcilable and unacceptable to all citizens).

Nevertheless, an important question is inevitable: Should the same logic be applied to *every* area that shares the same characteristic? If this is the case, then the same logic should even be applied to conceptions of justice because citizens also disagree and hold different conceptions. But if this is so, then the state would be unable to implement even conceptions of justice that govern everyone; and if the state cannot do so, then there is no need for the state to exist in the first place.



The dilemma is this. On the one hand, Rawls cannot treat every area that shares the same characteristic (i.e., since different individuals hold different views, the state should leave them to be discussed by individuals themselves) in the same way, otherwise the state would collapse. If Rawls insists that the state must treat them in the same way, then the state must either exclude even conceptions of justice from the state which would make the state collapse or the state must include comprehensive doctrines in the state which would make the state fail to be neutral.

But on the other, if Rawls fails to treat every area that shares the same characteristic in the same way, then he fails to exclude comprehensive doctrines from the state on the notion that since different individuals hold different views, the state should leave them to be discussed by individuals themselves. How could Rawls get out of this tricky situation?

Rawls avoids this dilemma by insisting that there is a significant difference (asymmetry) between disagreements about a matter of justice and about comprehensive moral questions: while the former could be settled in one way or another, the latter could not. In general, Rawls appeals to what he calls “the fact of reasonable pluralism” – the idea that in a modern democratic and pluralist society, citizens are supposed to have different reasonable views on comprehensive moral questions.

He argues that, given this fact, conceptions of justice should not be based on the supposition of any comprehensive or metaphysical claim; instead, they should be what he calls *political* conceptions of justice. For Rawls, political conceptions of justice are significantly different from comprehensive conceptions of justice in that while the former could reasonably be agreed by everyone, the latter could not.

Rawls argues that disagreements about a matter of justice could be settled by appealing to political conceptions of justice. In other words, while there is reasonable pluralism about comprehensive moral questions, there is no reasonable pluralism about a matter of justice. The question is how he derives/justifies political conceptions of justice? (or what would his political conceptions of justice look like?). Rawls has two main arguments for this question.

First, in *Theory*, Rawls claims that a political conception of justice could be derived by

rational reflection (or considered judgments) among reasonable and rational persons. Rawls uses the method of thought experiment (or a device of representation): he hypothetically sets up an imagined world (the original position) where people's comprehensive doctrines are excluded from their knowledge (the veil of ignorance), where people are assumed to possess certain characteristics (the Rawlsian political conception of the person), and they are to choose for (political) conceptions of justice acceptable to them all (reflective equilibrium).

Rawls believes that, given this method, two principles of justice<sup>8</sup> would be derived. According to Rawls, the method of rational reflection would work only with questions concerning fundamental political institutions for citizens (a matter of justice), but it would not work with questions concerning the good life, the truth of the world, and so on (comprehensive moral questions).

This is because, Rawls argues, when deciding on a matter of justice, all people could be perceived as reasonable and rational beings whose different comprehensive doctrines are excluded, and this would make them all agree upon the same conceptions of justice through rational reflection. But this will not happen with disagreements about comprehensive moral questions because it is unreasonable to ask people to exclude their different comprehensive doctrines from themselves when deciding about comprehensive moral questions, and since different people would argue from different comprehensive premises (e.g., how they view their identities and value things), they are not supposed to reach an agreement on this matter.

Rawls could avoid the dilemma: for disagreement about a matter of justice, the state does not need to be neutral because this disagreement could be resolved by rational reflection; for disagreement about comprehensive moral questions, the state needs to be neutral because this disagreement could not be resolved by any means.

Second, in *The Idea of Public Reason Revisited* (1997), Rawls now argues for the derivation of political conceptions of justice in a more general way. Instead of emphasizing on his method of rational reflection, he simply requires that, when deciding

---

<sup>8</sup> Rawls (1971: 14-15) argues that the hypothetical persons in the original position would choose two principles of justice, that is, the liberty principle (i.e., everyone has equal basic rights and duties), and the difference principle (i.e., everyone has fair equality of opportunity, and inequalities are just only if the least advantaged members are benefited).

about a matter of justice, we must hypothetically perceive people as reasonable and rational, free and equal persons whose comprehensive doctrines are excluded (political conceptions of the person). Rawls now argues that his conception of the person is only one of the possible political conceptions of the person (i.e., we may think of other political conceptions of the person insofar as they are perceived as reasonable and rational, free and equal persons).

Moreover, Rawls (1997: 773-74, 805) claims that his method of rational reflection illustrated in *Theory* is simply one of the possible methods, and his two principles of justice are only one of the possible political conceptions of justice or what he calls “the family of reasonable political conceptions of justice” – the idea that although citizens may disagree about conceptions of justice, it is possible to say that, under certain conditions, a certain group of conceptions (rather than only one conception) could be acceptable to all citizens (i.e., political conceptions of justice) while some conceptions could not be acceptable to all (i.e., comprehensive conceptions of justice), and although citizens would still disagree about which political conception of justice is the best, it is possible to say that they could agree that all those political conceptions of justice are reasonable and acceptable.

In this sense, Rawls would claim that the state does not need to be neutral toward a matter of justice, though it is disagreed among citizens because, under certain conditions, we could find a certain *set* of conceptions which is reasonable and acceptable to all. Rawls (1997: 774) argues that although he still thinks that his two principles of justice are the most reasonable conceptions of justice, he does not expect that every reasonable citizen would accept his claim; instead, he argues that they could come up with different political conceptions of justice with different methods, and they may legitimately believe that they are more reasonable than his principles of justice.

However, this does not mean that Rawls now rejects his method of rational reflection, but he simply argues that his method of rational reflection is simply *one* of the possible ways to derive/justify conceptions of justice.

Rawls implies that the state may take a political conception of justice without violating the neutrality principle even if citizens may not exactly agree with the one endorsed by the

state, because citizens still agree that a political conception of justice endorsed by the state at the moment is reasonable and justified. On the contrary, when it comes to disagreement about comprehensive moral questions, Rawls asserts that citizens could not reasonably agree with each other upon any same set of reasonable comprehensive doctrines; none of them could reasonably be agreed by all citizens as acceptable if they are to be imposed on them.<sup>9</sup> Therefore, Rawls would say, the state needs to be neutral toward comprehensive moral questions at all. I will come to discuss this argument of Rawls in detail in Chapter 5.

#### 1.2.4 Political Liberalism

Although I claim that one of the outstanding elements of Rawls' theory is his conception of neutrality, Rawls himself has a few *direct* comments on the conception of neutrality. One of those is this (Rawls, 1993: 192-93):

“Thus, neutrality might mean for example: a. that the state is to ensure for all citizens equal opportunity to advance any conception of the good they freely affirm; b. that the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it; c. that the state is not to do anything that makes it more likely that individuals accept any particular conception rather than another unless steps are taken to cancel, or to compensate for, the effects of policies that do this. The priority of right excludes the first meaning of neutrality of aim, for it allows that only permissible conceptions (those that respect the principles of justice) can be pursued. The first meaning can be amended to allow for this; and as so amended, the state is to secure equal opportunity to advance any permissible conception. In this case, depending on the meaning of equal opportunity, justice as fairness may be neutral in aim. As for the second meaning, it is satisfied in virtue of the features of a political conception expressing the priority of right: so long as the basic structure is regulated by such a view, its institutions are not intended to favor any comprehensive

---

<sup>9</sup> As we shall see in Chapter 5, Rawls holds that since we live in a democratic society where there is the fact of reasonable pluralism, the state cannot take any particular comprehensive doctrines or base conceptions of justice on those doctrines; citizens also hold that, under certain conditions, everyone's comprehensive doctrines are all reasonable as they are compatible with political conceptions of justice. This may cause a bit confusion to some readers when Rawls proposes on the one hand that the state should not take any comprehensive doctrines because none of such doctrines could be acceptable to all citizens, but proposes on the other hand that the state may take one of the political conceptions because they could be acceptable to all citizens. Some might wonder why the state cannot take one of the reasonable comprehensive doctrines if Rawls holds that all citizens consider them all as reasonable. The answer is that, for Rawls, although all democratic citizens would consider all comprehensive doctrines which are compatible with political conceptions of justice as reasonable, they merely accept them as acceptable *only if* they are practiced by each individual, but they would consider them as unacceptable if they are imposed on everyone (Rawls, 1993: 486). This is why, for the sake of clarity, I intentionally wrote that none of reasonable comprehensive doctrines could reasonably be agreed by all citizens as “acceptable if they are to be imposed on them” rather than merely “acceptable.”

doctrine. In regard to the third meaning, however, it is surely impossible for the basic structure of a just constitutional regime not to have important effects and influences as to which comprehensive doctrines endure and gain adherents over time; and it is futile to try to counteract these effects and influences, or even to ascertain for political purposes how deep and pervasive they are”

Rawls argues that there might be three meanings of neutrality. First, the state must provide an equal opportunity for everyone to pursue any comprehensive doctrine. Second, the state must not favour or promote any comprehensive doctrine. Third, the state must not have an influence on how people choose any comprehensive doctrine.

However, Rawls proposes that the first meaning needs to be revised and the third meaning needs to be rejected. For the first meaning, it is not true that the neutral state must allow everyone to pursue any comprehensive doctrines at all; instead, the neutral state must allow everyone to pursue only comprehensive doctrines compatible with political conceptions of justice.<sup>10</sup>

For the third meaning, it is not true that the neutral state must not have an influence on how people choose comprehensive doctrines at all; instead, the neutral state may have an effect on the popularity of some comprehensive doctrines, *given that* state actions are confined to “the basic structure of a just constitutional regime.” The neutral state must be based on the structure that is very strict to political conceptions of justice independent of any comprehensive doctrines, and the state must not favour any comprehensive doctrine. Given this, any influence and effect that may stem from such a structure is justified and viewed as neutral, although it may make some doctrines more popular or enduring than others.

Rawls' above conception of neutrality is fairly captured by Kymlicka (1989a: 883) who broadly defines “neutrality” as “the view that the state should not reward or penalize particular conceptions of the good life but, rather, should provide a neutral framework within which different and potentially conflicting conceptions of the good can be pursued.” He further discusses two different conceptions of neutrality, *consequential* and *justificatory* neutrality.<sup>11</sup> For the first conception, the neutral state must make sure that

<sup>10</sup> Therefore, it would be more accurate to say that the neutral state is neutral toward all “reasonable comprehensive doctrines” rather than merely all “comprehensive doctrines.” But for the sake of shortness, I would call “comprehensive doctrines” for *reasonable* comprehensive doctrines from now on.

<sup>11</sup> These two conceptions of neutrality are first introduced by Raz (1986).

every way of life would survive and be valued to an equal degree, e.g., some ways of life must not flourish better than other ways of life (884).

For the second conception, the neutral state must make sure that it does not “act in order to help some ways of life over others” (Kymlicka, 1989a: 883), although that may end up with the situation where some ways of life may flourish better than other ways of life. Kymlicka argues that Rawls defends only the second conception of neutrality, not the first one because Rawls' theory of justice would affect every way of life unequally in the sense that some ways of life which satisfy citizens would exist while other ways of life which do not would be driven out (884, 886). Kymlicka (891-92) argues that Rawls' neutrality does not aim to promote some ways of life over others; every way of life, whether individualistic or communal, may be advantaged and disadvantaged by the state equally:

“One respect in which communally oriented people may be disadvantaged is that they must coordinate the deployment of resources distributed to individuals, and this coordination involves costs and effort that individualistic people avoid. Communally oriented people would prefer that resources be distributed directly to groups and then allow individualistic people to withdraw their resources from the group (this would involve costs for individualistic people that communally oriented people avoid). This problem would be solved if there were mechanisms for communally oriented people to receive benefits communally and for individualistic people to receive benefits individually. And this is indeed what Rawls endorses. He proposes that one branch of the state be organized so as to facilitate such coordination. Rawls would not object if various marital and cultural groups pay taxes, and receive benefits, collectively, where the members have so agreed”

Kymlicka argues that the Rawlsian state is the neutral state because it does not aim to promote individualistic ways of life in particular, but it simply aims to guarantee that every individual would be able to choose any ways of life as they see fit, and, of course, collective ways of life are absolutely possible under such a state. In my view, Kymlicka's above argument really capture Rawls' passage on neutrality (1993: 192-93), and Rawls would surely agree with him. However, I do not see that Kymlicka's argument and even Rawls' passage (192-93) really capture Rawlsian neutrality.

Rawls (1993: 457) argues that “a central feature of political liberalism is that it views all such arguments [*secular or nonreligious comprehensive doctrines*] the same way it views religious ones, and therefore these secular philosophical doctrines do not provide public

reasons. Secular concepts and reasoning of this kind belong to first philosophy and moral doctrine, and fall outside of the domain of the political.”

We can see that Rawls also emphasizes on “reasoning” that the state may use to justify laws and public policies, and argues that public reasons must be independent of any particular (religious and nonreligious) comprehensive doctrine (reasoning). Thus, I would propose, following Rawls' logic, that we distinguish between “characteristic” and “justification” of the state, and that the neutral state must be neutral toward both of them.

The *characteristic* of the state is any action implemented by the state. For example, the state may allow each citizen to choose any occupation as they prefer, or may force each citizen to work as the state prefers; the state may allow each citizen to choose any religion as they prefer, or the state may force each citizen to hold the same religion as the state prefers, and so on. If we only employ the *characteristics* of the state as the criteria of neutrality, then it would be easy to judge whether a particular state is neutral or not. If we see that a state does not reward or penalize any way of life in particular, then we might say that such a state is neutral. Kymlicka's criteria of neutrality presented above is based on this criteria.

The *justification* of the state is any reason or justification for certain state actions given by the state, explicitly or implicitly. The state not only implements policies, but also provides a certain justification for them. I propose that this criteria is indispensable in judging whether the state is neutral or not. For instance, if we just look into the state that does not reward or penalize any particular conception of the good life in terms of *characteristic* – e.g., each citizen is able to pursue or not to pursue any way of life, including any religion, then we would say that this is the neutral and liberal state.

But if the fact is that this state justifies such a policy by referring to a particular religious *reason* (e.g., this is God's command), then while we might still say that this is the liberal state because each citizen can choose any way of life, including religion, we could not say that this is the neutral state because the state clearly endorses a particular religious reason. Whereas the state guarantees religious freedom for citizens in terms of *characteristic*, it does not make the separation between state and religion in terms of *justification*. Because of this, we cannot say that this is the secular state, despite that it guarantees religious

freedom.

Therefore, the neutral/secular state must also be neutral in terms of *justification*, and this is what Sandel (1982: 1) calls “*deontological liberalism*”: the state must be liberal *and* neutral; the state must guarantee individual rights and must justify individual rights without appealing to any comprehensive doctrine. Therefore, the question concerning state neutrality in terms of justification differs from the question concerning state neutrality in terms of characteristics as Sandel (1994: 1767) articulates: “the question is not whether rights should be respected, but whether rights can be identified and justified in a way that does not presuppose any particular conception of the good.”

Some might argue that this criteria is useless because different people may have different reasons to justify laws and public policies. Some might justify public policies by referring to religious reasons, another might refer to philosophical reasons, and so on. Thus, according to this criticism, it is unnecessary to discuss the justification or foundation of the state as there could be more than one justification, and people are free to decide about it. This criticism may be called the overlapping consensus argument. I accept this argument as the interpretation of how “citizens” could justify conceptions of justice.

But I do not think that this argument is incompatible with my argument. This is because, throughout this thesis, what I am concerned (or my unit of analysis) is only about the relation between “state” and “comprehensive doctrines.” My question is, therefore, whether the “state” could and should be neutral toward comprehensive doctrines or not, *not* whether “citizens” could and should be neutral toward any comprehensive doctrines. In this sense, the overlapping consensus argument could go along with my argument very well: while “citizens” could have their own reasons to justify the state, the “state” itself must not base its justification on any comprehensive doctrine.

Rawls' political liberalism, therefore, consists of two aspects, i.e., characteristic and justification: the state must be neutral among competing conceptions of the good life (characteristic) and among competing controversial reasonings (justification). As we shall see in the next chapter, this political liberalism may be contrasted to what one might call “comprehensive liberalism”: the state is neutral among competing conceptions of the good life (characteristic) but may be *not* among competing justifications.



For instance, Locke's liberalism and Mill's liberalism may be put in this category: while Locke justifies the liberal state by appealing to God, Mill to a particular understanding of human nature. While the state under political and comprehensive liberalism are similar in that they both are liberal and neutral toward competing conceptions of the good life, they are different in that the former is neutral even in terms of justification, the latter is not.

It should be noted that my distinction between *comprehensive liberalism* and *political liberalism* is different from William Galston's distinction between *Enlightenment liberalism* and *Reformation liberalism*. According to Galston (1995: 525-26), Enlightenment liberalism means liberalism that takes side on reason over faith, critical reflection over religious worship or tradition, self-autonomy over external determination, and so on, whereas Reformation liberalism means liberalism that tries to be neutral toward different conceptions of the good life. He claims that only Reformation liberalism is adequate to deal with the fact of diversity. However, he seems to emphasize this conception of neutrality through Reformation liberalism only in terms of characteristic.

For example, Galston (1995: 533) discusses two different models of free association in Enlightenment liberalism and Reformation liberalism. In the first case, “freedom of association is subject to the constraint that the internal structure and practices of all groups must conform to the requirements of individual autonomy.” In the second case, on the contrary, “groups may be illiberal in their internal structure and practices as long as freedom of entrance and exit is zealously safeguarded by the state.” While Reformation liberalism is surely part of Rawlsian secularism, it seems to emphasize neutrality of characteristic rather than justification.

What I mean by political liberalism also differs from Gerald Gaus' “justificatory liberalism,” although the latter argues that state actions must be justified in a way that is acceptable to all fully rational people. Gaus (1996) himself asserts that Rawls' political liberalism differs from his justificatory liberalism in that while Rawls tries to avoid any controversial dispute on moral epistemologies (or justifications), he accepts that there is no way to avoid such a contentious dispute in one way or another. In this sense, although Gaus would insist that the state must be neutral in terms of justification, his justificatory liberalism would still be considered “comprehensive” according to Rawls' political liberalism.

Kymlicka (1989a) makes an important point when he argues that the liberal neutral state must not *reward* or *penalize* any particular conception of the good life; each citizen must not only be able to pursue what they want, but they all must do so under the same fair framework in the sense that no one would be helped by the state more than others to pursue what they want. I agree that this is an important criteria of the neutral state. But I think that it is also important to see the significant difference between the neutral state and the liberal state.

The liberal state, according to my understanding, simply guarantees that people are allowed to do what they want given that they do not harm others, and that is it. Whether everyone would pursue what they want *equally* in the sense that no one would be helped by the state or not has nothing to do with the criteria of liberty. I propose that we distinguish between being “rewarded” and being “penalized,” and they do not need to come together in the liberal state. It is clear that people would have no freedom if they are “penalized” in pursuing a particular conception of the good life.

But it is not clear why we should hold that people would have no *freedom* if they are not helped by the state while someone else is. In contrast, it is quite clear that people are treated *unequally* if their pursuing of conception of the good life is not helped by the state while someone else is. In the liberal state, one cannot be “penalized” in pursuing any conception of the good, but someone may be “rewarded” in pursuing some conception of the good.

The neutral state, in contrast, must guarantee that people are allowed to do what they want, *and* that no one can be “rewarded” or “penalized” by the state in pursuing any conception of the good life at all. I argue that the neutral state is not the same thing as the liberal state; while the neutral state must also be the liberal state, the liberal state does not need to be the neutral state; the neutral state is much more demanding than the liberal state (Lovett and Whitfield, 2016: 126). We shall see the significant difference between the liberal state and the neutral state more clearly when I discuss various forms of the non-secular state in Chapter 2.

I would argue that the neutrality of justification is important for the secular state for two reasons. First, as I have discussed, state justification is important in itself if the state wants

to be neutral toward comprehensive doctrine. If the state favours some certain comprehensive doctrine even in terms of justification, then it would fail to separate itself from comprehensive doctrine.

Second, state justification may affect state neutrality in terms of characteristics. The non-neutrality of justification may lead to the non-neutrality of characteristic: that the state appeals to a particular comprehensive doctrine as a way of justification implies that the state *implicitly* supports a particular way of life, which would make it in a superior position compared to other doctrines; supporters of a particular way of life implicitly justified by the state may claim that their conception is better than others, otherwise it would not have been justified by the state in the first place.

For example, in the case of the Lockean state that justifies the existence of God, a theistic organization may claim that their way of life is superior than others, otherwise it would not have been justified by the state in the first place, and this claim may have an impact on how people choose their religion. Although the state would not explicitly say that everyone should believe in God and even allows people to believe otherwise, it cannot deny that, through state justification, it already endorses and prefers the belief in God over the disbelief in God. This fact could be used by supporters of the belief in God as the sign of the state support of their religion in recruiting new adherents.

This is also the case even in the case of the comprehensive liberal state that uses nonreligious comprehensive doctrines as the justification, e.g., the utilitarian justification. Supporters of utilitarianism may claim that their philosophy/doctrine is superior than other conceptions, religious or nonreligious, otherwise it would not have been supported by the state in the first place. It should be noted that what concerns us here is only about the fair framework of competition (*procedure*), not about *consequences* of competition.

It may be the case that although a particular conception of the good life is backed up by the state, it may be unsuccessful in recruiting new adherents compared to other conceptions because there are many other factors in determining the success. In this sense, the state support through state justification may not affect the competitive ability of each conception. I accept this argument. But my point here is not about whether the state support affects the fair *consequences* of each conception, but whether it affects the fair

*procedure* of competition itself, and my argument is that it does.

### 1.3 The Status of Religion In Rawls' International Political Theory

Rawlsian secularism explained in the last section may also be called Rawls' *domestic* political theory: liberal societies should govern themselves according to Rawls' idea of political liberalism. In *The Law of Peoples* (1999), Rawls extends his discussion to the international case, i.e., Rawls' *international* political theory. The main question Rawls (1999: 55) tries to answer is how liberal societies governed domestically by political liberalism should act toward other nonliberal but decent societies,<sup>12</sup> whether they should tolerate their regimes or should make them become more liberal?

Rawls allows nonliberal but decent societies (e.g., the religious state that respects human rights) to continue their ways, although this may be incompatible with political liberalism insisting on the state-religion separation. Rawls (1999: 74) even accepts that an established religion may be acceptable in those societies.

I want to clarify that what I mean by Rawlsian secularism does not include this argument for the following reasons. First, I consider his international political theory as his attempt to show how many nations, liberal or nonliberal, could live together peacefully at a global level, and how fully liberal societies should treat other less liberal societies (i.e., societies that he finds less justified, though decent). This indicates that Rawls views nonliberal but decent societies from a perspective of a fully liberal society that he justifies in his domestic political theory.

Therefore, for Rawls, the most justified form of state is presented in his domestic political theory rather than in his international political theory. As I think that we should discuss what he really finds as the most justified theory of justice, I find it compelling to take seriously his ideas presented in *Political Liberalism* rather than in *The Law of Peoples*.

Second, I find his international political theory rather inconsistent with his domestic political theory. For example, while he proposes, in *Political Liberalism*, that the state

---

<sup>12</sup> According to Rawls (1999: 3), the term “decent” is “to describe nonliberal societies whose basic institutions meet certain specified conditions of political right and justice (including the right of citizens to play a substantial role, say through associations and groups, in making political decisions) and lead their citizens to honor a reasonably just law for the Society of Peoples.”

must be neutral toward comprehensive doctrines, he seems to allow, in *The Law of Peoples*, illiberal but decent societies where an established religion may have various privileges compared to other religions, given that people have religious freedom (Rawls, 1999: 74).<sup>13</sup>

I agree with M. Freeman (2004: 400) in commenting that “Rawls' liberalism is neutral with respect to religious belief, and it is therefore difficult to understand why he requires liberals to tolerate religious discrimination. He calls for toleration of non-liberal societies because toleration is a liberal principle, but, just for that reason, governmental discrimination on the ground of religion must be unacceptable.”

Rawls (1999: 74) may reply that although such a nonliberal society may be unreasonable, it is not fully unreasonable (and so it is acceptable). He implies the distinction between acceptable (e.g., fully liberal societies, illiberal but decent societies) and unacceptable (e.g., slave societies) forms of state, and argues that only the former is acceptable.<sup>14</sup> But even this reply is inconsistent: he cannot say that the state presupposing some religious and philosophical doctrines is unacceptable (*Political Liberalism*) and acceptable (*The Law of Peoples*) at the same time.

Maybe he would mean that it is unacceptable when it happens in fully liberal societies but acceptable in nonliberal societies, that is, political liberalism should be applied only to fully liberal societies, not to nonliberal but decent societies. That Rawls (1999: 85) says that nonliberal but decent societies should be able to decide their future for themselves indicates that they are allowed to choose whether they would turn to be fully liberal or would continue their ways.

But why should we hold that while nonliberal societies may choose between these two regimes, fully liberal societies must comply with political liberalism only? Doesn't this imply that once nonliberal but decent societies decide to become fully liberal, they cannot choose to turn back to their old ways? Doesn't this undermine his claim that nonliberal but decent societies can choose between these two regimes?

<sup>13</sup> Rawls (1999: 74) accepts that, in these nonliberal but decent societies, some citizens are denied “full and equal of conscience” on religious and philosophical doctrines. We may, therefore, call this a kind of religious discrimination: some citizens are treated better than others on religious grounds.

<sup>14</sup> I would say that fully liberal and nonliberal but decent societies are all *acceptable* rather than *justified* because, according to Rawls (1999), only the former is justified while the latter is unjust but still acceptable.

Rawls (1997) allows the liberal society to choose between his own principles of justice which he thinks are the best and other political conceptions which he thinks are less justified, and he never argues that once the society endorses the best one it cannot turn back to other less justified ones; instead, he argues that the society might go back and forth between them. If he applies this logic to the international case, then he would propose that although he believes that fully liberal societies are the best regime, he accepts that a society might choose between fully liberal societies and nonliberal but decent societies because they all acceptable, even if with different levels. He would propose that nonliberal but decent societies could go back and forth between being the same and becoming fully liberal.

He would not propose that once nonliberal but decent societies decide to become fully liberal, they cannot choose to turn back to their old ways. He would propose that the process (from *nonliberal but decent societies* to *fully liberal societies*) should be symmetrical for the backward process (from *fully liberal societies* to *nonliberal but decent societies*); fully liberal societies should be able to decide whether they would continue their ways or would turn to nonliberal but decent societies.

But if this is the case, then it is unclear why Rawls (1993) argues that the state needs to be neutral toward comprehensive doctrines despite that this could be acceptable as fully liberal societies may choose to become less liberal. But if Rawls insists that this logic is not applied to the international case, then it is unclear why Rawls says that nonliberal but decent societies should be able to choose between two regimes, despite that they do not really have a choice.

Therefore, I argue that however Rawls would apply this logic to the international case, his international political theory is inconsistent with his domestic political theory. If we take Rawls' international theory seriously, we should reject Rawls' domestic theory. But if we take his domestic theory seriously, we should reject his international theory, and this is my position.

S. Freeman (2007: 425-26) disagrees with my interpretation of Rawls' international political theory:

“Within his own partially comprehensive doctrine presented in *A Theory of Justice*, Rawls always believed that every society in the world has a duty to develop its institutions so that it realizes the moral requirements of justice as fairness. Any society that does not conform to justice as fairness is not just, and societies, both liberal and non-liberal, are unjust to the degree that they depart from the principles of justice. Rawls says nothing within *Political Liberalism* or *The Law of Peoples* that changes this position. *The Law of Peoples* is not intended to endorse relativism or multiculturalism; it does not imply that it is morally appropriate for non-liberal or non-democratic societies to continue in their ways without reforming their institutions”

According to S. Freeman, then, Rawls' international political theory is consistent with his domestic political theory: according to him, Rawls still insists that every society (including nonliberal but decent societies) should reform themselves until it realizes political liberalism. But I would argue that S. Freeman's claim is not supported by Rawls' texts. In *The Law of Peoples*, there are so many passages showing that Rawls does not believe that every society must conform to political liberalism; instead, he argues that fully liberal societies should respect and allow nonliberal but decent societies to continue their ways as they see fit. Here are some examples:

“In the case of a decent hierarchical society, there is no original position argument deriving the form of its basic structure. As it is used in a social contract conception, an original position argument for domestic justice is a liberal idea, and it does not apply to the domestic justice of a decent hierarchical regime” (70)

“A decent hierarchical society meets moral and legal requirements sufficient to override the political reasons we might have for imposing sanctions on, or forcibly intervening with, its people and their institutions and culture” (83)

“I also suggest that it is not reasonable for a liberal people to adopt as part of its own foreign policy the granting of subsidies to other peoples as incentives to become more liberal, although persons in civil society may raise private funds for that purpose ... Decent societies should have the opportunity to decide their future for themselves” (85)

In contrast to S. Freeman's claim, Rawls says nothing in *The Law of Peoples* implying that every society should conform to fully liberal societies; instead, he says that nonliberal but decent societies should be able to continue their ways even if they are incompatible with political liberalism (Rawls, 1999: 64).

It should be noted that when Rawls (1999: 85) says that people in liberal societies should not subsidize to make nonliberal societies more liberal, he *neither* means to say that it is not a duty of liberal people to help make nonliberal but decent societies more liberal as if this is a duty of those nonliberal societies themselves *nor* that such a subsidy would be ineffective as S. Freeman (2007: 433) claims; instead, he means that nonliberal societies do not even have such a duty in the first place.

S. Freeman is right in saying that, for Rawls, nonliberal but decent societies are not as reasonable and justified as fully liberal societies defined by political liberalism, but it is not true to say that, for Rawls, these societies are unjust and unreasonable *at all* (Rawls, 1999: 74). S. Freeman (2007: 433) claims that, for Rawls, “a just society is a liberal society, and non-liberal but decent societies are unjust.”<sup>15</sup> S. Freeman claims that his conclusion is based on page 83 of *The Law of Peoples*. But, unfortunately, Rawls' text (1999: 83) does not support his conclusion:

“I am not saying that a decent hierarchical society is as reasonable and just as a liberal society. For judged by the principles of a liberal democratic society, a decent hierarchical society clearly does not treat its members equally ... A decent hierarchical society honors a reasonable and just Law of Peoples even though it does not treat its own members reasonably or justly as free and equal citizens, since it lacks the liberal idea of citizenship. A decent hierarchical society meets moral and legal requirements sufficient to override the political reasons we might have for imposing sanctions on, or forcibly intervening with, its people and their institutions and culture”

Rawls does *not* say that a decent hierarchical society is unreasonable and unjust at all, but he says that it is not as reasonable and just as a liberal society. Somewhere else, Rawls (1999: 74) also writes that:

“In decent hierarchical societies a state religion may, on some questions, be the ultimate authority within society and may control government policy on certain important matters ... a decent hierarchical society's (comprehensive) religious or philosophical doctrines must not be fully unreasonable ... the question might arise here as to why religious and philosophical doctrines that deny full and equal liberty of conscience are not unreasonable. I do not say that they are reasonable, but rather that they are not fully unreasonable; one should allow, I think, a space between the fully unreasonable and the

<sup>15</sup> As I said, I think that, for Rawls, only liberal societies are just while nonliberal ones are unjust but acceptable. If S. Freeman means this, then I would agree with him. But I do not think that this is what he means. He not only says that, for Rawls, nonliberal but decent societies are unjust, but also that they are unacceptable at all, and they have a duty to become fully liberal (S. Freeman, 2007: 425-26).



fully reasonable. The latter requires full and equal liberty of conscience, and the former denies it entirely”<sup>16</sup>

All this means that, for Rawls, although he himself views a decent hierarchical society as not reasonable and just as a liberal society, he certainly views it reasonable and just enough to be tolerated, and therefore, it is acceptable.

Finally, I want to focus on Rawls' domestic theory rather than his international theory because I think that only the former gives us the meaning of the secular state, while the latter is indeterminate about the state-religion relation. As his international theory allows the religious liberal state in nonliberal but decent societies, if we include this theory in Rawlsian secularism, then we may need to accept the non-secular state like the religious liberal state. This should be excluded from my discussion to prevent confusion.

This exclusion may be viewed as my biased account of Rawls' theory. But my aim is not to interpret Rawls' philosophy as a whole, but to interpret some of his philosophy that I think fits with the definition of the secular state as I understand it. Rawlsian secularism is not based on Rawls' philosophy as a whole, but on some of his philosophy, especially his conception of neutrality. As the status of religion in Rawls' international theory seems to contradict with Rawlsian secularism, it needs to be excluded.

## 1.4 Summary

I argued that Rawlsian secularism has four characteristics. First, “comprehensive doctrine” is used in a general sense, including all controversial claims such as metaphysics, epistemology, psychology, and so on, and the political-comprehensive distinction is based on a matter of scope and justification. Second, the secular state is neutral toward all kinds

---

<sup>16</sup> “Religious or philosophical doctrines” here are not only comprehensive doctrines held by citizens, but also supported by the state. According to political liberalism, citizens are free to hold any religious or philosophical doctrine whose teachings may be nonliberal and unequal, e.g., Islam teaching that it is wrong to believe in other gods than Allah (so *Muslims* have no freedom to believe in other gods), and men can marry up to four wives while women cannot (so *Muslim* men and women are not equal). I believe that Rawls would view this as reasonable *only if* it grants its members the right to exit anytime and it must not be imposed forcibly on everyone else (i.e., every *citizen* must have full and equal liberty of conscience). Thus, it does not make sense to believe that, in this context, Rawls refers “religious or philosophical doctrines” to comprehensive doctrines held by citizens because even a comprehensive doctrine that is nonliberal and unequal could be said to accept full and equal liberty of conscience. It makes more sense to believe that this means comprehensive doctrines supported by the state because any comprehensive doctrine could be said to accept or deny full and equal liberty of conscience only if it must be allowed by the state.

of reasonable comprehensive doctrines, religious or nonreligious. Third, the secular state is neutral toward disagreements about comprehensive questions, but is not toward disagreements about a matter of justice. Finally, the secular state does not aim to promote any conception of the good life *and* does not justify conceptions of justice by appealing to comprehensive reasonings.

This thesis will take this Rawlsian secularism as the meaning of the secular state. I also argued that Rawls' international political theory is inconsistent with his domestic political theory, and makes my discussion of Rawlsian secularism confusing and indeterminate, so I proposed to exclude his international political theory from Rawlsian secularism.

## Chapter 2 The Non–Secular State

### 2.1 Introduction

The non-secular state is broadly the state that is not neutral toward religious issues. For many people, the non-secular state is simply the one that embraces a particular religion as a state religion and is often repressive on religious freedom. But I would argue that, indeed, the non-secular state may take three different forms, i.e., the religious state, the anti-religious state, and the comprehensive liberal state, and it is not always repressive on religious freedom. In this chapter, I will review the characteristics and justifications of the non-secular state.

This chapter consists of three main sections: discussion on the religious state, discussion on the anti-religious state, and discussion on the comprehensive liberal state.

### 2.2 The Religious State

In general, the religious state refers to the state that *explicitly* supports a particular religion. The characteristics of the religious state can be ranging from the state that imposes the teaching of a particular religion on every citizen in a very repressive way (individuals must convert to the same religion, otherwise they are punished by law) to the state that simply gives the privilege to a particular religion over other religions while guaranteeing citizens' freedom to hold different religions (individuals are free to choose their religions but some religion is favored by the state).

Although the state does not proclaim any official state religion or does not punish citizens for holding other different religions or no religion at all, we still call it the religious state as long as the state explicitly favors a particular religion in one way or another. A state religion may be justified by many different comprehensive reasons, e.g., traditionalism, majoritarianism, virtue ethics, religious reasons, and so on.

### 2.2.1 The Characteristics of the Religious State

The religious state may support a state religion officially or unofficially: the state with an official state religion is the state that not only favors a particular religion in practice, but also proclaims it in the constitution; the state without an official state religion is the state that only favors a particular religion in practice.

Moreover, the religious state may be in a form of the repressive state or the modest state: the repressive religious state is the state that not only favors a particular religion, but also treats other religious and nonreligious people so brutally that other religions than a state religion could not have a place in public at all; the modest religious state is the state that simply favors a particular religion, but does not punish other different religious and nonreligious people, and allows citizens to express their religious (or nonreligious) views and to organize their religious associations in public openly.

I will illustrate what the religious state could look like through the case of *Saudi Arabia*, which is the example of the repressive religious state with an official state religion, and *Thailand*, which is the example of the modest religious state without an official state religion.<sup>17</sup>

Nevertheless, there is no theoretical relationship between “officialness or unofficialness” and “repressiveness or moderation.” It is possible that a state with an official state religion may be repressive or modest, and a state without an official state religion may be repressive or modest. We should neither conclude from these examples that the state with an official state religion must always be repressive, and the state without an official state religion must always be modest, nor that a particular state religion is what determines state repressiveness or moderation.<sup>18</sup> The point of discussing these two cases is simply to show

<sup>17</sup> I discuss these two real cases (Saudi Arabia and Thailand) not to comprehensibly explain what is really going on in those countries, whether in the past or the present, but to show how the repressive and modest religious state could look like in reality. Thus, I do not claim that the characteristics of these two countries to be presented here must be always the most recent update.

<sup>18</sup> One may argue that a *particular* state religion is what determines the behaviours of the state. For example, they may argue that since Islam is a very strict religion in the sense that its followers are not allowed to listen to and follow the teachings of other religions at all, if Islam becomes a state religion, then the state would be repressive on other religions because of the nature of the teaching of Islam. In contrast, one may further argue, since Buddhism is a quite flexible religion in the sense that its followers are not required to be strict to Buddhism only but they may practice the teachings of other religions along the way (Keown, 2013: 139), if Buddhism becomes a state religion, then the state would be modest on other religions because of the nature of the teaching of Buddhism. I doubt this argument because, as a matter of fact, some Buddhists and the Buddhist state are not always modest on other religions. For

that the religious state may be official or unofficial, and may be repressive or modest.

Let's begin with Saudi Arabia. The Saudi Arabia Constitution is entirely based on the Qur'an (the central text of Islam) and Sunna (the traditions and practices of the Prophet Muhammad). This is clearly written in Article 1 of the 1992 Saudi "Basic Law of Governance": "The kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, The Holy Qur'an, and the Sunna (Traditions) of the Prophet (PBUH). Arabic is the language of the kingdom. The City of Riyadh is the capital." The state not only favours Islam, but also forces every citizen to be Muslim at the cost of either death sentence or prison sentence. No one is allowed to convert from Islam to other religions, and atheism, non-religion, and any criticism of Islam are a crime.

For instance, according to the International Religious Freedom Report for 2016 in Saudi Arabia, a 28-year-old man has been imprisoned for 10 years for expressing his atheism on the internet (United States Department of State, 2016c: 8), and "27 Lebanese Maronite Christians were arrested and deported for participating in "un-Islamic prayer" and possession of the "Gospel"" (9).

For many people, the pictures of the brutal state repression, the absolute lack of religious freedom, and the absolutely superior status of a particular religion over others are very vivid, and this is why they strongly protest against the religious state. But the religious state may appear in a modest form. The state may explicitly support a particular religion as if it is a state religion without proclaiming it officially, and the state may favor a particular religion without forcing citizens to convert to the same religion.

Thailand and Sri Lanka, to cite a few, are based on Theravada Buddhism.<sup>19</sup> Despite the absence of a official state religion, the Thai state clearly favours Theravada Buddhism in several ways, e.g., giving financial support to Buddhist temples and organizations, cultivating Buddhism into Thais through state education, setting up national holidays according to important days in Buddhism (four days per year), and explaining some public

---

instance, the Myanmar state, whose Buddhism is a state religion, has been repressive toward some ethnic and religious minorities, especially Rohingya Muslims (Keyes, 2016: 45).

<sup>19</sup> Theravada Buddhism is a sect of Buddhism which has been most practiced in Sri Lanka and countries in Southeast Asia like Thailand, Myanmar, and Cambodia. Theravada Buddhists believe that their beliefs and practices are mostly compatible with the true teaching of the Buddha as they claim that their practices are very strict to the Pali Canon or the scriptures of Buddhism.

policies through Buddhist language. Thai people have grown up with the understanding that the country is historically and culturally sustainable because of Buddhism, and that to become a full citizen of the country is to identify themselves with Buddhism.

In case of Thailand, the state ideology “*Nation, Religion, and King*” which has been adapted since the 1880s under the reign of King Chulalongkorn is significantly based on the “traditional Thai Buddhist theory of kingship”: “The king, regarded as elected by a gathering of all the people, should reign justly as a protector on whom the people can rely, and should be guided by the restraints of the moral law of Buddhism” (Murashima, 1988: 80). According to this ideology, the state must apply the teaching of Buddhism to laws and public policies.

Interestingly, although Thailand has been changed from absolute monarchy to constitutional monarchy since 1932, the state ideology has still been unchanged until today. Whoever runs the country, the monarchy, the military junta, or even elected governments, the state ideology has never been challenged at all (Chaloemtiarana, 1979; Hewison, 1997; Winichakul, 2014, 2016).

It is almost the consensus among Thai elites and many Thai citizens that Thailand could not do without these three values (Nation, Religion, and King). The National Office of Buddhism was founded by Thai governments to support Buddhism financially and ideologically, e.g., to promote and maintain Buddhist places and artifacts, to promote and promulgate Buddhism domestically and internationally, and to propose a policy for the protection of Buddhism. In daily life, only Buddhist monks are given a number of special rights in public.

For example, they are allowed to use any public transportation in Bangkok, the capital of Thailand, for free, and are granted a priority seat on buses, trains, and in airports. In this respect, it is difficult to say that the Thai state is religiously neutral even if it does not establish any state religion officially.

An interesting characteristic of the Thai state is that while the state obviously gives the privileges to Buddhism, members of other religions and non-religious people are not forced to convert to Buddhism at all. The state also supports four other religions (Islam,

Brahmin-Hinduism, Sikhism, Christianity) financially (tax exemption and government subsidies) but not ideologically: while the state appeals to the Buddhist principles and proclaims that Buddhism is a foundation of the country, it never refers to any teachings of those four religions as the source of state legitimacy at all. This may be because the state supports other four religions simply for the sake of social stability to avoid conflicts between religions, especially Muslims in the Deep South of Thailand (Che Man, 2003).

It should be noted that although Thai citizens are allowed to hold any religions and even invent a new religion, the state recognizes only these five religions, while other existing religions (local religions, atheism, and nonreligious) and any new religions will not be recognized and given any financial benefits (United States Department of State, 2016d: 7-8).

### **2.2.2 The Justification of the Religious State**

I will show that the religious state could justify its actions on many different grounds, and all reasons would fall in the category of comprehensive doctrines. The point is not to cover all possible reasons, but simply to illustrate how some of them could be used to justify the religious state. I choose to discuss the following justifications: religious reasons, traditionalism or cultural relativism, majoritarianism or utilitarianism, and virtue ethics.

Let's begin with religious reasons. The state may appeal to certain religious texts, e.g., state actions are justified because they are supported by certain religious texts, and nothing more. This is very clear in case of Saudi Arabia as the justification is totally based on the teaching of Islam: since God (Allah) is the only Creator of the world, and every human being has a duty to obey God, the government, therefore, is legitimate to impose the so-called God's laws (Islamic laws) on its own citizens.

Thus, the religious state like Saudi Arabia would be justified by the simple logic: the religious state is justified because Allah says so, and nothing more. This kind of logic may be applied to other religions; if a country uses the teachings of Christianity as the foundation of the country, then we would call this argument the Christianity justification, and so on.

The religious state may also be justified on grounds of traditionalism or cultural relativism. The logic of this argument is this: each community/country has its own values and cultures, and its members are expected to follow them. They do not believe in a universal value that can be applied to everyone equally, but they believe that each individual should obey their own community's values because these values define who they are.

According to the Thai case, the reason for the religious state is not only based on the teachings of Buddhism, but also on the history and tradition of the country. The latter reason would argue that because Buddhism is a foundation of Thai cultures/traditions, and the Thai identity (Thainess) must be defined and reflected through Buddhism, every Thai citizen should learn how to be a good Buddhist. So the Thai state, according to this view, is legitimate to proclaim Buddhism as a Thai state religion as the way to promote Thainess and national values. We can see how this line of argument really goes from the following statement shown in the website of the National Office of Buddhism:

“Buddhism is the religion of Thailand. For a very long period, Buddhism has always been the spiritual mainstream of Thai people's way of life. Owing to the unity of people in the country, which is one of the most important Buddhist principles, Thailand has sustained strength, sovereignty and independence. Buddhism is also the important root of most customs, virtue and tradition in Thai culture; these are the key elements that contour the unity of Thai people. Thus, the dharma principles have been playing an distinguished role for the development and strength of our nation”

The religious state may be justified by majoritarianism: as the state should do whatever the majority wants, and if it happens that the majority requires a state religion, then the state should do so. According to this view, what matters is not the teaching of a particular religion or the history of a country but the majority's preferences. In the Thai case, apart from the reasons of the teachings of Buddhism and the history of the country, the state may claim that as the majority of Thai citizens (93.6%) is Buddhist (National Statistical Office, 2010: 3), Buddhism should be proclaimed as a state religion to serve the interests of the greatest number of people.

The religious state may also be justified by some extreme forms of utilitarianism. It is suggested that these extreme utilitarianisms may be divided into two types: theological utilitarianism, e.g., the philosophy of Joseph Priestley, and secular utilitarianism, e.g., the



philosophy of Jeremy Bentham (Matsumoto, 2010). While they all base the ultimate moral justification on the greatest happiness of the greatest number, they differ on the understanding of happiness.

According to theological utilitarians, the greatest happiness is possible only if human beings follow and obey God because they are God's creatures. In this sense, although the great majority in a given time may not believe in God, theological utilitarians may still justify the religious state on the utilitarian principle by arguing that without religion they cannot achieve the real and greatest happiness; while their happiness without religion may be possible, their happiness with religion would always be more massive. In contrast, according to secular utilitarians, the greatest happiness is possible only if human beings become atheists who reject any theological faith (Crimmins, 1986). I will come to secular utilitarianism later when I discuss the justification of the anti-religious state.

A state religion can also be justified on the virtue ethics ground: as the role of the state is to cultivate virtues and good characters into citizens (Aristotle, *The Nicomachean Ethics*: Book II, 1103b),<sup>20</sup> if the teachings of a particular religion are found virtuous, then the state should cultivate those principles into citizens. For instance, the state may claim that since the teachings of Buddhism are virtuous, regardless of whether it has been practiced by the majority or not, Buddhism should be a state religion. Whatever criterions the state may use to judge whether a particular religion is virtuous, the core logic is the same – anything virtuous must be imposed on every individual. All these examples show how the religious state could justify a particular religion.

### 2.3 The Anti-Religious State

For many people, the non-secular state would imply the religious state or the state that embraces a particular religion in one way or another, and especially in a very repressive way. To them, there seems to be two alternatives concerning the state-religion relation: either the secular state or the (repressive) religious state. But, in fact, this is not the only form of the non-secular state. If the non-secular state means the state that is not separated from religious issues, then any state that is not religiously neutral, whatever positively or

---

<sup>20</sup> I cite Aristotle here not because I want to argue that Aristotle actually supports the religious state, but because I want to show how the virtue ethics argument inspired by Aristotle could be applied to justify the religious state.

negatively, for or against, should be called the non-secular state.

While the religious state engages in religious issues and promotes a particular religion, the anti-religious state engages in religious issues but acts against every religion; while both the religious and anti-religious state have a say on religious issues (non-neutrality), the religious state has a *positive* view on a particular religion but the anti-religious state has a *negative* view on every religion. Thus, the anti-religious state, in general, refers to the state that *explicitly* challenges all religions.

At first glance, the anti-religious state seems to be a kind of the secular state because it separates religion from the state at all. In this section, I will show why the anti-religious state is a kind of the non-secular state rather than the secular state, and again, it may take both the repressive and modest form.

### 2.3.1 The Characteristics of the Anti-Religious State

The anti-religious state is the state where all religions are opposed on the ground that every religion is morally wrong in one way or another, and citizens would be discouraged to hold any religion even in their private sphere. A significant difference between the Rawlsian secular state and the anti-religious state, therefore, is that while the former aims to neither support nor eliminate all religions and non-religion, the latter explicitly aims to eliminate all religions and to support non-religion.

In this sense, the anti-religious state is a non-secular state which is not neutral toward religion. Both the religious and anti-religious state are not religiously neutral: while the religious state is *positively* based on religion, the anti-religious state is *negatively* biased against religion.

Like the religious state, the anti-religious state may take a repressive or modest form. The repressive anti-religious state is the state that tries to eliminate all religions by punishing any religious person in one way or another. Many communist countries such as the former Soviet Union, China in the era of the cultural revolution, Cambodia under the Khmer Rouge, and North Korea are good examples of this kind. In these countries, religion is viewed and treated by the state as a crime and no one could express their religious views

in the public and private sphere, and every citizen is forced and encouraged to hate all religions as they are the barrier of the socialist development.

For example, it was reported, in North Korea, that “ownership of Bibles or other religious materials brought in from abroad is reportedly illegal and also punishable by imprisonment and severe punishment, including, in some cases, execution,” and that “the government continued to deal harshly with those who engaged in almost any religious practices through executions, torture, beatings, and arrests” (United States Department of State, 2016b: 3).

In the former Soviet Union under the rule of the Communist Party (Bolshevik), especially the era of Stalin, a crucial policy or official ideology regarding religion and culture was called *Gosateizm* (State Atheism) whose principle is that all religions, especially Russian Orthodox Christianity, were officially proclaimed as the crime and must be eliminated from the whole society (Kowalewski, 1980; Fitzpatrick, 1996; Curtis and Leighton, 1998). There were many tools exploited by the Russian Communist Party to implement their anti-religious policy such as the expropriation of church property, the state propaganda against religious beliefs, and the promotion of anti-religious ideology in the educational system (Curtis and Leighton, 1998).

Even though the Russian Communist Party was actually unsuccessful to get rid of all religions and make citizens convert to communist ideology, what we can learn from them is that the state which is not neutral toward religions could be in the form of the anti-religious state where citizens may have less religious freedom than in the religious state.

However, it may be argued that although many traditional religions (Christianity, Islam, Buddhism, and so on) would be legally impermissible in those communist countries, their communist ideology was not different to those traditional religions in the sense that it also functioned in the same way as those traditional religions.

For example, Zuo (1991: 101) argues that “ironically, at the same time as it attempted to destroy traditional religious activities, the Chinese communist regime initiated and encouraged a new religion centered around Mao Ze-dong, chairman of the Chinese Communist Party and leader of the People's Republic during the Cultural Revolution. As

some Western scholars suggest, Mao was, all of a sudden, seen as a god and widely worshiped by the people.”

Moreover, Zuo (1991: 101) also shows that the characteristics of the Chinese anti-religious or communist state are similar to those of the religious state in several aspects, as he argues, for example, that “ritual activities were set up in association with this fanatic devotion to the idol Mao. For instance, it was quite common that, in the morning before breakfast, family members stood before Mao's picture asking for instructions for the day. In the evening, standing before Mao's picture again, they made a quiet confession of the “sins” they had committed during the day.”

This is also the case for North Korea, as Belke (1999: 1) argues that “most general volumes on world religions mistakenly state that North Korea is a “Marxist-Leninist dictatorship” where religious practices are virtually non-existent. Any such notion falls widely short of reality. In fact, Juche<sup>21</sup>'s approximately 23 million adherents, who worship their former and current dictators, outnumber those of more well-known world religions such as Judaism, Sikhism, Jainism, Bahaism, and Zoroastrianism.” According to this view, the political ideology (communism) in China and North Korea is equivalent to a religion because it shares the similar characteristic with many traditional religions (blind faith and blind worship) (Zuo, 1991).

However, I would argue that although it is historically true that many communist or anti-religious states would end up with the building of a new (political) religion in one way or another, they all started with the *aim* to get rid of all traditional religions in order to establish communist society. This would allow us to say that the (ideal) characteristic of the anti-religious state is the state that tries to criticize and even eliminate all religions from the public and private sphere on the ground that religions are bad for the good life of citizens in one way or another, e.g., if the state identifies itself with the communist ideology, then religions are bad for the good life of communist citizens, and so on.

Like the religious state, the anti-religious state may take a quite modest form as it may allow citizens to hold any religion in the private sphere, but the state obviously opposes

---

<sup>21</sup> “Juche” is the term used to name the political religion of the North Korea's communist ideology. In short, “Juche” is the practice that every citizen is forced to obey and worship their communist leaders (for example, Kim Jong Il).

every religion and tries to challenge all religions in the public sphere. Unfortunately, although this is possible in theory, I do not think that any actual country can fit entirely to this category. For example, on the one hand, China, in the present time, may try to compromise with a number of traditional religions by allowing them to be practiced in the private sphere, on the other hand, the Communist Party of China (CPC) obviously identifies the state with the atheist or anti-religious ideology as it forces every school to teach atheism (United States Department of State, 2016a: 8).

If it is the case that the CPC simply promoted the anti-religious ideas in the educational system or in the public discourse and challenged any religious teachings in public, while respecting the (restrictive) right of citizens to practice their religions, then I would put China in the category of the modest anti-religious state comfortably. But this is not the case.

In fact, it is reported that while the CPC vows to permit religious freedom in the private sphere, many religious persons are violated in several ways: “Throughout the country, there continued to be reports of deaths, in detention and otherwise, of religious adherents and that the government physically abused, detained, arrested, tortured, sentenced to prison, or harassed adherents of both registered and unregistered religious groups for activities related to their religious beliefs and practices” (United States Department of State, 2016a: 8).<sup>22</sup>

Although we cannot say that China is the modest anti-religious state, we can say, at least in theory, that it tries to promote the anti-religious ideology and challenge all religions without violating citizens' freedom to hold religions. At least in theory, the anti-religious state, like the religious state, may take two different forms: a repressive and modest form.

### **2.3.2 The Justification of the Anti-Religious State**

As many anti-religious countries are Marxist-Leninist countries, at least as they define themselves, it is safe to say that a potential justification of the anti-religious state would be based on some versions of Marxist theory. They may argue that, according to Marx's theory of historical materialism, religion is historically a tool used by the ruling class to

---

<sup>22</sup> One of the most popular cases is the state repression on Uighurs Muslims in Xinjiang.

justify their exploitation of the exploited class. For example, the absolute monarchy may claim the divine right to rule: God sends him to rule the earth, and to obey the King is to obey God.

Or some ruling elites (e.g., religious institutions) may indoctrinate the ruled class that they could have the better life in afterlife if they obey certain religious teachings endorsed by the state; as a result, people would lose an interest in fighting the unjust political and economic structure in this life. Thus, religions should be abolished because they protect the class society and they are the barrier of a socialist revolution.

Apart from Marx's theory of historical materialism, the (communist) anti-religious state may appeal to another version of Marx's critique of religion, found in his earlier work *On the Jewish Question* (2000) where Marx addresses and criticizes Bruno Bauer's critique of religion. In short, Marx (2000) argues that while Bauer correctly understands that for Jews to emancipate themselves is to abolish Judaism as it is a source of their alienation, he fails to understand that it is not enough to simply have the secular state because they are still allowed to be Jews in the private sphere.

Marx adds that to fully emancipate Jews, we must abolish their religion in the private sphere altogether because it is the source of their alienation. According to Marx, the modern or secular state is the state that the *political state*, where religions are excluded from the public sphere, and the *civil society*, where human beings are free to hold a religion, are split.

Marx argues that the secular state still makes Jews alienate from themselves and from others; insofar as they are a Jew, they would encounter the contradiction between themselves as a Jew (in the civil society) and themselves and others as a member of the community (in the political society): they would treat themselves and others merely as a means rather than an ends in themselves, and treat each other as the barrier of their own freedom rather than part of the realization of their freedom.

What Marx criticizes Bauer is that the secular state where citizens are free to pursue a religion in the private sphere can at best lead to political emancipation (the state is free from religion, but people are not) rather than human emancipation (people are free from

religion); we should even abolish religions in the private sphere to realize our real human nature. Marx's concern is not about political emancipation of Jews, but emancipation of humans from Judaism.

Marx argues that the very basis of human alienation in the capitalist state is egoism (or self-interest), and private property, class, money, market, and so on are the preconditions of egoism. He proposes to abolish capitalism for human emancipation. At the same time, Marx argues that the very basis of Jews is egoism in the same way as everyone else in the capitalist society. Therefore, he proposes that for humans to emancipate themselves from alienation they must abolish capitalism and Judaism (and other religions alike). As his criticism focuses particularly on Christianity and Judaism, we could say that he has a very negative view on theological religions like Christianity and Judaism.

But Marx sometimes seems to suggest that his criticism may be applied to all religions rather than just Christianity or Judaism in particular. For instance, Marx (2000: 53) argues that “the conflict with his citizenship and with other men as members of the community in which man as an adherent of a particular religion finds himself can be reduced to the secular division between political state and civil society.” This may imply that, according to Marx, all religions similarly cause human alienation. This could be used as the justification of the anti-religious state.

The anti-religious state may be justified on other non-Marxist accounts. For example, one may justify it on the majoritarian ground: if the majority in a certain period of time wants to abolish all religions, then the state should implement this policy. Or one may justify it on the utilitarian ground defined by Bentham's secular utilitarianism. One may argue that religion is hostile to the greatest happiness of human beings because religion teaches humans to focus on the happiness of the next life rather than the present life, which would make them unable to achieve the greatest happiness of this life (Crimmins, 1986). I would call Bentham an anti-religious person rather than a secularist because his view on religion is negative rather than neutral.

Crimmins (1986: 105) writes that “the secularization envisaged by Bentham thus involved more than the disentanglement of the religious and political spheres of social life. Certainly his policy of disestablishment set out in *Church-of-Englandism* was designed to

achieve this end. But ultimately secularization meant for Bentham the elimination of religious beliefs as influential psychological factors in the human mind, and this was to be the task of the legislator.”

According to Bentham, religion should be eliminated because it does not make happiness of humans. If one understands that secularism simply means the separation of state and religion on *any* reason, then Bentham may be called a secular utilitarian, as Crimmins (1986) and Matsumoto (2010) claim.

But if one understands that secularism means the separation of state and religion only on the reason that is also religiously neutral (e.g., since different individuals hold different religious views, the state should religiously be neutral), then Bentham is not a secularist because what he wants is that the state eliminates all religions at all on the anti-religious reason. Thus, Bentham's argument should be called “anti-religious” (non-secular) rather than “secular.”

One may reject religion on the empiricism ground: religious belief, especially the belief in God, is wrong because it cannot be proved scientifically and empirically. Or one may reject religion on the traditional ground: if a society values the anti-religious ideology for a long time, then the state should abolish all religions for the sake of the traditional value of society. And one may think of other (anti-religious) reasons.

My point here is not to discuss every potential justification of the anti-religious state, but to argue that (1) the anti-religious state is significantly different from the secular state in that any justification of the anti-religious state is based on comprehensive doctrines (essence of man, happiness, empiricism, traditional values, etc.), and (2) as the secular state cannot engage in religious issues, the atheist state should be called the anti-religious state rather than the secular state as it is not religiously neutral.

## 2.4 The Comprehensive Liberal State

As we have seen that the religious and anti-religious state are not neutral in terms of characteristic and justification, it is not difficult to conclude that they are not the secular state. But it would be harder to say whether it should be called secular if the state is neutral



in terms of characteristic but *not* in terms of justification: the state promotes and protects human rights of all citizens and does not give the privilege to a particular religion, but the state endorses a particular comprehensive doctrine as the justification of its actions.

I would call this kind of state “the comprehensive liberal state” – the state that does not support or challenge any religion in terms of characteristic but may support or challenge some religion in terms of justification. I will argue, in this section, that the comprehensive liberal state is not the secular state because it is based on what one might call “comprehensive liberalism” rather than “political liberalism.” This kind of liberalism asserts that individuals should be free to pursue what they want either because this is a good way of life for everyone or it is a means to achieve other goods such as happiness, social welfare, God's command, and so on.

This section will not be discussed through the distinction between the characteristic and the justification as I did in the last sections. This is because, in terms of characteristic, while the religious and anti-religious state may take the repressive and modest form, which make it necessary to examine them in detail, the comprehensive liberal state rules out the repressive form at all.

What we should pay much attention to is rather the *justification* of the comprehensive liberal state as this is the only thing that makes the comprehensive liberal state differ from the secular state. I will, therefore, discuss only the justification of the comprehensive liberal state, which may take at least two different forms: *religious* or *nonreligious* comprehensive reasoning.

### 2.4.1 The Justification of the Comprehensive Liberal State: A Religious Comprehensive Doctrine

The comprehensive liberal state may be justified on religious reasons. Some<sup>23</sup> of John Locke's arguments could be used as an example of the religious justification of the comprehensive liberal state. Locke (1980), for instance, defends natural rights of

<sup>23</sup> I need to emphasize that only “some” of Locke's arguments could be used here. This is because if we take Locke's argument as a whole seriously, then we should not even call him a liberal as he proposes not to tolerate atheism (and non-religion) (Locke, 1955: 52). The Lockean state, if taken as a whole, should be called the religious state because its characteristic is compatible with the view that religious people are morally better than atheists. But my point here is just to show that “some” of Locke's arguments rather than his “whole” argument could be used as the justification of the comprehensive liberal state.

individuals to life, property, and liberty on the ground that these properties are bestowed upon every human being by God, and men are supposed to preserve whatever they are given by God. For Locke, individual rights are justified because they are God's law as he argues in many places that

“In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equality, which is that measure God has set to the actions of men, for their mutual security; and so he becomes dangerous to mankind, the tie, which is to secure them from injury and violence, being slightly and broken by him” (10)

“God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience” (18)

“As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy” (20-21)

“God and nature never allowing man so to abandon himself, as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it” (88)

We can see that Locke justifies individual rights on a religious ground: God really exists and has moral power over humans. Although Locke (1955) advocates the separation between state and church, it is hard to say that his justification should be called secular because it is based on a religious comprehensive reason.

Locke (1955: 18) appeals to the existence and power of God in preventing governments to interfere religious matters: “Because the care of souls is not committed to the civil magistrate any more than to other men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such authority to one man over another, as to compel anyone to his religion.”

It should be noted that, for Locke, freedom is *not* something which is good in itself (i.e., something which requires no further justification), but it is treated simply as a means for other ends. As Locke (1955: 35-36, 38) argues that those who force other people to please God are those who force them to disobey God because one who tries to please God just because they are forced to do so would in effect displease God.

They simply worship God as a result of being forced externally by someone else rather

than as a result of their internal acceptance of God. They would worship God just because they are commanded by other humans rather than by God. But if they worship God by themselves, then they are commanded by God Himself, and this is the only way to please God.

Therefore, according to Locke's argument, state and church should be separated in order to please God. In other words, individual freedom is essential for humans to show their honest respect for God. If the state takes argument like this of Locke as state justification, then it is hard to say that the state is religiously neutral. Lockean liberalism might be called "Lockean religious liberalism" (R. Taylor, 2011: xxiii).<sup>24</sup>

#### **2.4.2 The Justification of the Comprehensive Liberal State: A Nonreligious Comprehensive Doctrine**

The comprehensive liberal state may justify itself by appealing to nonreligious comprehensive reasons. For instance, the state may claim that as, by nature, we all want to maximize happiness and minimize pain, the state should do anything to achieve these goals for the majority, and the best way to achieve these is to guarantee individual freedom and even to be neutral toward any way of life people may choose.

The state is, therefore, neutral in terms of *characteristic* because it does not explicitly proclaim any preferred way of life, but the state is not neutral in terms of *justification* because it implicitly employs a particular nonreligious comprehensive doctrine (a metaphysical and comprehensive conception of human nature) as the justification of the state. Some of John Stuart Mill's arguments could be used as an example of this kind of comprehensive liberal state (the non-secular liberal state).

His main argument I am referring to here is that any moral action must lead to the achievement of the greatest happiness of the greatest number in the long run, and individual liberty is merely an effective means for that purpose. If the liberal state which is neutral in terms of characteristics uses an argument as Mill's as the justification, then the state would fail to be neutral in terms of justification. What makes Mill's reasoning interesting, and differ from Locke's, is that his justification is based on a *nonreligious*

---

<sup>24</sup> The very general idea that everyone and every conception of the good life should be treated equally by the state because this is what God orders may also be called "divine egalitarianism" (Cordelli, 2017: 39).

comprehensive doctrine rather than a *religious* one.

At first glance, this seems neutral toward religion. But as I have argued in Chapter 1 that the secular state must be neutral not only toward religious doctrines but also nonreligious doctrines, Mill's justification cannot be used as the foundation of the secular state. To remind this argument: since a utilitarian justification is a kind of comprehensive doctrine, albeit a nonreligious one, the state would fail to be neutral toward religion if it embraces such a nonreligious one because it implies that the state prefers nonreligious to religious doctrines.

## 2.5 Summary

The non-secular state is diverse and complicated. It could take many different forms: the repressive/modest religious state, the repressive/modest anti-religious state, and the comprehensive liberal state. This chapter showed that what really concerns us about the secular state is about the concept of neutrality (state neutrality) rather than the concept of freedom (religious freedom).

We have different forms of the non-secular state because they vary according to their relation with the status of freedom; for instance, the repressive religious state differs from the modest religious state in that while religious freedom has no place in the former, it is guaranteed in the latter. But regarding the concept of neutrality, we could say that the non-secular state, in whatever forms, shares the same characteristic – the state involvement in religious matters in one way or another.

Therefore, to call for the state to be secular is to call for the state to do something more demanding than just to provide and protect religious freedom of all citizens, but to be neutral toward religious issues in terms of characteristic and justification. It should be reminded again that the point of this chapter (and also all chapters in Part I) is to search for and defend the *definition* of the secular state (and what is not the secular state) rather than to defend such a secular state as a desirable regime.

Thus, for example, when I say that the comprehensive liberal state fails to be secular because its state justification appeals to some comprehensive reasoning, it does not

necessarily mean that I must always find such a state undesirable. This would be completely another issue that I will deal with in Part II.

## Chapter 3 Some Alternative Versions of Secularism

### 3.1 Introduction

So far I have argued that the secular state has four characteristics influenced by Rawls' conception of neutrality (Chapter 1), and that the non-secular state may take different forms (Chapter 2). This chapter will go in more detail in defending Rawlsian secularism as the model of the secular state. I will do this by dealing with Cécile Laborde's argument and Robert Audi's argument.

In order to defend Rawlsian secularism as the model of the secular state, I need to show why and how it is more appropriate than some other versions of secularism. However, it goes beyond my capacity to deal with all other versions of secularism here, so I choose to discuss only two alternative versions of secularism in this chapter, Laborde's and Audi's argument. I choose them because their arguments seem to offer a sophisticated alternative to Rawlsian secularism.

Rawlsian secularism has four main characteristics. First, political and comprehensive doctrines are different and could be separated. Second, nonreligious and religious comprehensive doctrines are all irreconcilable, and the state must treat them the same by being neutral toward them all. Third, disagreements on political questions (political disagreements) significantly differ from disagreements on comprehensive moral questions (comprehensive disagreements) in that while the former could be reconcilable, the latter could not. Fourth, the state must be neutral toward all comprehensive questions and doctrines.

Laborde argues that it is a mistake to believe that political disagreements could be separated from comprehensive disagreements because sometimes we cannot solve political disagreements without making judgments on comprehensive disagreements. If comprehensive disagreements are judged controversial, then political disagreements would be controversial too. Laborde concludes that the secular state, therefore, does not need to be neutral toward comprehensive doctrines, religious or not, insofar as certain conditions are met. In this sense, Laborde seems to go against the first, third, and fourth characteristic

of Rawlsian secularism.

I also examine Audi's argument. I do not deal with Audi's argument as a whole, but only some of his argument which claims that the state needs to be neutral toward religious doctrines but may be not toward nonreligious doctrines because while religious disagreements are more likely to cause violence, nonreligious disagreements are not. This seems to go against the second characteristic of Rawlsian secularism.

### 3.2 Laborde's Argument

In Chapter 1, I argued that Rawlsian secularism has four characteristics. First, comprehensive doctrines are defined as conceptions of the good life, metaphysical, psychological, epistemological claims, and controversial justifications. Second, the secular state must be neutral toward all kinds of comprehensive doctrines, religious and nonreligious. Third, the secular state must treat disagreements about a matter of justice and about a matter of comprehensive doctrines differently. Finally, the secular state must not justify state actions by appealing to comprehensive and metaphysical claims.

However, some scholars question and challenge Rawlsian secularism as characterized above, and one of the sophisticated works critical of such Rawlsian secularism is Cécile Laborde's *Liberalism's Religion* (2017). To be fair, Laborde's work does not aim to criticize Rawlsian secularism directly; but as her version of secularism seems to be against Rawlsian secularism, I consider her argument as an alternative to Rawlsian secularism. As I offer a defence of Rawlsian secularism as the best definition of the secular state, it is worth discussing Laborde's argument.

However, it should be noted that it is one thing to say that one disagrees with Laborde's argument as an alternative understanding of secularism, but it is another thing to say that one disagrees with her argument as a plausible solution to the state-religion relation problem. I confine my criticism to the former claim, not the latter. In fact, although I criticize Laborde's argument as inferior to Rawlsian secularism as the definition of the secular state, I agree more with some of her argument than that of Rawls as an ideal relation between state and religion.<sup>25</sup> For the latter point, I will mention in Part II where I

<sup>25</sup> The same can be said to the case of Miller (2021) who argues that there might be nothing wrong with some versions of religious establishment in a secular state under certain conditions. In Chapter 6, I will

turn to criticize Rawlsian secularism.

In general, Laborde (2017: 2-3, 4-5) agrees with Rawls' basic idea that religion is nothing special but one of the comprehensive doctrines citizens may choose. Apart from this, Laborde seems to disagree with Rawlsian secularism. Laborde calls her argument “minimal secularism” – the secular state does not need to be neutral toward comprehensive doctrines only if certain conditions are met.

Laborde (2017) provides three main conditions. First, the accessibility condition – “when a reason is not generally accessible, it should not be appealed to by state officials to justify state coercion” (120). Second, the vulnerability condition – “when a social identity is a marker of vulnerability and domination, it should not be symbolically endorsed and promoted by the state” (137). Third, the personal ethics condition – “when a practice relates to comprehensive ethics, it should not be coercively enforced on individuals” (144).

In short, according to minimal secularism, the secular state may not be neutral toward some comprehensive doctrines only if they are accessible to public reasons and do not restrict individuals' freedom to pursue their conceptions of the good life based on their personal ethics. The secular state may also officially recognize some religious symbols only if they are not cause vulnerability and domination among citizens. However, as my thesis focuses particularly on public reasons rather than religious symbols (or dressing codes), I will examine only Laborde's accessibility and personal ethics condition.

### 3.2.1 The Accessibility Condition

As we have seen, Rawls makes a distinction between political and comprehensive doctrines, and argues that whereas all kinds of comprehensive doctrines/reasons are irreconcilable, political doctrine is publicly accessible and reconcilable. Quong (2005: 303; 2011: 193, 206) supports this characteristic of Rawlsian secularism as he argues that while disagreements about comprehensive doctrines are too fundamental to be acceptable

---

argue that the state may support some religions financially and legally under certain conditions. In this sense, I agree more with Miller than Rawls about the normative relation between state and religion. And as we shall see, Laborde disagrees with Rawls that the state could avoid any controversial moral issue (e.g., abortion). In this sense, I also agree more with Laborde than Rawls. But when it comes to the meaning of the secular state (i.e., the state-religion separation), I would agree more with Rawls than Miller and, of course, Laborde.



to all, disagreements about political doctrines could be agreeable (resolvable) among reasonable citizens; although there are disagreements about political and comprehensive doctrines, these two disagreements are of different kinds and the neutral state does not need to treat them the same.

Quong (2011: 205-06) explains that disagreements about comprehensive doctrines are irreconcilable because they are disagreements at “the level of ultimate convictions or principles,” but disagreements about political doctrines (or conceptions of justice) could be agreeable because they all agree upon “the same fundamental normative framework”: Quong (204) calls the former “foundational disagreement,” and the latter “justificatory disagreement.”

According to Quong's logic, we may articulate that disagreements about comprehensive doctrines are foundational because they even disagree on common “ends” in the first place (so, they do not have any common premise they agree with each other); for example, disagreements between two persons, one sets God as a primary goal, another sets other free and equal citizen as a primary goal (Quong, 2011: 205). In contrast, disagreements about political doctrines are justificatory because though they may disagree about how to weigh and implement different political values, they all agree upon the same set of ends<sup>26</sup> (political values like freedom, equality, fairness, etc.); for instance, disagreements between two persons, both of them accept the same common ends (setting free and equal citizens as the primary goal) in the first place (205-06).

Rawls and Quong, therefore, distinguish between political and comprehensive doctrines (Rawlsian secularism's first characteristic), and argue that while disagreements about a matter of justice are reconcilable, disagreements about moral comprehensive questions are not (Rawlsian secularism's third characteristic).

---

<sup>26</sup> While I would say that Quong's foundational disagreement is disagreement about “ends,” I would not say that his justificatory disagreement is disagreement about “means” because, in fact, even justificatory disagreement is also about “ends.” But while foundational disagreement cannot agree upon any set of ends at all, justificatory disagreement can. For example, let's assume that there are two ends (A and B). Disagreement is foundational if people cannot value the same value; some takes A and strongly opposes B, another takes B and strongly opposes A. Disagreement is justificatory if people can accept the same set of values. However, this does not mean that everyone needs to accept the same values as desirable. They may still disagree with each other, but they at least accept certain values as legitimate. For example, although everyone accepts both A and B as legitimate, they may still disagree on which one (A or B) should be on the top (i.e., they agree that A and B are desirable, but disagree on which one is more desirable), or they may even disagree about which one is desirable and which one is not.

Laborde (2017) proposes an alternative understanding of secularism which seems to oppose to these two characteristics of Rawlsian secularism. She argues that there is no a significant distinction between political and comprehensive doctrines (and disagreements) as Rawls and Quong argue because she (107-08) believes that even *some* political conceptions of justice are also based on some particular comprehensive doctrines, in which she argues that the state cannot decide *some* political questions such as abortion rights, animal rights, and same-sex marriage right “without taking a substantive stance about the status of fetuses, animals, and marriage.”

Even if these are limit cases, Laborde argues that they reveal that even disagreements about political doctrines are too foundational. Therefore, according to Laborde, as disagreements about political and comprehensive doctrines are all foundational, the state needs to treat them in the same way. Laborde (2017: 109) further argues that as the state sometimes cannot make a decision on political questions without taking a stance on some certain comprehensive doctrines (abortion rights, etc.), the state should be able to engage in some “judgments of substantive, metaphysical, and ontological questions.”

In other words, the secular state, in Laborde's view, may not be neutral toward comprehensive, metaphysical, and ontological claims. This is also against Rawlsian secularism's fourth characteristic.

As Laborde argues that the secular state should not treat political and comprehensive doctrines differently, and that the state may even engage in comprehensive discussions, this raises important questions: Does this imply that the state may take any particular comprehensive doctrine even if people may dispute about them? If this is the case, then how could such a state be called neutral at all? Does it also imply that the state may be allowed to engage in religious matters as religion is also one of the comprehensive doctrines? If this is the case, then how could such a state be called secular at all?

In order to answer these questions, Laborde (2017) introduces the accessibility condition: the state may appeal to comprehensive reasons, religious or nonreligious, when justifying state actions (laws and public policies) only if they are accessible to public reasons. What she (120-21) means by “public reasons” and “accessibility” are explained as follows:

“Public reasons are reasons that actual (not idealized) publics find accessible. Public reasons, on this view, are analogous to official languages: they are the vocabulary, grammar, and references of the shared political language of particular societies. Accessibility articulates what citizens need to share, in particular societies, in order for public deliberation to be possible at all, while remaining indeterminate about the substantive content and outcome of public reasoning. Consider, to illustrate, two different types of reasons against laws allowing assisted suicide in a pluralistic society. The first reason is that, because life is a gift of God, no person has the right to put an end to it, even the person whose life it is. The second reason is that, because the sick and the dying are fragile and vulnerable, their conscious determination to die cannot be ascertained with full certainty, and their vulnerability will easily be exploited by others. Although the former reason is intelligible, only the latter reason is publicly accessible, because it appeals to no premise, such as “life is a gift of God,” that is neither shared nor subjectable to common standards”

According to Laborde (2017), although the state does not need to be neutral toward comprehensive doctrines, this does not imply that the state could take any particular comprehensive doctrine; instead, the state still needs to be neutral toward all comprehensive doctrines and disagreements, religious or not, *in another sense* – the state must not appeal to any comprehensive doctrine (and reason) which is *inaccessible* to public reasons and which is incompatible with “basic liberal norms of freedom and equality” (123). For this condition to be possible, Laborde needs to assume that there must be some comprehensive doctrine/reason which is publicly accessible, although disagreements about them are foundational.

In other words, Laborde needs to change a little the meaning of “foundational” used by Quong: while Quong assumes that foundational disagreements cannot reach any agreed premise at all, Laborde needs to assume that foundational disagreements could accept the same premise based on accessible language. This does not mean that people would agree upon the same comprehensive doctrine, but that although people may disagree over certain comprehensive doctrines, they must, at least, be able to *understand* its way of reasoning (language); they could participate in public debates, and could accept certain comprehensive doctrines if they turn out to be endorsed by the state.

For example, if there are two comprehensive doctrines (A and B), foundational disagreements, according to Laborde's meaning, could sometimes reach the same premise (i.e., everyone could access each other's reasonings), although they still do not agree with each other (i.e., one who endorses A still does not value B, and vice versa).

Laborde (2017: 128) believes that this condition is fair to both religious and nonreligious reasons as they all are possible to be used by the state, given that they are publicly accessible. Laborde (125-27) does not claim that all nonreligious reasons are accessible, and all religious reasons are inaccessible. Instead, she says that some nonreligious reasons are inaccessible, and some religious reasons are accessible. As she (126) writes that “not all religious views are inaccessible ... for example, the normative import of religiously inspired views and ideals need not exclusively rely on contested appeals to divine authority: like other systems of thought, religious doctrines contain detachable and self-standing reasons.” Laborde (123) argues that only religious reasons that “directly appeals to scriptural or theological authority” is inaccessible in the condition of a pluralist society. Therefore, the secular state, according to Laborde, may appeal to *some* comprehensive reasons, religious or not, because some of them are publicly accessible.

Laborde (2017: 120, 277) separates *accessible* reasons from *intelligible* and *shareable* reasons. Reasons are *intelligible* only if the public cannot understand them, and thinks that they are justified only to those who already accept the premise (standard) of the reasons. Reasons are *shareable* only if the public not only can understand but also endorse them, and thinks that they are justified to everyone. Reasons are *accessible* only if the public can understand them, but thinks that they are not justified to everyone. An example might help better understand these differences.

Let's assume that people discuss the moral status of abortion. If one reasons that abortion is morally wrong because it violates God's law (a religious reason), then, according to Laborde, this reason would be called *intelligible* as the public cannot understand it, and thinks that it is understandable only to those who already accept the existence of God. If one reasons that abortion is not morally wrong because it is not equal to killing a person as a fetus is not a person yet (a nonreligious reason), then “if” the public not only can understand and but also agrees that this reason should be used by everyone, then this reason would be called *shareable*,<sup>27</sup> but “if” the public can understand it but thinks that this reason may not be acceptable to everyone, then this reason would be called *accessible*.

According to the above criteria, understandable (or accessible) is not equal to acceptable

<sup>27</sup> I need to use “if” because, according to my understanding, Laborde would not believe that such a reason could really be shareable to the public. But as my purpose of this example is just to show when we can say that a reason is shareable, I need to “assume” that this reason is shareable.

because one may understand a reason without accepting (or justifying) it. For example, A understands B's reason that abortion is wrong because it kills the person without accepting it as A holds that since the fetuses are not the person yet, killing the fetuses is not equal to killing the person; therefore, A who justifies abortion understands the reason of B who rejects abortion. But both A and B cannot understand C's reason that abortion is wrong because it violates God's law. But why should we hold that A can understand B's reason but cannot understand C's reason? Laborde would answer that this is because C's reason requires A to believe in God first, but A does not believe in God; instead, B's reason does not require any belief in God, and A actually shares the premise with B that killing the person is wrong.

Laborde believes that some comprehensive doctrines/reasons could be reconcilable in some important sense, that is, they could at least be understandable (accessible) to the public. She would claim that although people cannot “accept” or “justify” each other's comprehensive doctrines (the shareability condition), they can at least “understand” language of each other's comprehensive doctrines (the accessibility condition). As she believes that some comprehensive doctrines could be reconcilable in this sense, she proposes that the secular state may not be neutral toward them.

Laborde's accessibility condition is, therefore, against Rawlsian secularism. While Rawls says that the state must be neutral toward all comprehensive doctrines/reasons, Laborde says that, in a pluralist society, and in practice, the state does not need to be neutral toward some comprehensive reasons, religious or not, given that they are publicly accessible. Laborde believes that the state is still secular even if it is not neutral toward comprehensive doctrines. For example, if the state embraces a particular religious reason, according to Rawls, then, the state would be non-secular, but according to Laborde, the state would be still secular only if such a religious reason is publicly accessible.

However, I do not think that Laborde's accessibility condition is significantly different from Rawlsian secularism as it might first appear. Of course, they are different in some aspects, but I believe that they also share the same fundamental idea about the neutrality principle. I will show that some elements of Laborde's accessibility condition could be used to support Rawlsian secularism rather than to act against it. And I will show that some other elements of her condition, which are incompatible with Rawlsian secularism,

are incompatible with the definition of secularism as I understand it.

Laborde (2017: 120-21) says that her approach “departs from Quong’s and other versions of Rawlsian public reason in the sense that, for me, public reasons are reasons that actual (not idealized) publics find accessible.” She (128) calls her argument as the “empirical theory of public reason” which has the following characteristic: “the multilayered notions and concepts that make up our public language are “secular” only to the extent that they have become accessible to the public reason of actual citizens, not because they have been moved to a different, more reliable epistemological plane.”

Laborde emphasizes that her idea of public reason is based on how “empirical” and “actual” citizens (or publics) understand it rather than how “idealized” citizens (or publics) understand it. This seems to be the first difference between Rawls and Laborde. While Rawls argues that a public reason is constructed by idealized people (free and equal, reasonable and rational citizens), Laborde suggests that a public reason is simply based on actual people.

However, I would claim that the difference between Rawls and Laborde here may be less significant than it might first appear. In fact, the difference is *not* between “idealized” and “actual” citizens, but just between “too idealized” and “less idealized.” In other words, their difference is just a matter of degree of “idealized” citizens.<sup>28</sup> For Laborde, then, “actual people” do not mean actual people in the literal sense; instead, they mean people who meet some conditions. This implies that not every actual person is eligible to participate in constructing public reasons; instead, only some actual people who meet Laborde’s conditions are. Those who fail to meet her conditions might be called “unreasonable people” who should be excluded from the consideration of the public in the first place.

Laborde’s conditions are that they must not violate “basic liberal norms of freedom and equality,” and that they must not “directly appeal to scriptural or theological authority” (Laborde, 2017: 123). To put it concretely, Laborde argues that someone like Nazis and religious theocrats do not meet her conditions and should be excluded from the

---

<sup>28</sup> As Laborde (2017: 277) writes that her public reason is based on actual people or “at least a weakly idealized constituency of Members of the Public, such as those formed by minimally rational moral agents.”

consideration of public reasons. For example, Laborde could argue, although Nazis complain that they cannot understand (access) a public reason, this does not undermine the validity of a public reason at all because people like them are simply unreasonable and are excluded in the first place. This may include whom we may call “seriously religious people” who cannot understand any reason which fails to mention God at all (e.g., Mawdudi, 1980; Bahlul, 2003; Cross, 2018).<sup>29</sup>

To understand this point clearer, let's consider the following example. Suppose that a society consists of four actual people (A, B, C, D). A believes that public policies should increase people's pleasures and reduce people's pains as much as possible because this would promote the highest good for people. However, he can understand and value other values like autonomy, equality, security, and so on, but he thinks that humans' happiness is the most valuable. B believes that public policies should value people's autonomy over people's happiness because this would respect human dignity.

However, he also can understand and value other values like equality, happiness, security, and so on. But he thinks that the state has no business to promote those values via laws and policies. C believes that public policies should prioritize people with certain skin colour over another people with different skin colours because the latter is subhumans. He cannot understand and value values like autonomy, equality, human dignity, and so on (e.g., Nazis). D believes that public policies should promote equality and happiness among people because this is God's command. He cannot understand any reason that fails to mention God (e.g., religious theocrats). How is a public reason constructed in this society?

According to Rawls, a public reason is constructed by idealized people: everyone must have a sense of justice (i.e., taking other people's interests into account), and they must leave their comprehensive doctrines/identities aside and view themselves and others as a

---

<sup>29</sup> Laborde (2017: 123) uses the term “religious theocrats” to refer to those who “directly deny the moral equality of persons,” and “directly appeal to scriptural or theological authority.” Religious theocrats, in this sense, are surely someone like Islamic extremists because they clearly violate basic human rights. It should be noted that “religious theocrats,” according to Laborde, would also include someone who values liberty, equality, human dignity, and so on, but only if these values must be linked to God in one way or another. We may call this kind of people “seriously religious people.” They are unreasonable, according to Laborde's standard, because although they respect basic human rights, they do not even understand any reason that fails to just mention God. In contrast, reasonable religious people may reason that while they believe in God, they accept that human affairs must be determined by human consideration rather than by appealing to the authority of God (Holloway, 1999; Rawls, 2007: 119-20; An-Na'im, 2008).

free and equal, reasonable and rational person (a political conception of the person). Rawls claims that his requirements are reasonable because they could reasonably be accepted. For instance, his political conception of the person could be reasonably accepted by both religious and nonreligious people because it does not appeal to God nor insult God. It simply leaves God aside.

Those who fail to meet these requirements would be called unreasonable and must be excluded from the consideration of public reason in the first place. So, in the above example, everyone is required to leave their different comprehensive identities aside and view themselves and others as a free and equal person.<sup>30</sup> After that, they could participate in constructing public reasons for the society. In this sense, no one can complain that public reasons are incompatible with their comprehensive doctrines only if their comprehensive doctrines are unreasonable.

C, a Nazi, cannot complain that public reasons are incompatible with Nazi values because he is unreasonable, i.e., he always refuses basic human rights. D, a religious theocrat also cannot complain that public reasons are incompatible with his reason because he is unreasonable, i.e., he cannot accept a political conception of the person just because it does not mention God. So, C and D are unreasonable and should be excluded from the consideration of public reason. However, A and B can accept his political conception of the person, so they are reasonable.

According to Laborde, a public reason is constructed by (weakly) idealized people: everyone must respect basic human rights, and they must be able to understand a reason which does not appeal to “scriptural or theological authority.” However, they do not need to leave their comprehensive doctrines/identities aside and view themselves and others as a free and equal, reasonable and rational person as Rawls requires.

---

<sup>30</sup> As we shall see more in this chapter and in Chapter 5 and 6, Rawls proposes that, in discussing public debate, citizens may argue from their comprehensive doctrines/identities, provided that they must be able to argue from the position of a political conception of the person (i.e., to view themselves and others as a free and equal citizen). This is called the Rawlsian proviso. Therefore, strictly speaking, Rawls does not say that people must leave their comprehensive doctrines/identities aside entirely, but that they can do so only if they must be able to view themselves and others as a free and equal citizen first. We might say that, for Rawls, to view oneself as a free and equal citizen is *necessary* whereas to view oneself according to their comprehensive identities is just *optional*. It should be clear that when I say that Rawls requires people to leave their comprehensive identities aside and view themselves and others as free and equal, I only mean that they cannot just argue from the position of their comprehensive identities alone without considering whether their reasons could be accepted by a free and equal person.



Those who fail to meet these requirements would be called unreasonable and must be excluded from the consideration of public reason in the first place. So, in the above example, no one is required to leave their different comprehensive identities aside and view themselves and others as a free and equal person. They can still view themselves and others according to their different comprehensive doctrines/identities, given that they must meet Laborde's weakly idealized requirements.

Laborde could claim that a Nazi and religious theocrat are unreasonable and must be excluded from the consideration of public reason in the first place not because they fail to view themselves and others as a free and equal person, but because they fail to respect basic human rights (the case of a Nazi), and to be able to understand a reason that does not appeal to God (the case of a religious theocrat). In other words, only A and B are reasonable and should be taken seriously for the consideration of public reason. Any public reason must be accessible to A and B, but not to C and D.

It also should be noted that the accessibility condition is confined to state officials only, not to ordinary citizens. Laborde (2017: 124) argues that

“The demand of accessibility applies only to a narrow class of state officials ... Minimal secularism does not impose any special burden on ordinary citizens, only on state officials. Recall that minimal secularism does not specify any civil or legal duty of citizens but, instead, articulates the special constraints that the state and its officials are under. It follows that there is no restriction on views and arguments that ordinary citizens can put forward in public debate. Minimal secularism does not create additional or unfair burdens on religious citizens. Only state officials, such as judges and lawmakers, are required to put forward accessible arguments as justification for their decisions and policies”

According to Laborde, then, ordinary citizens, religious or not, could use any reason in public discussion, accessible or not. Religious people would be able to discuss with other citizens by appealing to the authority of God (the God reason) because even if the reason would be publicly inaccessible, they are still allowed to do so because, as Laborde claims, the accessibility condition is not applied to them (ordinary citizens).

Therefore, to say that a religious theocrat (according to the above example) is unreasonable and excluded from the consideration of public reason is *not* to say that he cannot use his inaccessible God argument in public discussion, but only that while he can

use it, the state cannot use it. A religious theocrat, in this example, can use his inaccessible argument in public debate, but he cannot complain that public reasons are unjustified just because he cannot understand them according to the standard of his inaccessible argument.

We can see both the similarity and difference between Rawls and Laborde according to the above example. The similarity is this. Both Rawls and Laborde agree that only A and B are the consideration of public reason: public reasons must be endorsed (in Rawls' case) or understood (in Laborde's case) by A and B. C and D are not the consideration of public reason because they are unreasonable. The difference is this. Rawls requires that every reasonable person (A and B) must leave their comprehensive identities aside and view themselves and others as a free and equal, reasonable and rational citizen before they can participate in constructing public reasons.

Laborde claims that her idealized conception of reasonable people is less demanding (or “weakly” in Laborde's term) than that of Rawls. She does not require that everyone must leave their comprehensive identities aside and view themselves and others according to a political conception of the person as Rawls requires. She believes that people can reason from their different comprehensive doctrines/identities, given that they respect basic human rights and do not directly appeal to scriptural or theological authority. This implies, in Laborde's view, that the state may not be neutral toward comprehensive doctrines.

However, I would argue that their difference may be less significant if we closely examine their fundamental reasons. I propose that although, at first glance, Laborde's claim (i.e., the state does not need to be neutral toward comprehensive doctrines/reasons) seems to offer an alternative view to Rawlsian secularism (i.e., the state must be neutral toward comprehensive doctrines/reasons),<sup>31</sup> we should rather see the similarity between Rawls and Laborde more than their significant difference.

First, Rawls believes that the state should be neutral toward all comprehensive doctrines because they are all irreconcilable to every reasonable person *in any sense*. He believes that it is unreasonable to expect that one should be able to accept the state that appeals to any other comprehensive doctrines than one's own. In contrast, Laborde believes that the

<sup>31</sup> Rawls argues that the state must treat nonreligious and religious doctrines the same *by being neutral* towards them all. However, I do not say that Laborde argues that the state must treat nonreligious and religious doctrines differently; instead, I say that Laborde argues that the state must treat nonreligious and religious doctrines the same *by not being neutral* toward them, given certain conditions.

state may be not neutral toward some comprehensive doctrines because some doctrines are reconcilable to every reasonable person *in some sense*.

She believes that although it is unreasonable to expect that one should be able to *fully* accept and justify some other comprehensive doctrines, it is reasonable to expect that one should be able to *partly* accept some comprehensive doctrines because one can at least “understand” them. In other words, for Laborde, some comprehensive doctrines are reconcilable not because they are shareable but because they are understandable to every reasonable person.

We can now see that Rawls and Laborde share the same fundamental idea: they all agree that the state should be neutral toward all comprehensive doctrines *only if* they are all irreconcilable *in any sense*, i.e., only if they are all unshareable and inaccessible. Logically speaking, this could be put in another way: the state may be not neutral toward some comprehensive doctrines *only if* some are reconcilable *in some sense*, e.g., only if some are shareable or accessible. Rawls and Laborde accept this fundamental idea.

Their difference simply lies in their different evaluations whether there could be some comprehensive doctrines which are reconcilable in some sense. Rawls evaluates that there could not be such a comprehensive doctrine, but Laborde evaluates otherwise.

Rawls argues that every reasonable comprehensive doctrine, religious or not, share the same characteristic: they are all reconcilable in any sense. Given this, Rawls would say that the state would be not neutral and unfair to someone if it appeals to some comprehensive doctrines. For example, the state that appeals to a particular comprehensive doctrine, religious or not, would be biased and unfair to those who hold different comprehensive doctrines because they cannot reasonably accept each other's comprehensive doctrines/reasons.

Laborde, in contrast, argues that different comprehensive doctrines may share different characteristics: some may be accessible, others may be not. Given this, Laborde would say that the state is still neutral and fair to everyone even if it appeals to some comprehensive doctrines, given that they are publicly accessible.

Rawls and Laborde just disagree because of their different evaluations about the characteristics of comprehensive doctrines, but they share the same fundamental idea that the state must be neutral *only if* a doctrine/reason is irreconcilable in any sense. In this sense, I would claim, Laborde's accessibility condition is not significantly different from Rawlsian secularism as it might first appear. Some elements of Laborde's accessibility condition could be used to support Rawlsian secularism.

Second, Rawls requires that everyone must view themselves and others as a free and equal, reasonable and rational citizen (a political conception of the person) before participating in the construction of public reason. Laborde believes that her empirical theory of public reason does not need this Rawlsian requirement. Instead, people may argue in public discussion from the position of their comprehensive doctrines/identities, given that the reasons are publicly accessible. Laborde's claim here seems to offer an alternative to Rawlsian secularism. However, I would argue that Laborde, indeed, may not significantly differ from Rawls on this point.

Laborde argues that some religious reasons may be publicly accessible, and some nonreligious reasons may be inaccessible. A reason that directly appeals to scriptural or theological authority would be inaccessible, religious or not. For example, a religious theocrat who always reasons that only his argument is correct because his God says so would be called unreasonable because his reasons directly appeal to theological authority, in which other people who do not believe in God could not understand. Or even a Kantian philosopher who always reasons that only his argument is correct because Kant (from this or that book of Kant) says so would be called unreasonable because his reasons directly appeal to a particular source of authority, in which other people who thinks otherwise could not understand.

Laborde (2017: 126) proposes that, given that religious or nonreligious people detach their argument from their particular source of authority, their reasons could be accessible. Let's reconsider the above example. There is a significant difference between a Kantian presenting his Kantian argument by reasoning that his argument is correct “because” Kant says so and a Kantian presenting his Kantian argument by reasoning that his argument is correct “because” he thinks that the state should respect one's autonomy rather than promoting one's happiness.

According to Laborde's logic, only the latter Kantian reason is publicly accessible because other people could understand the reason even if they do not know Kant or agree with Kant at all. This argument goes to the case of religious people as well. Their religious reason would be accessible only if they must detach the argument from the claim of God.

My point here is not to argue if Laborde's claim is justified, but to see if her argument differs from Rawlsian secularism or not. According to my analysis, I do not see a significant difference between Rawls and Laborde. We may ask why Laborde must require a Kantian, utilitarian, Christian, and so on to detach their arguments from their particular sources of authority (Prophets, Kant's books, Bentham's words, Jesus, Bible, etc.) in the first place. Of course, Laborde would answer that this is because if they do not, other people would not be able to understand their reasons.

But I think that this answer would be the same as saying that because we must view other people as someone who is free and equal in the sense that they have their own comprehensive doctrines/identities and we could not require them to embrace our own comprehensive doctrines. As a reasonable person, we should take other people's interests and claims into account. We should, for example, put ourselves into other people's shoes: as a reasonable person, we should not expect others to accept what we would not accept ourselves. This is very close to Rawls' requirement of a political conception of the person (a free and equal person). Again, the difference between Rawls and Laborde is less significant than it first appears.

However, I would claim that the significant difference between Rawls and Laborde on this point is this. Whereas Rawls insists that the state must be neutral toward moral comprehensive questions at all, Laborde (2017: 109) allows the state to engage in "substantive, metaphysical, and ontological questions." Now, let's assume that a Kantian detaches his Kantian argument from a particular source of authority (Kant's words, Kant's books, etc.). But he discusses a metaphysical question of the self. He reasons that human beings are a free and rational being by nature. He does not claim that this reason is correct just because Kant says so, but because he thinks that it is reasonable to believe so.

According to Laborde, this Kantian reason should be held publicly accessible and could be embraced by the state. But according to Rawls, this Kantian reason is still too

controversial for the state to take because it is concerned about controversial metaphysical questions. Rawls cannot agree with Laborde on this point.

Moreover, it should be noted that Laborde's claim that although all comprehensive doctrines are irreconcilable in the sense that they are all unsharable and unacceptable to everyone, some comprehensive doctrines could be reconcilable in some sense, that is, its reasons are at least understandable to everyone is not just a descriptive claim, but it is also a normative claim. The claim has the moral implication. She not only claims that it is the fact that some comprehensive doctrines are understandable, but also suggests that this fact could justify the state appealing to some comprehensive doctrines/reasons.

I would argue that Rawls, at best, can agree with Laborde on the descriptive claim, but he cannot agree on her normative claim. It may be possible to assume that Rawls could agree that some comprehensive doctrines are understandable to everyone. But even if Rawls could agree with this fact, he cannot accept its moral implication that the state may appeal to some comprehensive doctrines just because they are understandable to everyone.

As Rawls implies that all comprehensive doctrines/reasons are irreconcilable in any sense, this implies that simply the fact that some comprehensive doctrines/reasons are understandable is not a significant reason that makes them reconcilable (or political). For example, Rawls (1997) writes that

“The idea of political legitimacy based on the criterion of reciprocity says: Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – were we to state them as government officials – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons” (771)

“A citizen engages in public reason, then, when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also reasonably be expected reasonably to endorse” (773)

Rawls argues that any public reason must be the one that everyone could be reasonably expected to “accept” or “endorse.” Laborde (2021: 108) claims that while her minimal secularism only requires the accessibility condition, Rawlsian public reason requires the sharability condition, which is too demanding in her view.

Rawls might say that although some comprehensive doctrines are understandable to everyone, it is still unjustified for the state to appeal to them because this is not a sufficient criteria of public reason. Instead, he could further argue, a reason would be a public reason only if it must pass the acceptability condition; the accessibility condition is insufficient. Therefore, I believe that Rawls could not accept the moral implication of Laborde's accessibility condition.

I think that this is the significant difference between Rawls and Laborde. Rawls believes that public reasons must be understandable, sharable, acceptable, and justifiable to everyone, and the accessibility condition is not a significantly sufficient criteria of public reason. Laborde, in contrast, believes that the accessibility condition is a significantly sufficient criteria of public reason. For Rawls, it is insufficient to just prove that some comprehensive reasons are publicly accessible; public reasons must be more demanding than that.

For Laborde, it is sufficient to prove that public reasons are publicly accessible. The question is that whose claim is more satisfactory? Is Rawls right that although some comprehensive reasons may be publicly accessible, this is not a significantly sufficient reason to justify the state appealing to those comprehensive reasons? Or is Laborde right that the accessibility condition is a significantly sufficient reason to justify the state taking side on those comprehensive reasons?

Before I proceed, let me make myself clear. What I try to say here is that, according to Laborde's accessibility condition, a reason would be considered a public reason only if it passes the accessibility test, it does not need to pass the acceptability or shareability test. In this sense, I claim that, for Laborde, only the accessibility condition is a sufficient condition of public reason. I am not talking about Laborde's minimal secularism as a whole. I recognize that if we talk about Laborde's minimal secularism as a whole, only the accessibility condition is not a sufficient condition of liberal legitimacy.

Instead, we need other conditions, i.e., the vulnerability and personal ethics condition. As Laborde (2017: 132) writes that “the first condition of liberal legitimacy, then, concerns the accessibility of the reasons offered by the state to justify its laws and policies. However, this is not sufficient, as a state may offer an accessible justification in support of

an illiberal law or policy.”

It should be noted that when I say that the accessibility condition is a significantly sufficient reason to justify the state appealing to some comprehensive reasons, I only mean that it is a sufficient condition to make state justification neutral (in Laborde's view), I do not mean to say that it is a sufficient condition of Laborde's minimal secularism as a whole.

I would say that, as a matter of the ideal relationship between state and comprehensive doctrines, I disagree with both Rawls and Laborde. Ideally, I think that, in some cases, the state may appeal to comprehensive doctrines/justifications even if they fail both the acceptability and accessibility condition. I will discuss this in Part II. But as a matter of the definition of secularism, I would say that I agree more with Rawls than Laborde.

Suppose that there are two reasonable people (A and B). A reasons that human beings, by nature, are selfish. B reasons that human beings, by nature, are benevolent. Both respect basic human rights of each other, their disagreements are not violent, and they do not directly appeal to any particular source of authority (God, prophets, philosopher, etc.).

According to Rawls, the state cannot appeal to both A's and B's reasons because as long as metaphysical or comprehensive moral questions (human nature, etc.) are at stake, any answer (argument) is always held controversial and irreconcilable. To appeal to one of them would show state non-neutrality, and people could complain that the state is not neutral toward them. Rawls claims that the state needs to appeal to only a political conception of justice that falls outside the category of comprehensive questions at all.

What would Laborde say about this case? It depends on whether she would find A's and B's reasons publicly accessible. If she finds them accessible, then it should follow that the state may appeal to any of them because although they cannot accept or justify each other, they can at least understand each other's reasons. To appeal to A's reason would be fair to B because he can at least understand the language of A's reason, and vice versa.

As a matter of definition, I agree with Rawls that the state would be neutral only if it is neutral toward any metaphysical or comprehensive moral questions, and the accessibility



condition is not a significantly sufficient reason to justify the non-neutral state. Any public reason, for Rawls, must be the one that people could reasonably accept and justify (not merely understand). The state should view them as a free and equal person (i.e., the state must leave them decide by themselves how to view their comprehensive identity).

If the state takes A's reason, then B is legitimate to complain that the state does not view him as a free and equal person, but as a particular comprehensive identity (i.e., the state explains that everyone, including B, is selfish by nature). My point is not that B cannot understand A's reason, but that although he can, the accessibility condition is not significantly enough to justify the state taking A's reason because it still shows that the state does not view people as free and equal.

Laborde might argue that the state cannot be neutral in the Rawlsian sense (acceptable) in the first place (e.g., the state must engage in controversial moral claims to decide about abortion rights, etc.). I agree with Laborde that the state cannot be neutral in that sense. But my point at this stage is just to search for the definition of secularism. My argument is not that Laborde's accessibility condition is unreasonable as an ideal relationship between state and religion, but that it is incompatible with the definition of secularism as I understand it.

However, one may criticize that I am mistaken in holding that Laborde would find A's and B's reasons accessible; instead, one might say, she should find them inaccessible because they still appeal to a particular source of authority (their accounts of human nature). In other words, one might argue that Laborde's requirement that accessible reasons must not directly appeal to scriptural or theological authorities should be expanded to even accounts of human nature, and so on because they are also *not* understandable to others.

I would say that if this is the case, then Laborde (2017: 109)'s claim that the state may make "judgments of substantive, metaphysical, and ontological questions" would be meaningless. If when we discuss the question about human nature, we are required to abstain from judging that our human nature is like this or like that, then I cannot see how we could discuss this question at all. And if we cannot discuss this question, then there is no need to say that the state may make judgments of metaphysical questions.

In sum, I argued that although, at first glance, Laborde's accessibility condition seems to differ from Rawlsian secularism (i.e., while Rawls argues that the state must be neutral toward comprehensive doctrines, Laborde proposes that the state may not be neutral toward some comprehensive doctrines), they share the same fundamental idea, which is, the state must be neutral toward comprehensive doctrines only if they are all irreconcilable in any sense.

In this sense, Laborde's accessibility condition may rather support Rawlsian secularism. I argued that the significant difference between Laborde's accessibility condition and Rawlsian secularism is that while Laborde holds that the accessibility condition is a sufficient reason to justify the state appealing to (accessible) comprehensive reasons, Rawls would hold that although some comprehensive doctrines are accessible, this is not a sufficient reason to justify the state taking comprehensive reasons. As a matter of definition, Rawlsian secularism is more convincing than Laborde's accessibility condition.

### **3.2.2 The Personal Ethics Condition**

I argued that the first characteristic of Rawlsian secularism is to define “religion” as more than just a conception of the good life but should also include metaphysical and epistemological claims because many religions have their views on those claims. And for the sake of simplicity, I also suggested that we use the term “comprehensive doctrine” instead of “conception of the good life” in order to include all these controversial disputes. The implication of this characteristic is that the secular state should be neutral toward any controversial comprehensive doctrines, religious or not.

Laborde (2017: 145) agrees that religion is more than just a conception of the good life. Nevertheless, she seems to disagree on the implication of this definition: she argues that the state may not be neutral toward some religious or nonreligious comprehensive claims only if they are not related to individuals' personal ethics.

This is another condition of minimal secularism – the personal ethics condition – the state may restrict individuals' freedom only if those restrictions are not related to their personal ethics (Laborde, 2017: 144, 146). Laborde believes that while the accessibility condition holds that the state may not be neutral toward some comprehensive doctrines only if they

are accessible to public reasons, the personal ethics condition tries to guarantee further that the state must not force individuals to live in a way that contradicts with their personal ethics. In other words, without this condition, the state may possibly enforce a particular conception of the good life whose reasons are publicly accessible. To make her argument clearer, let me cite her passage as follows (149-50):

“There are other dimensions of religion that do not relate to comprehensive ethics, and the demand of state secularism should be far less stringent there. It is not obvious, for example, that *Shari'a* (Islamic law) regulations concerning banking rates or charity (*zakat*) cannot be permissibly enforced by a liberal state – assuming they do not infringe on the personal dimension of the ethical life. Or, to take another example, a state that prohibits the sale of non-ritually slaughtered meat is not *ipso facto* in breach of minimal secularism. Imagine that the standard objection to ritual religious slaughter – the impersonal reason that it causes unnecessary pain to animals – is removed. (This is not fanciful, as techniques for reconciling the stunning of animals with *shechita* and *halal* slaughter are currently being developed.) In that case, would non-Muslims or non-Jews have valid objections to a ban on non-ritually slaughtered meat? I think not, because being forced to eat such meat does not infringe on their integrity-related liberties. It might limit their ordinary freedom, but it does not limit their (ethically salient) liberty: it does not force them to do something that is ethically unconscionable for them. In this case, Gideon Sapir and Daniel Statman are right to suggest that there is no right to freedom from religion: when integrity-related liberties are not burdened and (I would add) when the state does not proclaim that there is just one way to live the good life. There is no general right to freedom *from* religion, when religion is not a comprehensive system of personal ethics”

According to Laborde, then, the secular state may legitimately ban non-Muslim slaughtered meat because this restriction has nothing to do with citizens' personal ethics, i.e., they may possibly prefer Muslim slaughtered meat, but this restriction does not significantly affect their personal ethics.

At first appearance, the personal ethics condition seems to be more open to some religious-related practices as Laborde (2017: 145-46) writes that “while the state must be neutral toward religion when religion is a system of personal ethics, it need not be neutral toward religion *when it is not*.”<sup>32</sup> Turning back to Laborde's example of a ban on non-Muslim slaughtered meat. This seems to be a clear example of how the state may be not religiously neutral but still gains support from citizens, even those who disagree with

<sup>32</sup> Although this is Laborde's articulation of Dworkin's argument, she clearly states that she agrees and develops from it.

Islam.

The state is secular in a general sense (because religious and nonreligious people could understand state actions) but may be not strictly secular (because it may endorse some religious practices unrelated to personal ethics). This is why, according to her method of disaggregating religion, Laborde (2017: 240) insists that the secular state does not need to be neutral toward religion in *every* aspect. But I find the personal ethics condition contradictory with the definition of the secular state as I understand it.

As Laborde (2017: 145) notices, religion is not merely a conception of the good life (or personal ethics), the state would clearly endorse some religious conceptions (Islam) over others even if they are unrelated to our personal ethics. If the secular state should, at least, mean state neutrality among competing religious views, then this would go against the definition of the secular state.

Laborde might reply that she sees nothing wrong with such a ban even if this would reflect state non-neutrality on religious matters, given that this ban meets her conditions. I would say that my point here is not to criticize her argument as unreasonable or undesirable (this is completely another issue), but just to point out that, as a matter of definition, her argument is hard to be called secularism because the state, according to her example, clearly justifies some Islamic conceptions, whether they are related to our personal ethics.

### 3.3 Audi's Argument

The argument that I want to deal with in this section claims that the state needs to be neutral toward religious comprehensive doctrines, but need not toward nonreligious comprehensive doctrines because while the former is more likely to cause violence, the latter is not. This idea is partly defended by Audi (2000). However, this does not mean that this is the whole argument of Audi. I will simply deal with this specific claim of Audi.

Audi (2000: 34, 39, 60, 158-59)<sup>33</sup> seems to imply that the secular state may treat religious

<sup>33</sup> While Rawls believes that any comprehensive doctrine, religious or not, is irreconcilable in any sense (so, public reason cannot be grounded on any comprehensive doctrine), Audi believes that there could be a comprehensive doctrine which is publicly accessible, in which religious doctrines are not one of them, as Audi (2000) writes that “some presuppositions about the good may be commitments of a liberal democracy, but religious conceptions are not among them” (60), and that “there might be comprehensive views that at least in the relevant parts are comprehensible to normal adults in the required way even if

and nonreligious comprehensive doctrines differently because they have different significant characteristics – while the former tends to cause violence due to disagreements, the latter does not, as he (39) writes that:

“Each religious group will tend to have its own conception not only of what constitutes a religion in the first place but also of criteria a religious group must fulfill to receive exemptions or other benefits. Granted that secular disputes can also polarize, other things equal they have less tendency to do this or at least to produce irreconcilable differences. If ideological disputes, say between communism and fascism, seem exceptions to this point, that may be in part because of how much an ideology can have in common with a religion. Indeed, there may be no sharp distinction between certain kinds of deeply internalized ideology and certain kinds of religion. (The more like a religion an ideology is, of course, the less other things are equal and the better the case for treating it like a religion in relation to the three separation principles.) Secular disputes, as compared with religious ones, also tend to be resolvable without either side's making as deep concessions”

If Audi is right in saying that there are significant differences between religious and nonreligious comprehensive doctrines, then he is right in proposing that the state may treat them differently, i.e., to be neutral toward religious doctrines but may be not toward nonreligious doctrines.

However, I disagree that there is such a significant difference. First, I think that his understanding of religion is too narrow. Audi (2000: 34) explicitly says that he only focuses on theistic rather than non-theistic religions because he views that the former poses more problems than the latter; in other words, his understanding of religion leads him to conclude that the secular state needs to be neutral only toward theistic religious doctrines.

This understanding is too narrow as it cannot address a non-theistic religion like Buddhism. Maybe he would consider Buddhism simply as a philosophy rather than religion according to the Western standard. But for many people, both Western and non-Western people, Buddhism is clearly a religion.

Given this, I would suggest that Rawls' understanding of religion – a distinction between religious and nonreligious comprehensive doctrine is not necessary in the eye of the state as it must be neutral toward them all anyway – is more appropriate as, with this approach,

---

they hold quite different comprehensive views” (158).

the state does not need to go deep in discussing a unique characteristic of religion as this is a quite controversial topic (Larsson, 2020: 279).

Second, as a matter of fact, disagreements between some nonreligious doctrines could be more violent than disagreements between some religious doctrines, e.g., disagreements between different Marxist sects tend to be more violent than disagreements between different Buddhist sects. Audi may reply that this is because disagreements between different Marxist sects possess a religious characteristic; in other words, religion has a very significant characteristic: potential violence due to disagreements.

This is why Audi would blame religion for any violent doctrine, e.g., even disagreements between Marxism and Fascism are violent because they share a unique religious characteristic, or if Buddhism disagreements are not violent, that would be because it does not share such a religious characteristic. I would argue that the state taking this view cannot be called the secular state because it holds a negative view on religion.

For the sake of discussion, let's assume that a characteristic causing potential violence due to disagreements is Characteristic X. According to my understanding, Audi's argument is based on the premise that since all religions share Characteristic X, it follows that Characteristic X should be called a unique religious characteristic, and any doctrine sharing Characteristic X should also be called religion. This seems a sound logical argument. But I would argue that it does not. That all religions share Characteristic X does not logically follow that Characteristic X should be called a unique religious characteristic. Let's assume that all religions and some nonreligious doctrines like Marxism, fascism, and so on share Characteristic X.

The question is why we should call Characteristic X a religious characteristic rather than just a general characteristic which may occur in religious or nonreligious doctrines? Audi might reply that because while all religions have this characteristic, not all nonreligious doctrines have it. But it is still not clear why we should name Characteristic X religious in the first place as it is not unique only to religions. Therefore, that the state calls this general characteristic as religious would imply its bias (negative view) against religious comprehensive doctrines.

Alternatively, Audi may reply that we could not say which comprehensive doctrine is religious and which is nonreligious until we see which comprehensive doctrine possesses Characteristic X. Therefore, we cannot take it for granted that communism and fascism are nonreligious while Buddhism is religious because what makes a particular comprehensive doctrine religious is the possession of Characteristic X. This follows, as Audi actually argues, that communism and fascism could sometimes be religious while Buddhism could be nonreligious according to this criteria.

But a problem of this criteria is that if we cannot say beforehand which comprehensive doctrine is religious and which is not, then how could we say beforehand that Characteristic X is religious? But if we could say beforehand that Characteristic X should be called religious, then this would reveal our bias against religion because we still do not know what religion actually looks like but we can already say that religion possesses Characteristic X (potential violence due to disagreements) in the first place.

In order to avoid this conclusion, Audi needs to take the premise that we must be able to say first which comprehensive doctrine is religious before we can say that Characteristic X is religious, e.g., he may hold that any comprehensive doctrine should be called religious in the first place if it believes in God(s), has rituals, and so on (Audi, 2000: 35).<sup>34</sup> And after he can already tell which comprehensive doctrine is religious, then he might claim that since all *these* religious doctrines possess Characteristic X, Characteristic X should be named “religious.”

Let's assume that we have five comprehensive doctrines (A, B, C, D, E), and there are two characteristics (X, Y): Characteristic X is potential violence due to disagreements; Characteristic Y is belief in God, supernatural things, having rituals, and so on. Let's assume that these five comprehensive doctrines have the following characteristics:

---

<sup>34</sup> It is not my interest here to discuss a definition of religion, but it may be worth to lightly commend on this point as this would lead to another rejection of Audi's implication. According to Audi, religion must be theism only. And he also suggests that the state must be neutral toward religious doctrines only. This implies that the state may not be neutral toward non-theistic religion like Buddhism or even Atheism. This is clearly contradictory with the secular state. For example, the atheist state, which is not the same thing as the secular state, already judges that theistic religions are wrong. Audi's argument that the state may be neutral only toward religious doctrines is problematic for the secular state because it is hard to believe that when theism disputes with atheism, the state could be neutral toward their dispute by appealing to one of them.

	Characteristic Y	Characteristic X
Doctrine A	Yes	Yes
Doctrine B	Yes	Yes
Doctrine C	Yes	Yes
Doctrine D	No	Yes
Doctrine E	No	No

**Figure 3-1:** The Criteria of a Definition of Religion

Audi might claim that Characteristic Y is what makes doctrine religious, and this is why we should call Doctrine A, B, C religious, and since all these three religious doctrines possess Characteristic X, we should also call Characteristic X religious. In this sense, it would be easy to call Doctrine A, B, C religious because they all share both Characteristic Y and X, and to call Doctrine E nonreligious because it shares neither. The question is how we should call Doctrine D?

According to Audi's argument, we should call Doctrine D religious because it possesses Characteristic X which is called religious. But, know it or not, this would mean that Characteristic X becomes an essential definition of religion instead of Characteristic Y because any doctrine can be called religious without having Characteristic Y. But then, the question is why we should call Characteristic X religious in the first place? Again, this would reveal our bias against religion.

Third, Audi's argument so far seems to imply that religious disagreements would be disagreements between religious doctrines, while nonreligious disagreements are between nonreligious doctrines, and these two disagreements could be separated. But I would argue that we could not make a sharp distinction between religious and nonreligious doctrines in the sense that religious people only dispute with other religious people, and nonreligious people would only discuss with other nonreligious people as if religious people can never get across to discuss with nonreligious people. In fact, religious and nonreligious doctrines always encounter each other, e.g., theism vs. atheism, Christianity vs. Marxism, Islam vs. individualism, and so on. If these disputes cause violence, then should the state be neutral toward them all?

If one says that the state should, then one would accept Rawls' approach (the state should treat all comprehensive doctrines similarly). But if one says that the state should not, then



one would be inconsistent. One might argue that although these disputes would cause violence, this is just because the religious side is a problem. Even if we may accept this, it is still not clear how one could propose that the state should be neutral toward religious but not toward nonreligious dispute. This is because, according to this argument, the state may favour (or disfavour) atheism, Marxism, individualism, and so on, but the state cannot favour (or disfavour) theism at all. But this proposal is impossible: if the state wants to be neutral toward theism, it must be neutral toward any discussion theism involves, which means that the state must be neutral toward atheism.

Finally, and most importantly, Audi's argument seems to imply that since religious disagreements tend to end up with violence, while nonreligious disagreements do not, the state should be neutral toward religious disagreement only in order to avoid potential violence. But that nonreligious disagreement does not cause explicit violence should not imply that the state does not need to be neutral toward them. It may just mean that those nonreligious people do not choose to use violence against their rivals, e.g., utilitarians may strongly disagree with their critics but they just do not want to get into trouble, so they decide not to use violence over their disagreements, but they may also really want the state to be neutral toward their debate and not to favour their critics.

I agree with C. Taylor (2011: 54) that even disagreements over utilitarianism or Kantianism would not be less irreconcilable than religious disagreements, and the secular state should be neutral toward them all. Therefore, violence is not necessarily an indicator of an irreconcilable dispute as some disagreements may be very irreconcilable without leading to violence.

All this suggests that the secular state should be neutral toward all kinds of comprehensive doctrines/reasons because they all share the same characteristics, i.e., disagreements on religious and nonreligious doctrines may cause violence, and even if some (nonreligious) disagreements may not explicitly show potential violence due to disagreement, this may not be a significantly sufficient reason to conclude that the state may not be neutral toward their comprehensive doctrines.

### 3.4 Summary

This chapter examined two alternative versions of secularism to Rawlsian secularism: Laborde's and Audi's argument. As a matter of definition, I argued that Rawlsian secularism is more convincing than both alternative versions. Regarding Laborde's argument, I argued that, as a matter of definition, Laborde's argument is not better than Rawlsian secularism. Some element of her argument could be used to support Rawlsian secularism rather than to offer an alternative to it, and some elements of her argument are incompatible with the definition of secularism as I understand it compared to Rawlsian secularism. Regarding Audi's argument, I claimed that Rawlsian secularism is more convincing, as a matter of definition.

At first glance, Laborde's argument seems to go against Rawlsian secularism. While Rawls says that the state must be neutral toward comprehensive doctrines/reasons, Laborde says that the state may not be neutral toward some comprehensive doctrines/reasons, given certain conditions. However, this chapter argued that Rawls and Laborde share the same fundamental idea: the state must be neutral toward all comprehensive doctrines only if they are irreconcilable in any sense. Given this, Laborde's argument supports Rawlsian secularism.

They differ in evaluating whether there is some aspect that some comprehensive doctrines could be reconcilable in some sense. Laborde claims that some comprehensive doctrines could be reconcilable in the sense that they could be publicly accessible. Rawlsian secularism would claim that although some comprehensive doctrines could be publicly accessible, this is not a sufficient reason to justify the state appealing to some comprehensive doctrines. I claimed that Rawlsian secularism is better than Laborde's claim, as a matter of definition.

I argued that the personal ethics condition is contradictory with the definition of secularism as I understand it. Although the state does not force people to abandon their personal ethics, the fact that the state implements some religious practices, unrelated to their personal ethics, still shows that the state is not religiously neutral in one way or another.

Audi claims that the secular state does not need to be neutral toward nonreligious comprehensive doctrines because they are less likely to cause violence due to disagreements compared to disputes about religious doctrines. I argued that this argument shows negative attitude toward religion because violence is not necessarily a sign of irreconcilable/controversial disputes; sometimes controversial (nonreligious) disputes may not show violence, and that means that the state should be neutral toward them all.

## **Part II A Critique of Rawlsian Secularism**

## Chapter 4 Rawls' Political Conception of the Person

### 4.1 Introduction

In Part I, I have discussed the characteristics of Rawlsian secularism, and argued that it is the best definition of the secular state. One of the most essential characteristics of the secular state is that it is neutral toward not only religious but also nonreligious comprehensive doctrines (i.e., any controversial comprehensive doctrine). This is where I set out my criticism of the secular state in this chapter: I want to show that the state cannot be neutral toward comprehensive doctrines in one way or another.

As I have mentioned in Chapter 1 and will discuss more in Chapter 5, Rawls (1997) argues that there is the family of reasonable political conceptions of justice, and his argument for justice as fairness illustrated in *A Theory of Justice* (*Theory*) is but an example of a possible political conception of justice among such a family.

In this sense, we may say that Rawls has two main arguments: one is particular (i.e., the political conception of justice supported by the philosopher “John Rawls”), and another is general (i.e., other political conceptions of justice anyone could reasonably support). Rawls claims that while any reasonable and rational person should consider his own political conception of justice as justified, they may not perceive it as the most justified conception as he himself does; instead, they may support other political conceptions that Rawls himself might find less justified.

I use the term “Rawls' political conception of justice” in a very specific sense: a *particular* political conception of justice, among possible political conceptions of justice, supported by Rawls himself (i.e., justice as fairness).

However, as Rawls' political conception of justice as a whole is a major systematic thought that I cannot cover in its entirety in this thesis, I propose, in this chapter, to examine only some element of his conception, that is, Rawls' political conception of the person (i.e., a *particular* political conception of the person, among possible political conceptions of the person, supported by Rawls himself).

I would argue that Rawls' political conception of the person is the very foundation of his political conception of justice, and that as it presupposes some controversial discussion of comprehensive doctrines, this also makes his conception of justice comprehensive rather than political, which makes the state fail to be neutral. This is not to say that I disagree with Rawls' conception of justice, but that I disagree that his conception is neutral as he claims.

This chapter consists of two main sections. First, I will illustrate how Rawls constructs his political theory of the person. Second, I will argue how his theory of the person fails to be neutral.

## 4.2 Rawls' Political Conception of the Person

Many political philosophers like Plato, Aristotle, Hobbes, Locke, Rousseau, Kant, Mill, and so on, begin their arguments with their accounts of human nature: they first discuss the nature of human beings (actual human behaviours, human essence) and the morality of human beings (the good life, the happy life, the purpose of human beings) before they discuss political institutions (forms of state, laws, public policies) that fit with their accounts of human nature. In one word, a conception of the person is the foundation of their political philosophy.

This can be illustrated in the political philosophy of many social contract theorists (e.g., Hobbes, Locke, Rousseau, Kant): although they are believed to regard the social contract as a thought experiment, they all argue that the hypothetical characteristics of the person illustrated in the state of nature (or the original contract) represent some (psychological) facts about human beings in one way or another.<sup>35</sup>

For instance, Locke (1980) would argue that the hypothetical person would be the one who is governed by God's law and is designed to protect what has been given by God (life, liberty, property). Kant (2019) would argue that the hypothetical person is the one who is

<sup>35</sup> It is unclear whether Hobbes, Locke, Rousseau, and so on regard their social contract theory as a hypothetical thought experiment or as a historical occurrence. This is partly because they did not make this point clear in their writings. Jones (2015: 99) argues that their ambiguity on this point is partly because they were not interested in this question in the first place, so it would be more likely that they would not regard their social contract theories as a historical occurrence. According to Rawls, their most essential point is to regard their theories as a thought experiment, while the question if they are historically correct is not essential to their social contract theories (S. Freeman, 2007: 16). I agree with Jones and Rawls on this point.

able to detach themselves from any heteronomous forces (e.g., experiences, natural inclinations).

In *Theory*, Rawls (1971: viii) views himself in the tradition of the social contract theory, but he believes that his theory “can be developed so that it is no longer open to the more obvious objections often thought fatal to it.” Rawls (viii, 584) believes that although his conception of justice (and of the person) are “Kantian in nature,” they turn out to be more reasonable and less controversial than previous social contract theories, including Kant's conception of the person.

Like previous social contract theorists, Rawls aims to represent the social contract happening in the original position as a hypothetical thought experiment rather than the representation of the actual historical event. Rawls does not try to represent the hypothetical person in the original position as the *whole* picture of human nature (how actual people behave or should behave).

So, it is misleading to criticize Rawls' hypothetical conception of the person as a misrepresentation of the actual human nature. For example, one may claim that, historically speaking, as people never sign a social contract as Rawls describes, Rawls' description of the original position is historically wrong. Or one may claim that, in fact, as humans are not disinterested or rational all the time, Rawls' characteristics of the person in the original position are sociologically wrong. These criticisms are misleading as Rawls does not aim to use his characteristics of the hypothetical person to discuss these topics in the first place.

However, although Rawls' conception of the hypothetical person is intended as a thought experiment, this does not mean that it does not involve in any discussion of human nature at all. As Rawls (1971: 587) himself is aware, one may ask why we need to take any interest in or even justify his hypothetical original position at all if it is merely a hypothetical assumption rather than an actual fact? One may ask further why we need to justify principles of justice chosen in the original position if even the hypothetical conception of the person is unrelated to our actual life?

In other words, why do we, actual people, need to comply with his principles of justice

chosen in the original position in the real world? This is called the stability problem (Rawls, 1971: 456; S. Freeman, 2007: 244). Rawls dedicates Part III of *Theory* to answer this question.

In general, Rawls believes that actual people would have inclinations to comply with his two principles of justice because they are compatible with their human nature (S. Freeman, 2007: 245, 282). Rawls (1971: 456, 476, 494-95, 528, 572, 587)<sup>36</sup> argues that as actual people already have “a desire to express their nature as free and equal moral persons,” and as they would find principles of justice chosen in the original position compatible with their human nature, they would have a desire to comply with those principles of justice. Or even if they do not actually comply with them, Rawls (1971: 476, 513, 528, 565, 574, 576)<sup>37</sup> argues that it is still justified to make them comply with them because this is the only way to make people realize their fundamental human nature as free and equal rational beings.

Rawls (1971: 574, 587) argues that we can fully realize our nature as free and equal moral persons only if we comply with principles of justice chosen in the original position (i.e., those principles of justice make us able to realize our human nature), and that “we may remind ourselves that the hypothetical nature of the original position invites the question: why should we take any interest in it, moral or otherwise? Recall the answer: the conditions embodied in the description of this situation are ones that we do in fact accept.”

This implies that principles of justice chosen in the original position must possess a sense of justice, otherwise they cannot make those who comply with them able to express their human nature (a sense of justice). And as principles of justice are chosen by the hypothetical person, this implies that the hypothetical person must possess a sense of justice, otherwise any conception of justice chosen by them cannot be said to possess a sense of justice.

---

<sup>36</sup> For instance, Rawls (1971: 528) writes that “human beings have a desire to express their nature as free and equal moral persons, and this they do most adequately by acting from the principles that they would acknowledge in the original position. When all strive to comply with these principles and each succeeds, then individually and collectively their nature as moral persons is most fully realized, and with it their individual and collective good.”

<sup>37</sup> For example, Rawls (1971: 574) writes that “the desire to express our nature as a free and equal rational being can be fulfilled only by acting on the principles of right and justice as having first priority,” and that “in order to realize our nature we have no alternative but to plan to preserve our sense of justice as governing our other aims.”



Therefore, this implies that the hypothetical person must partially reflect our human nature (i.e., having a sense of justice).<sup>38</sup> This answers why we, actual people, should consider principles of justice chosen in the original position as relevant and justified: as the hypothetical person in the original position partially<sup>39</sup> possesses our fundamental human nature, we should comply with chosen principles of justice because they are suitable for ourselves. As Rawls (1971: 583, 587) believes that he can reformulate Kantian themes by appealing to “a suitably general conception of rational choice” rather than “a transcendental being,” he claims that his conception of justice could gain more acceptance.

However, in *Political Liberalism*, Rawls proposes to revise some elements of his theory of justice, discussed in *Theory*, which Rawls believes are too controversial. Rawls (1993: xv-xvi) writes that

“Indeed, it may seem that the aim and content of these lectures mark a major change from those of *Theory*. Certainly, as I have indicated, there are important differences. But to understand the nature and extent of the differences, one must see them as arising from trying to resolve a serious problem internal to justice as fairness, namely from the fact that the account of stability in Part III of *Theory* is not consistent with the view as a whole. I believe all differences are consequences of removing that inconsistency. Otherwise these lectures take the structure and content of *Theory* to remain substantially the same. To explain: the serious problem I have in mind concerns the unrealistic idea of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine. They accept, as rooted in this doctrine, its two principles of justice. Similarly, in the well-ordered society associated with utilitarianism citizens generally endorse that view as a comprehensive philosophical doctrine and they accept the principle of utility on that basis. Although the distinction between a political conception of justice and a comprehensive philosophical doctrine is not discussed in *Theory*, once the question is raised, it is clear, I think, that the text regards justice as fairness and utilitarianism as comprehensive, or partially comprehensive, doctrines”

<sup>38</sup> As Rawls (1971: 462) writes that “the general facts of moral psychology affect the choice of principles in the original position.” Or as Dworkin (1973: 508) argues that “the original position is therefore a schematic representation of a particular mental process of at least some, and perhaps most, human beings.”

<sup>39</sup> I need to put “partially” here because, as I said, Rawls' description of the hypothetical person does not reflect the whole picture of human nature (e.g., while he assumes that the hypothetical person is disinterested, he does not claim that this is what the actual person always does or should do); instead, he claims that because a sense of justice is inherent in our human nature, it is reasonable to assume that the hypothetical person has a sense of justice. And by saying that it has a sense of justice, he does not mean that actual people must only have a sense of justice while rejecting other inclinations (e.g., religious duties); instead, he (1971: 575) means that we must always realize a sense of justice as our fundamental human nature, and given this, we are free to pursue any other inclinations that we might think essential to our human nature.

Rawls himself accepts that some elements of his theory of justice, especially Part III of *Theory*, are seriously problematic because they are comprehensive rather than political. As we can see that, in Part III, Rawls claims that his principles of justice are better than other alternatives because they are compatible with human nature: given that we all possess the same human nature, which is to conform to principles of justice chosen in the original position, it is reasonable to conclude that everyone, whatever comprehensive doctrines they pursue, would have a desire (or inclination) to comply with those principles of justice. His justice as fairness, therefore, can be said to be merely one of the comprehensive moral doctrines, but it is special just because, as Rawls (1971) believes, it could be agreed by everyone even if they hold different comprehensive doctrines.

However, Rawls (1993) later accepts that this would be impossible and implausible for a modern pluralist society: as it is impossible to expect that everyone could agree upon the same comprehensive doctrine, and as justice as fairness illustrated in Part III of *Theory* is but a comprehensive doctrine, it is impossible that everyone could agree upon justice as fairness as a comprehensive doctrine.

In order to solve this problem, Rawls (1993) proposes to make his justice as fairness political rather than comprehensive by removing Part III of *Theory* while preserving the rest of it. Instead of claiming that justice as fairness is the best comprehensive doctrine which could be supported by everyone, he now suggests that justice as fairness is just the political doctrine which could be supported by everyone who views themselves as citizens independent of any comprehensive doctrine at all. By doing this, Rawls believes that his conception of justice would be less objectionable.

He argues that although many philosophers would advocate the liberal state, their justifications might become a problem itself as their theories of the person are so controversial that would cause disagreements among citizens if the state appeals to one of them, e.g., if the state claims that a person is a utility maximizer, then those who perceive themselves differently would disagree and feel that they are treated unequally. Rawls calls these controversial theories of the person as a comprehensive (or metaphysical) theory of the person. Rawls worries that this would make principles of justice less acceptable and even illegitimate.

Rawls does not solve this problem by leaving aside any theory of the person at all; instead, he claims to find what he calls “a political conception of the person”: a conception of the person that has nothing to do with controversial disputes about human nature, metaphysics, epistemology, and so on, but is constructed as a hypothetical person, as a thought experiment. Rawls claims that the state may justify laws and policies by appealing to a political conception of the person as it is neutral toward any controversial comprehensive conception of the person.

I will show how Rawls argues that his conception of the person, illustrated in *Theory* (without Part III), is political rather than metaphysical or comprehensive. The general differences between “comprehensive” and “political” conception of the person may be categorized in three main areas as follows:

	Conception of the Person	
	Comprehensive	Political
Human Characteristics	A Matter of Scope - Comprehensive-Political Questions - Comprehensive Argument  A Matter of Justification - Strong/Controversial Presuppositions	A Matter of Scope - Purely Political Questions - Pluralism Argument  A Matter of Justification - Weak/Uncontroversial Presuppositions
Agreement	Comprehensive Agreement - Moral, Philosophical, or Religious Conceptions	Political Agreement - Political Conceptions
Sphere of Commitment	Private Sphere/Commitment	Public Sphere/Commitment

**Figure 4-1:** A Comprehensive-Political Conception of the Person

In general, Rawls argues that his conception of the person is political rather than metaphysical or comprehensive because he uses his conception of the person to deal with a matter of justice (purely political questions) instead of a matter of moral comprehensive questions (or even mixed comprehensive-political questions). He does not mean to use it as a reflection of human nature, whether in terms of human behaviours or human essence. He does not expect that his conception of the person must be used as a model for everyone in the private sphere. He uses it as a thought experiment to see how citizens in a

democratic society could reach a political agreement, not a comprehensive agreement.

It should be noted that, in *Theory*, although Rawls discusses political questions, he also partially discusses moral comprehensive questions (i.e., human nature). Rawls, in *Theory*, fails to make his conception of the person political because he deals with *both* political and comprehensive questions rather than purely political questions. He still uses the comprehensive argument (an account of human nature) when dealing with the stability problem.

But in *Political Liberalism*, Rawls claims that he simply appeals to the fact of reasonable pluralism rather than human nature: as everyone in a pluralist society disagrees on comprehensive doctrines and agrees that it is reasonable for conceptions of justice to be independent of those doctrines, they would find it necessary to secure political conceptions of justice (pluralism argument). Rawls claims that a political conception of the person, instead of reflecting our human nature, represents how we actually understand ourselves as citizens in a pluralist society (Rawls, 1993: 86; S. Freeman, 2007: 335).

As I argued in Chapter 1 that the comprehensive-political distinction is based on a matter of scope *and* a matter of justification, it can be said that a political conception of the person must also be based on these two criteria. Apart from a matter of scope, then, Rawls also argues that his conception of the person is political rather than comprehensive or metaphysical not only because he uses it as a hypothetical assumption for a thought experiment but also because his selected assumptions (hypothetical human characteristics) are uncontroversial or weak (i.e., hypothetical assumptions can be shared/accepted by everyone).

In contrast, he claims that a comprehensive conception of the person uses strong presuppositions (i.e., hypothetical assumptions cannot be shared/accepted by everyone). Therefore, even hypothetical assumptions must be made political themselves. The distinction between weak-strong presuppositions will be discussed later.

Rawls (1993: xv-xvi, 7; 1997: 773) insists that, apart from Part III of *Theory*, his argument in *Theory* (justice as fairness) is still in place (e.g., a hypothetical conception of the person, the original position, the veil of ignorance, reflective equilibrium). Rawls (1997) also

argues that all these ideas are only his own way of presenting political conceptions of justice; other people may appeal to other ways and other conceptions of justice insofar as they fall into political conceptions of justice. So, if we are to examine Rawls' (own) political conception of justice, we still need to look into his argument (justice as fairness) in particular. I will show why his political conception of the person is the foundation of his justice as fairness, and why it is not political as he claims even if Part III of *Theory* were to be removed.

### 4.3 A Conception of the Person as the Foundation of Justice As Fairness

If, as Rawls claims, a political conception of the person in the original position is simply hypothetical rather than based on our human nature or anything related to our actual life, then why should we focus on his conception of the person? To answer this question, we need to understand Rawls' procedure (or strategy) for his justice as fairness as follows:

The Initial Stage	The Contract Stage	The Real World Stage
<ul style="list-style-type: none"> <li>- Hypothetical assumptions about human characteristics and circumstances of justice</li> <li>- Those assumptions are “weak” rather than “strong”</li> </ul>	<ul style="list-style-type: none"> <li>- Hypothetical persons choose a theory of justice under the circumstances of justice through a reflective deliberation</li> </ul>	<ul style="list-style-type: none"> <li>- A theory of justice is implemented in an actual society</li> <li>- Actual persons may embrace comprehensive conceptions of the person in the private sphere</li> </ul>

**Figure 4-2: Rawls' Procedure for Justice As Fairness**

Rawls' procedure can be divided into three main stages. In the initial stage, Rawls constructs the hypothetical person with certain characteristics that he claims are based on weak assumptions about humans (i.e., certain human characteristics that are widely held). In the contract stage, Rawls assumes that these hypothetical persons choose the best conception of justice acceptable to them all. In the real world stage, Rawls claims that a chosen principle of justice is implemented in the real world and no one can legitimately complain about it because it is already judged as justified and acceptable to everyone.

Rawls does not claim that actual people must think of themselves as the hypothetical person described in the original position in the private sphere; they may think of themselves according to their comprehensive identity. He believes that the validity of his

principles of justice lies in the agreement among reasonable and rational persons under fair conditions (i.e., the fair contract).

However, one might ask if the validity of Rawls' justice as fairness really lies in the very idea of the contract at all? If not, then where does the real force of the argument for his theory lie? I want to argue that it is his hypothetical conception of the person, not the contract, that really forms the basis of his whole theory. I will show that we may delete the contract stage from his procedure.

In my view, a contract is an agreement reached by at least two parties, and the justification of a contract is based on the fact that every party involved agrees upon the same principle, whatever they are, rather than that the principle is justified in itself, independent of the agreement between those parties.

For example, if A and B agree upon contract C, then we would say that contract C is justified and must be enforced not because it is justified in itself, but because it is agreed by A and B. But, let's say, if both A and B further agree that contract C no longer serve them well, and would like to agree on contract D instead, then we would say that contract C is no longer justified for A and B. This is called the reciprocity condition (Hampton, 1980).

Now, let's consider the status of the contract in Rawls' theory. Although Rawls might argue that his theory is justified on the contract ground because he allows hypothetical persons to choose principles of justice together, it is still hard to call such a situation a contract. Hampton (1980) argues that any contract must be based on the fact that each party involved must be allowed to hold different preferences and goals.

But Rawls' hypothetical persons could not hold different preferences; they all have the same preferences (risk-aversion, the more the better motivation) and goal (maximin rule), and encounter the same circumstance (complete uncertainty). They are not allowed to have other preferences (e.g., risk-neutral) or goal (e.g., maximum rule). Without these specific assumptions, Rawls' conception of justice would not be chosen.

Because Rawls forces every party to have the same preference which automatically makes

them have no conflict to negotiate in the first place, it may be more accurate to say that they contract with themselves rather than with other people; and if this is the case, then it is hard to call it a contract. Rawls also holds that once a conception of justice is chosen in the contract stage, it must be enforced in the real world stage, and no one can complain and change its contents.

This is at odds with the very idea of the contract holding that there must always be the possibility that the contents of the contract may be changed or even ended if parties involved no longer want them.

In this sense, Hampton (1980) rightly concludes that Rawls does not have a contract theory because every hypothetical person is forced to have the same preference and goal, which makes it useless to have a contract in the first place, and the contract cannot be changed or undo in any case.

Therefore, the contract stage could be ruled out from Rawls' procedure because the contract plays no role at all. The question is, then, what is the real basis of his justice as fairness? The answer is his own "assumptions" about human characteristics and the circumstances of justice in the initial stage. The validity of his theory relies on his particular design of the original position, including a hypothetical conception of the person: as different conceptions of the person yield different conceptions of justice, Rawls' particular conception of the person is what guarantees that his particular conception of justice would always be chosen (Nagel, 1973: 225).

If he designed the conditions in the original position differently (e.g., different human characteristics, different circumstances of justice, different conditions for decision making), then his two principles of justice would not have been chosen. In other words, his conception of the person really makes his justice as fairness because it is this hypothetical person (with certain characteristics) who chooses a conception of justice which suits them best.

More importantly, a hypothetical person must be a moral and just person, not merely a reasonable and rational person, in the first place, otherwise any conception chosen by them

cannot be called a conception of “justice” at all.<sup>40</sup> If a hypothetical person is merely a reasonable and rational person without being moral, then any conception chosen by them can at best be called a conception of reasonableness and rationality. But as Rawls argues that a conception chosen in the original position is also a conception of “justice,” it logically follows that a hypothetical person who chooses them must be moral and just in the first place. In this sense, one may criticize Rawls by arguing that as his hypothetical person is unjust in the first place, his conception of justice is, therefore, unjust.

It is important to understand that “a moral and just person” here is limited only to the scope of the public sphere. For a person to be called moral and just, in this sense, does not mean that their characteristics are more moral or just than other characteristics in the private sphere, e.g., the autonomous self and autonomous actions are more moral and just than the religious self and religious actions *because* they make people live the truly ethical life.

But it means simply that a person has characteristics qualified to determine conceptions of justice, e.g., the autonomous self and autonomous actions are more moral and just than the religious self and religious actions *because* they are fair and acceptable to everyone, and everyone could accept that any conception chosen by the autonomous self would be imposed on them in the public sphere; a religious self is called “unjust” not because they are morally wrong in themselves in the private sphere, but because they would be illegitimate if they impose their religious doctrine on everyone else even in the public sphere. In this sense, to ask if a hypothetical person is moral and just is to ask if they have characteristics qualified to impose their preferred conceptions of justice on everyone else.

However, what concerns us here is not whether Rawls' conception of the person is really just or not, but whether his selection of hypothetical assumptions about human characteristics is really neutral toward controversial metaphysical or moral claims or not. If not, how could he claim that his conception of the person is merely political, and his conception of justice is neutral toward comprehensive doctrines? This is why Rawls' conception of the person plays a crucial role and requires serious scrutiny.

---

<sup>40</sup> Rawls (1971) himself accepts that the hypothetical person is a moral agent as he writes that “the original position is defined in such a way that it is a status quo in which any agreements reached are fair. It is a state of affairs in which the parties are equally represented as moral persons” (120), and that “if the original position is to yield agreements that are just, the parties must be fairly situated and treated equally as moral persons” (140).



#### 4.4 A Critique of Rawls' Political Conception of the Person

In this section, I will argue that Rawls' conception of the person is not political as he claims, even if we do not take Part III of *Theory* into account: his selection of hypothetical assumptions cannot avoid controversial debate about the self. As Rawls' conception of the person is essential to his conception of justice taken by the state, this is also a reason why the neutral state is incoherent, i.e., the state cannot be neutral toward controversial comprehensive doctrines/reasonings as it promises.

I will divide this section into three subsections. First, I will show how my argument differs from some previous arguments against Rawls' design of the original position, including the characteristics of the hypothetical person. Second, I will provide my argument showing that Rawls' conception of the person presupposes controversial claims by dealing with what I call Rawls' weak-strong argument. And finally, I will examine what I call Rawls' worst-case scenario argument, and argue that even this argument fails to make his conception of the person less controversial.

##### 4.4.1 What is Wrong with Rawls' Hypothetical Design?

As one might notice, criticisms against Rawls' design of the original position and his idea of the hypothetical person are not new at all. As these issues have been discussed by many scholars soon after the publication of *Theory*, and, for many scholars, these discussions have already been settled for some time, this may make my readers view my attempt to criticize these issues as outdated, redundant, and unnecessary.

Therefore, I need to show how my argument to be presented here differs from some of those previous discussions. But I will not review all those previous discussions because it would go beyond my capacity to discuss every criticism against these issues, and because my aim here is not to review those discussions for their own sake, but to show how my argument differs from some previous criticisms which are close to my argument.

My argument is to show that, as opposed to Rawls' claim, his design of the original position and hypothetical human characteristics is not uncontroversial and neutral. I will review some criticisms claiming, similar to my argument, that Rawls' design is

controversial and nonneutral.

Nagel (1973) and Schwartz (1973) were, among others, the very first critics of Rawls after the publication of *Theory*, who tackle with Rawls' design of the original position and argue that it is controversial, nonneutral, and unfair (Nagel, 1973: 226; Schwartz, 1973: 296). They argue similarly that Rawls' design is biased against some particular ways of life as *not* every way of life would value (or need) primary goods equally.

They argue that primary goods may help someone to advance their ways of life only if they value individualistic ways of life, but they would be less useful or even harmful if they value collectivistic ways of life; therefore, they claim, it is unfair to ask those who may want to pursue collectivistic ways of life to live under the individualistic society.

Schwartz (1973: 302, 304) uses an example of a socialist (like Marx): he could complain that he is harmed by living in a society that values “a greater rather than a lesser amount of wealth,” and that, by living in this society, “he would devote valuable time to thinking about material wealth” and “people would tend to be more interested in wealth than in other people.”

It is believed that such a criticism was already invalidated by Kymlicka (1989a: 886-93). He defends Rawls' primary goods as fair to everyone, including socialists, because even socialists would need some material resources to pursue their socialist way of life, and even someone would not really want any resources at all, they still do not get harmed by Rawls' primary goods, as Rawls (1971: 143) argues that “they are not compelled to accept more if they do not wish to, nor does a person suffer from a greater liberty.”

Kymlicka argues that both individualists and socialists are treated equally regarding the costs of pursuing their ways of life: they need to convince others to join their ways of life, otherwise they would have less resources (high costs) to form a society as they want.

As my argument against Rawls, that will be presented shortly, has nothing to do with his idea of primary goods, it differs from Nagel's and Schwartz's criticisms in that sense. But my argument has something in common with Nagel's and Schwartz's criticisms. According to my understanding, their *ultimate* point of criticism is not to defend

collectivistic ways of life over individualistic ways of life, but to argue that Rawls cannot justify the latter over the former without appealing to any controversial reasoning. In other words, they focus on Rawls' mode of reasoning as I do.

I want to participate briefly in the debate between Nagel and Schwartz vs. Kymlicka, as I think that Kymlicka's argument may be less relevant than many scholars believe. The problem with Kymlicka's argument is that he misunderstands the main point of Nagel's and Schwartz's criticisms. In fact, they do not argue that Rawls' primary goods treat the socialist (like Marx) unequally *just because* the motivation that prefers a greater rather than lesser amount of wealth is promoted over the motivation that prefers a lesser rather than greater amount of wealth, *nor because* primary goods would make socialist ways of life more costly than individualistic ones. If these were Nagel's and Schwartz's argument, then Kymlicka's argument would be right. But I believe that this is not the case. Their argument is much more radical than that.

When they say that Rawls' primary goods are biased against socialists, they do not just talk about the situation where both individualists and socialists live in the same society and compete to recruit their new adherents. But they even mean that socialists cannot live in the fully socialist state that could be possible only if the whole society must eliminate individuals' desires for wealth at all. The socialist way of life, in this sense, means that the whole society must be socialist, not just some individuals: for the socialist (like Marx), the socialist life is impossible if others still value the individualistic life.

For example, if one wants to live the socialist life (i.e., living *without* money and market) but other people still exchange commodities with money through the market, then one would be forced economically to work for money and exchange through the market with others, otherwise they cannot make a living. Moreover, the socialist's aim is not just to live the socialist life individually or to convince others to voluntarily choose to live the socialist life, but to make the whole society socialistic regardless of people's consent.

If the socialist just wants to live the socialist life individually, then they would be concerned about how to make the socialist life possible only for themselves, regardless of how others would live their lives. If the socialist wants others to live the socialist life voluntarily, then they would be concerned about how to convince others that the socialist

life is superior than other ways of life. These two kinds of socialism may be called *individualistic socialism* – the idea that socialism would be possible only if individuals voluntarily choose to live the socialist life.

But if the socialist wants to make the whole society socialistic regardless of people's consent, then they would be concerned about how to make everyone live the socialist life regardless of their consent. This kind of socialism may be called *collectivistic socialism* – the idea that socialism would be possible only if the collective society is made socialistic regardless of people's consent.

For Kymlicka, and for Rawls, the Rawlsian state is fair for both individualists and socialists (or collectivists) because, in their views, both are allowed to live as they want; insofar as those who prefer individualistic ways of life choose to live their lives that way, and those who prefer socialistic way of life choose to live their lives that way, everything would be fine.

But for Nagel and Schwartz, this idea is very individualistic not because it promotes individualists over socialists, but because it only allows individualistic socialism, not collectivistic socialism. This is why they argue that Rawls' primary goods are biased: they are useful only for individualistic socialism, but useless for collectivistic socialism.

My interpretation of their criticisms is supported by their own writings. For instance, Nagel (1973: 228) writes that primary goods “are less useful in implementing views that hold a good life to be readily achievable only in certain well-defined types of social structure, or only in a society that works concertedly for the realization of certain higher human capacities and the suppression of baser ones, or only given certain types of economic relations among men” [underline added].

Here, Nagel talks about the social structure (rather than individuals) and the suppression of some ways of life. This indicates that the socialist life would be possible only if one must live in certain types of social structure, e.g., the fully socialist society.

Schwartz (1973: 304) writes that by living in the Rawlsian society the socialist “could claim that, in such a system, people would tend to be more interested in wealth than in

other people.” Here, Schwartz talks about how other people, not just the socialist, value social norms. The socialist life would be possible only if “other people” also value what the socialist values.

Kymlicka (1989a: 890) seems to miss this point as we can see from his comments: “[for Nagel and Schwartz] costs would be assessed differently in a society that is designed to produce socialist individuals: the socialist's desire for land would not be as costly, since fewer people would have conflicting desires,” and “[they] do not explain why their [socialist] choices should be subsidized regardless of how costly they are for others.” Kymlicka still portrays the situation where individualists and socialists live together, and socialists are subsidized by the state.

I do not think that the ultimate point of Nagel and Schwartz is that Rawls' theory is unjustified, but that Rawls cannot justify it without appealing to some controversial claims. Kymlicka (1989a: 890-91) just asserts that it is wrong to force people's preferences without giving any further reason. But this is exactly what Nagel and Schwartz ask: Why? Can Rawls justify this without appealing to controversial claims? And according to Nagel (1973: 228) and Schwartz (1973: 307), Rawls cannot avoid controversies. Kymlicka does not really challenge their criticisms.

Another famous critic of Rawls' design is Sandel (1982, 1984). His main argument against Rawls' design is that it presupposes a controversial Kantian conception of the person (or what Sandel calls “an unencumbered self”), which makes his design, in Sandel's view, controversial and unjust. The unencumbered self is the person whose self (the capacity to choose) is prior to ends (choices), and for Sandel, this conception of the person is morally wrong; therefore, that Rawls assigns a hypothetical person in the original position this conception of the person is unjust.

As I argued earlier, different hypothetical conceptions of the person would yield different conceptions of justice. As Sandel thinks that Rawls' hypothetical conception of the person (the unencumbered self) is unjust in the first place, he thinks that Rawls' conception of justice, chosen by this hypothetical person, would be unjust. Sandel proposes what he calls “an encumbered self”: the person whose ends are prior to the self.<sup>41</sup>

<sup>41</sup> Caney (1992: 277), Forst (2002: 24, 27), and Pogge (2007: 186) misunderstand that Sandel's “encumbered self” is compatible with Rawls' theory. But, indeed, it is not and cannot be allowed by

Many scholars criticize Sandel's argument as it either misinterprets Rawls or it is unjust. First, Sandel's argument misinterprets Rawls. For instance, Caney (1992: 275-78) and Mulhall and Swift (1996: 196) argue that Sandel misinterprets Rawls' idea of the hypothetical person: while Rawls assigns a hypothetical person certain characteristics in the original position, he simply does this as a thought experiment, he does not claim that actual people are as described in the original position, and does not demand that actual people must view themselves that way; instead, they may view themselves as an encumbered self as Sandel suggests. So, Sandel is wrong in employing the sociological objection against Rawls, and in interpreting Rawls' conception of the person as a moral demand for everyone. This is a typical reading of Sandel.

However, I think that other interpretations of Sandel's argument are also available. In my reading, Sandel (1982) also disagrees with such a sociological criticism of Rawls' hypothetical person as he argues that it is just a thought experiment rather than a sociological description of the self, and that actual people may not view themselves that way:

“The sociological objection fails in various ways ... Altruism and benevolence, for example, are wholly compatible with this [*Rawlsian*] liberalism, and there is nothing in its assumptions to discourage their cultivation. The priority of the subject does not say that we are governed by self-interest, only that whatever interests we have must be the interests of some subject. From the standpoint of the right, I am free to seek my own good or the good of others, so long as I do not act unjustly. And this restriction has not to do with egoism or altruism but rather with the overriding interest in assuring a similar liberty for others. The co-operative

---

Rawls because an encumbered self, according to Sandel (1994: 1773), is not merely a person who pursues communal or religious ends in private, but a person who also prioritizes their ends over Rawls' justice in public. For instance, a person is still called an unencumbered self if they claim to be determined by communal or religious values, but always subject them to Rawls' justice. But a person is called an encumbered self if they claim to be governed by communal or religious values, and even prioritize them over Rawls' justice. Sandel (1982: 147-54) discusses three accounts of the self-community relation. First, the instrumental account – people are always self-interested. Second, the sentimental account – people may pursue communal or religious aims, given that they still subject them to Rawls' justice. Third, the constitutive account – people claim to be determined by their community or religion which determines their conception of justice in one way or another. For Sandel (1984: 86; 1989a: 611; 1994: 1773-774; 1998: xii-xiii), the first two accounts are the unencumbered self, while the third is the encumbered self. He insists that while Rawls rejects the first account and justifies the second, he rules out the third. Rawls (1975: 537) himself believes that his theory does not say that one's social, communal, or religious doctrine/identity is merely their preferences or personal tastes; instead, he accepts that they may be the indispensable elements of their self. He claims that he simply asks people to leave these information (their comprehensive doctrine/identity) when they think about a matter of justice. Rawls might believe that this shows how **Sandel's conception** of the encumbered self is compatible with his theory. But as I argued, Sandel could not accept this as the encumbered self means that the person must be allowed to be influenced by their comprehensive identity when they think about a matter of justice.

virtues are in no way inconsistent with this [*Rawlsian*] liberalism” (12)

“The description of the circumstances of justice cannot be regarded as a straightforward empirical generalization, to be established or refuted by the best evidence of sociology, psychology, and so on ... The description of the circumstances of justice, then, does not need to be true in any literal, empirical sense. The original position that contains it is in any case an admitted fiction, a heuristic device designed to constrain our reasoning about justice in certain ways” (41)

“Rawls has emphasized in particular that the assumption of mutual disinterest does not bias the choice of principles in favor of individualistic values at the expense of communitarian ones. Those who suppose that it does overlook the special status of the original position, and mistakenly assume that the motives attributed to the parties are meant to apply generally to actual human beings or to persons in a well-ordered society. The motives attributed to the parties in the original position neither reflect the actual motivations current in society nor determine directly the motives of persons in a well-ordered society” (61)

Sandel understands that, for Rawls, the hypothetical person is not designed to describe humans sociologically; he even accepts that communal values are compatible with Rawls' theory. Maybe the most controversial passage of Sandel (1982: 14) that makes many scholars believe that he misinterprets Rawls' idea of the original position is this: “justice cannot be primary in the deontological sense, because we cannot coherently regard ourselves as the kind of beings the deontological ethic – whether Kantian or Rawlsian – requires us to be.” Many scholars interpret this passage as saying that Rawls requires actual people to be like the hypothetical person in the original position. But I think that this passage can be interpreted differently.

In my view, what Sandel wants to say is this. First of all, as different hypothetical persons yield different conceptions of justice, and as Rawls himself accepts, the hypothetical person must be the moral and just person, otherwise any chosen conceptions cannot be called conceptions of “justice,” this implies that we must accept the hypothetical person described by Rawls as just.

But Sandel argues that the characteristics of a hypothetical person are unjust in the first place, so any conception of justice chosen by such a hypothetical person would automatically be unjust. Sandel's point is that Rawls' theory is unjustified because its assumptions are unjust.

Next, as Sandel says that “justice cannot be primary in the deontological sense,” we need to understand what he means by this. Sandel (1982: 1, 2, 6; 1984: 82) understands the notion that “justice is primary in the deontological sense”<sup>42</sup> as saying that justice requires us to think of ourselves as free and equal people who do not take any comprehensive identity into account when considering a matter of justice so that a conception of justice is independent of any conception of the good, and our comprehensive doctrine/identity cannot determine justice. Given this, Sandel proposes that we cannot (should not) think about justice that way (i.e., we cannot and should not think about justice by leaving our comprehensive doctrine/identity aside).

Sandel's above passage (1982: 14), thus, should be read that: Rawls argues that we should determine conceptions of justice without appealing to our comprehensive identity, but indeed we should not determine conceptions of justice independently of our comprehensive identity, so Rawls' design is unjust.<sup>43</sup> In other words, Sandel (1982: 14) wants to say that “we cannot coherently regard ourselves as the kind of beings the deontological ethic – whether Kantian or Rawlsian – requires us to be” even in the public sphere where we decide about a matter of justice.

Although Rawls allows us to pursue communal or any other comprehensive doctrines in the private sphere, he requires us to leave our comprehensive doctrine/identity when deciding about justice. Sandel argues that we should not leave our comprehensive doctrine/identity aside even when deciding about justice.

Nevertheless, this may raise another question: if Sandel recognizes that even communal

---

<sup>42</sup> Sandel (1982: 11-13) clearly states that his target of criticism “deontological liberalism” (or Rawlsian liberalism) cannot be criticized by the sociological objection because it misinterprets Rawls. This means that his argument would not focus on whether Rawls accurately describes people's sociological facts, but whether he justly suggests how people should think about a matter of justice.

<sup>43</sup> I guess that one of the reasons why Sandel's passage (14) has often been misunderstood is because of his choice of word, that is, he writes that “we *cannot* regard ourselves” rather than “we *should not* regard ourselves.” If he used “should not” instead, I believe that this would make it easier to understand that he means to say that we should not regard ourselves as the deontological self (even in the public sphere) because it is unjust. But as he uses “cannot,” this causes a confusion as saying that one is incapable of being as the deontological person. I think that this is just the language problem; sometimes we may use “can” and “should” interchangeably. For example, I may say that since killing people is wrong, I cannot do so. It does not mean that I am incapable of killing people, but that I cannot do so because it is unjust. Or I may say that since I believe that my religious duties are extremely important to me, I cannot think of justice without taking my religious duties into account. Or as Laborde (2017: 1) asks: “Can a liberal state establish a particular religion in its laws and institutions? Can state officials appeal to religious convictions in justifying laws? Can majority religious symbols be displayed in the public sphere? Can churches have male-only clergy? Can faith-based business deny services to LGBTQ citizens?” Laborde does not ask whether the state or churches are capable of doing these but whether they should do it.



values are compatible with Rawls' theory, then what exactly does Sandel criticize Rawls? I think that Sandel's criticism is this: while communal values (altruism, religious duties, national ties) are compatible with Rawls' theory, they are possible only if they are voluntarily chosen by individuals, i.e., the self is prior to the good, but, in Sandel's view, this is morally wrong because the good should be prior to the self, e.g., our communal (e.g., national, religious) duties sometimes determine our moral actions and justice.

And this is the second criticism of Sandel: his argument is unjustified as it forcibly imposes communal values on individuals (Gutmann, 1985; Wallach, 1987; Thigpen & Downing, 1987; Feinberg, 1988; Waldron, 1988; Kymlicka, 1988, 1989a, 1989b, 2002; Kukathas & Pettit, 1990; Caney, 1991, 1992; Phillips, 1993; Friedman, 1994; Kautz, 1995; M. Freeman, 1998, 2012; Forst, 2002). I would say that my argument against Rawls' design differs from Sandel's in that while Sandel argues that Rawls' design is controversial and unjust, I would simply argue that it is controversial because it cannot avoid controversial debate about human characteristics.

While Sandel focuses on Rawls' characteristics of the original position, I will focus on his mode of justification. But I want to briefly state that I disagree with those above scholars who interpret Sandel as a cultural relativist who argues that our cultural, religious, national identities determine justice *directly* (e.g., if my religious identity is Buddhist, then I need to do as Buddhism demands). I will show how Sandel's account of identity could be related to conceptions of justice without endorsing our communal values directly in Chapter 6.

The last criticism against Rawls' design I want to review here is Haksar (1979). Like Nagel, Schwartz, and Sandel, Haksar attacks Rawls' claim that his conception of justice is neutral and uncontroversial. He argues that although Rawls' original position is simply used as a thought experiment, its validity depends on his justification of its design, in which Haksar argues that Rawls' justification would be impossible without appealing to some certain perfectionist claims, which are deeply controversial.

For instance, Haksar asks, why does Rawls only confine the right to decide conceptions of justice in the original position to humans, but not to other animals? What is the justification of this? Doesn't this suggest that Rawls already implies that humans have

certain special abilities unavailable in other animals? And why doesn't Rawls also extend this right to fetuses? Doesn't this imply that he views fetuses as non-humans? Why should we hold that all humans are morally and politically equal in the first place? And so on.

Haksar claims that Rawls' design cannot avoid these questions, and he needs to use controversial arguments (e.g., humans are morally worthier than animals because they have some capacities unavailable to animals) to justify his design. In the end, Haksar insists that Rawls' theory, know it or not, must depend on some certain perfectionist claims. Haksar's argument focuses on Rawls' justification rather than characteristics.

My argument will focus on Rawls' mode of justification. However, my argument differs from Haksar's in that I will not refer to human nature (not even in Part III of *Theory*) or perfectionist claims, but I will only claim that Rawls cannot avoid controversial debate on hypothetical assumptions about human characteristics.

#### **4.4.2 Rawls' Weak-Strong Argument**

Now it is time to provide my own argument against Rawls' design of the original position. My focus would be on why Rawls believes that his hypothetical person is merely political rather than comprehensive. As I said, only the reason that it is a hypothetical thought experiment is not enough because we may think of other hypothetical characteristics.

For example, one may claim that a hypothetical person is designed as a creature of God, and as God gives humans a sense of justice and demands that we must express this nature, we need to establish conceptions of justice fair to all humans. One could claim that as this is just a thought experiment, once conceptions of justice are established actual people may not view themselves that way (e.g., some may not believe in God).

Undoubtedly, Rawls would call such a hypothetical person comprehensive rather than political. But why? It is also claimed as a thought experiment and not a moral model for actual people in the private life just like his idea. Rawls may claim that it is comprehensive because it contains the ultimate truth about the world (i.e., the existence of God), while his does not. But why does he believe that his conception does not involve the ultimate truth?

He claims that, as an assumption of a thought experiment, we may “assume” that the person is disinterested, autonomous, not believing in God's power, and so on. And because of this, he further argues, these characteristics are simply the “assumptions” rather than the “ultimate truth.” But if this is the reason, then I cannot see why one who holds different hypothetical assumptions cannot claim the same.

One, for example, may claim that, as an assumption of a thought experiment, we may “assume” that the person is benevolent, social, believing in God's power, and so on. And because of this, they may further argue, these characteristics are simply the “assumptions” rather than the “ultimate truth.”

Moreover, Rawls claims that actual people do not need to adopt his hypothetical person in reality; they may view themselves other ways. But if one really wants to view themselves as his hypothetical person even in everyday life, they are able to do so, too. And if this is the case, then the characteristics of the hypothetical person would become the ultimate truth for those who practice them in reality; they may really believe that God does not exist, or even God does exist He does not have power on humans, that the good life is to live an autonomous life independent of any religious and communal claims.

My point here is that if Rawls wants to insist that his conception of the hypothetical person is political while other conceptions (like the conception of God's creatures described above) are comprehensive, he cannot do so by using *the assumption argument* – the idea that the characteristics of the hypothetical person are not comprehensive just because they are used as the assumptions for a thought experiment.<sup>44</sup> This is because the assumption argument is limited only to a matter of scope rather than a matter of justification, in which other conceptions of the person, however controversial, could meet the criteria. Rawls needs to use other reasons than the assumption argument.

The question is on what reason Rawls could claim that his conception of the person is political? I would argue that he needs to reason that this is because his hypothetical assumptions (or characteristics) are uncontroversial and generally acceptable to ordinary people. In other words, as a matter of justification, his assumptions are justified as suitable to be used as assumptions.

---

<sup>44</sup> I have mentioned the assumption argument in Chapter 1 (Section 1.2.1: 25-26) of this thesis.

Let's consider the following thought experiment. There are four competing *comprehensive* conceptions of the person: (A) the God's creature, (B) the utilitarian self, (C) the political animal self, and (D) the autonomous self. These four comprehensive conceptions have the same characteristics: (1) they discuss the ultimate truth about the world and the self, (2) they are applied to the whole life, (3) they are irreconcilable to each other, and (4) they all agree that people should be able to believe otherwise (e.g., advocates of the conception of God's creatures may believe that everyone is God's creature, but they believe that it is wrong to force everyone to believe this).

Further, the conception of God's creatures here does not refer to any existing religion, but to the very general idea that humans are God's creatures; the utilitarian self here does not refer to the philosophy of any particular utilitarians (Bentham or Mill), but to the general idea that humans want to pursue happiness and avoid pain; the political animal self here refers to the general idea that humans are social beings; and the autonomous self here refers to the characteristics of the Rawlsian hypothetical person. They all begin as a comprehensive conception of the person. The question is how Rawls makes the comprehensive autonomous self (D) become political while insisting that the rest (A, B, C) cannot be made political?

The easiest way that one may think of is to claim that we would treat D simply as a thought experiment rather than the ultimate truth of the world, and allow actual people to perceive themselves other ways. But as I said earlier, this does not work because one may also reason the same with A, B, and C. One may claim that we would apply D only to the scope of political agreement (a matter of scope) while leaving people to choose any comprehensive conception of the person as they see fit in the private sphere. But this does not work because one may also reason the same with A, B, and C. Rawls cannot justify his hypothetical person as political with the assumption argument.

Rawls might reason that only D can guarantee the result of his two principles of justice while A, B, C cannot. But if this is the case, then it means that Rawls would destroy his social contract himself: this would mean that he already has his principles of justice in mind in the first place, and just searches for a particular conception of the person that could guarantee the result of his principles of justice.<sup>45</sup> Thus, Rawls cannot use this reason.

---

<sup>45</sup> In fact, I believe that we may use A, B, C as a hypothetical person and still preserves Rawls' two principles of justice. For instance, we may describe a hypothetical person as the utilitarian self (in a very

Whatever reasons Rawls would use to justify his political conception of the person, he must show that it is uncontroversial in itself (i.e., although D is comprehensive, it is uncontroversial if it is used as an assumption for a thought experiment). In Part III of *Theory*, Rawls claims that his design of the original position is uncontroversial because it is part of our human nature that he believes everyone could easily accept.

But in *Political Liberalism*, he accepts that even such a reason is too controversial. He proposes that the justification of the design of the original position must be independent of any comprehensive doctrine at all, whether religious, moral, and even philosophical.

Rawls, therefore, eliminates his argument in Part III of *Theory*. Instead, Rawls reasons that his assumptions are political because they are widely accepted by citizens in a pluralist society (let's call this the pluralism argument). With this argument, he believes that his justification of the design is uncontroversial because it does not appeal to controversial claims (e.g., human nature). But I would argue that even this reason would still need to presuppose some controversial claim.

There are many questions the pluralism argument does not answer or make itself clear. Why should we hold that anything accepted by people in pluralist societies is justified? What does it mean to say that a certain conception of the person is widely held? Does it mean that every actual person accepts it, or the actual majority accepts it, or only reasonable and rational people accept it? If it is the third case, then how do we justify the conception of reasonableness, and can we justify it without appealing to controversial claims? And so on.

The pluralism argument is unclear toward these questions. I believe that by making his reason encounter with them we will see how controversial his reason is. And if we can claim that it is controversial, then we can argue that the Rawlsian state is incoherent.

Sometimes Rawls seems to imply that the pluralism argument is widely held by every

---

general sense): as the self wants to achieve happiness and avoid pain, and as the best way to achieve this is to accept Rawls' two principles of justice, they would agree on the same (Rawlsian) principles of justice. In this sense, I disagree with R. Taylor (2011: xxii) who argues that only the Kantian conception of the person could endorse Rawls' two principles of justice. He may be right if we take, for example, the religious conception of the person according to the existing religion. But this is possible if, as I suggested, we take only the very general idea of the religious conception of the person (e.g., we are the creature of God, and God wants us to do xxx).

*actual* person in a pluralist society. Let's consider this claim. Rawls could claim that his selected assumptions about the original position are uncontroversial because they are based on “weak” rather than “strong” assumptions about the person and the circumstances of justice: while the former means uncontroversial assumptions that everyone actually accepts, the latter means controversial assumptions as not everyone accepts them.

Let's call this Rawls' weak-strong argument. I would argue that this argument is not neutral. Let's see what Rawls means by his weak-strong argument. Rawls (1971) writes that

“One must try to avoid introducing into it any controversial ethical elements. The initial situation must be characterized by stipulations that are widely accepted” (13)

“I have emphasized that this original position is purely hypothetical. It is natural to ask why, if this agreement is never actually entered into, we should take any interest in these principles, moral or otherwise. The answer is that the conditions embodied in the description of the original position are ones that we do in fact accept” (21)

“The postulate of mutual disinterest in the original position is made to insure that the principles of justice do not depend upon strong assumptions. Recall that the original position is meant to incorporate widely shared and yet weak conditions. A conception of justice should not presuppose, then, extensive ties of natural sentiment. At the basis of the theory, one tries to assume as little as possible” (129)

“If it is asked why one should not postulate benevolence with the veil of ignorance, the answer is that there is no need for so strong a condition. Moreover, it would defeat the purpose of grounding the theory of justice on weak stipulations, as well as being incongruous with the circumstances of justice” (149)

“Since the theory of justice relies upon weak and widely held presumptions, it may win quite general acceptance” (243)

“We must look for a constrained minimum, a set of weak conditions that still enables us to construct a workable theory of justice ... For example, the assumption of mutually disinterested motivation is not a demanding stipulation ... it asks little of the parties” (583)

Rawls believes that his theory of justice is based on “weak” rather than “strong” assumptions, and because of this, he believes that his theory of justice could “win quite general acceptance.” But the way Rawls derives the weak-strong distinction is unclear. Is

it derived from what actual people currently hold (e.g., people currently hold that “altruism” is too demanding for ordinary people), or from what actual people want it to be (e.g., people hold that “altruism” should be made common for ordinary people)?

It should be noted that when I use the term “actual” here (e.g., actual people, people actually hold), I do not suggest that Rawls intends to use his hypothetical persons to represent what people actually look like, but that Rawls derives his “weak” assumptions from what people actually *hold* what “weak” assumptions are. My question is how Rawls derives his “weak” assumptions? How could he know which assumptions are “weak” and “strong”? Is it possible to distinguish between “weak” and “strong” assumptions without making a controversial judgement?

Rawls claims that his “weak” assumptions derive from what people in general widely hold as Rawls writes that they are “widely accepted,” “ones that we do in fact accept,” “widely shared,” “widely held,” are “not a demanding stipulation,” and they ask “little of the parties” and “as little as possible.” In contrast, “strong” assumptions are “any controversial ethical elements,” “extensive ties of natural sentiment,” “benevolence,” and “demanding.”

When Rawls says that “weak” assumptions are those that are widely accepted, he does not mean that they are motivations that people really hold *in the sense that* they are always motivated by such “weak” motivations in their everyday life, as Rawls (1971: 148, 178) argues that actual people simply accept “weak” assumptions to work out for a conception of justice, but they may be motivated by other “strong” motivations in their daily life. “Weak” assumptions are motivations that people in general really *hold* that they are “weak” rather than “strong”: while people may be motivated by different motivations (some are motivated by weak, some by strong), they all *hold (or agree)* that some are “weak” and some are “strong.”

For example, there are two people (A and B), while A is motivated by a religious sentiment and benevolence, B is motivated by a disinterested motivation. According to Rawls, weak assumptions must be those that are widely held by both A and B. Rawls believes that although A and B may be motivated by different motivations, they all accept and share the view that “disinterestedness” is a “weak” motivation because it is little demanding, while “benevolence” is a “strong” motivation because it is too demanding.

Although A and B may be motivated by different motivations, they all *hold* (or agree) that which motivations are “weak” and which motivations are “strong.” This is what Rawls means when he says that weak assumptions are widely held.

The difficulty of this argument, however, is that I believe that it is impossible to separate between “weak” and “strong” assumptions without making a controversial judgement. In the view of Rawls, it might be easy to say that weak assumptions refer to those who are disinterested, whereas strong assumptions refer to those who are altruistic, religious, and so on. Rawls believes that this notion is common to everyone, even to those with strong assumptions; so, it is uncontroversial and independent of his own judgement.

But this may not be the case if we look at the matter from the eye of many non-Western and non-autonomous<sup>46</sup> people such as some religious people (Muslims, Christians, Buddhists), and even some philosophical people (communists, utilitarians, communitarians, confucians).<sup>47</sup> For some of them, what Rawls considers as “weak” should be viewed as “strong,” and vice versa. Some Muslims, for instance, hold that the belief in God, and obeying God, are not demanding and controversial; instead, they hold that it is very counterintuitive to disbelief in God, or to leave God aside when considering a matter of justice.

Communists may view Rawls' weak assumptions as strong because they still allow people to have private property, and Rawls' hypothetical person cannot choose any conception of “justice” because such a person possesses unjust assumptions about human characteristics (i.e., people are allowed to pursue their private interests) in the first place.

Some Confucians may view Rawls' weak assumptions as strong because it is unjust to hold that people may be allowed to be independent of their family and community; it is more common, for them, to hold that people should act according to a tradition, which is uncontroversial and not demanding; instead, it is strong to hold that people should be allowed to act against the tradition.<sup>48</sup>

<sup>46</sup> The term “non-autonomous people” may be confusing. I want to refer to those people who, in the private sphere, hold communal or religious values instead of living the autonomous life; but, in public, they are also liberal in the sense that they respect other people's rights. This is why I use “non-autonomous” instead of “non-liberal.”

<sup>47</sup> Again, I refer only to “some” of them, that is, only “some” who are liberal in the public sphere.

<sup>48</sup> The distinction between “weak” and “strong” is even more complicated and indeterminate as Sandel's conception of an encumbered self, which is often viewed as too strong by his liberal critics, is rather viewed as too weak by some Confucian scholars (Li, 2018: 3; Sandel, 2018: 249).



Let's return to the earlier point that the way Rawls derives the weak-strong distinction is unclear. Is it derived from what people currently hold, e.g., people hold that altruism *is* too demanding for ordinary people in the present, or what people want them to be, e.g., people hold that altruism *should* be made common for ordinary people? If the answer is that it represents what people currently hold what are weak and strong, then it is unclear why we should automatically hold that what people currently hold should be justified as an assumption.

As we can see that the belief in God is common and not demanding to some Muslims; in this sense, we could also say that the belief in God is a weak assumption for them. But I am sure that Rawls would not say that the belief in God is a weak assumption.

This raises questions. If the weak-strong assumption represents what people currently hold, then why wouldn't Rawls hold what Muslims currently hold as weak as "weak" in the same way he holds what Western and liberal people currently hold as weak as "weak"? Why does Rawls only hold what Western and liberal people currently hold as weak as "weak" assumptions, but holds what Muslims currently hold as weak as "strong" assumptions? Why does Rawls place more weight on Western and liberal people than Muslims in the first place?

As I argued in Chapter 3, it is reasonable to hold that these non-Western and non-autonomous doctrines/people are also available in Western societies (e.g., the UK, the US). Why does Rawls place more weight on certain types of people than other types of people in defining his weak-strong assumptions? Does Rawls want to say that each community may have different views on the weak-strong distinction, and they may have different conceptions of justice? I do not think so because this argument would make Rawls more like cultural relativism rather than universal liberalism.

If people hold that religious duties are too "strong" for ordinary people, Rawls would certainly confirm their definition, but if people hold that religious duties are "weak" for ordinary people, Rawls would doubt and question their definition. This suggests that, indeed, Rawls does not hold automatically that whatever people currently hold as weak and strong should be viewed as "weak" and "strong." Rawls needs to consult with a further criteria independent of what people currently hold. Rawls cannot avoid

controversial debate.

Given that actual people disagree on what metaphysical and comprehensive claims are held as weak and strong, he needs to decide who is more reasonable. For example, while one argues that benevolence is too strong, another argues that it is weak. Rawls may decide to agree with the former that benevolence is too strong. Rawls cannot claim that his judgement is based on how actual people defines the weak-strong distinction because they actually disagree with each other; instead, his judgement reflects his own way of thinking that benevolence should be held as too strong for people.

Now, let's consider the case that the weak-strong distinction represents what actual people want them to be. Someone might currently hold that benevolence is too demanding (strong) for themselves and others because they find it hard to be benevolent under certain current conditions. But they might hold that benevolence should be made common (weak) for themselves and others because they find it important; they want benevolence to be weak for everyone, but only if the state or society must help make certain conditions suitable for it.

I would argue that if the weak-strong distinction represents what actual people want them to be, this also suggests that Rawls must make "his" judgement on controversial debates about which should be called weak and which strong. For instance, some people would want benevolence to be too strong for people, while others would want it to be weak for people. The question is how would Rawls hold that benevolence is weak or strong?

If Rawls holds that benevolence should be held as too strong for people, then he would not add benevolence into his assumptions and, of course, his conception of justice would not make the state promote benevolence in particular. But if he holds that benevolence should be made weak for people, then he would add benevolence into his assumptions, and his conception of justice would make the state promote benevolence among people.

In order to decide about this, Rawls needs to make his own judgement, e.g., he may argue that benevolence should be held as too strong for ordinary people.<sup>49</sup> Rawls cannot avoid

---

<sup>49</sup> This does not mean that Rawls does not want people to be benevolent, but that he does not agree that ordinary people should be encouraged to be benevolent. He would not have a problem if some wants to be benevolent, but he would have if this is required or encouraged by the state.

controversial debate about which metaphysical/comprehensive claims are more reasonable to be used as an assumption, e.g., between the claim that people should be benevolent and the claim that benevolence is too demanding for people.

Indeed, Rawls must not only argue why certain controversial claims should be assumed as “weak” but also why his “weak” assumptions are (or should be) justified in the first place. As I argued, different conceptions of the person would yield different conceptions of justice, and if the former is unjust, then the latter would be unjust automatically. Rawls must claim that his conception of the person, based on his “weak” assumptions, is justified. If Rawls does not make a moral judgement about his “weak” assumptions, then he cannot say that his “weak” assumptions are just.

What I claim here is not that he embraces a metaphysical conception of the person in the sense that he really believes in a metaphysical claim as the ultimate truth (e.g., benevolence, religious duties, belief in God are unreasonable and unjust in themselves), but that he cannot avoid deciding which metaphysical/comprehensive claims are (or should be) more “reasonable” and “just” to be used as an assumption for a political conception of the person.

Rawls may believe that this discussion is uncontroversial because it is discussed from the perspective of a political conception of the person; although he makes a judgement on the characteristics of the “just” person, his judgement is political rather than comprehensive because this is a question concerning a matter of justice, not a matter of moral comprehensive questions.

As a matter of justice, Rawls would claim, people can agree on certain assumptions (as weak and just) because they all would think of themselves as reasonable and rational persons; given that they all view themselves that way, they could agree on which human characteristics should be considered weak and strong.

But this argument does not take us far. It looks powerful and convincing to say that one should be reasonable and rational, but why should we assume that everyone views themselves as reasonable and rational as defined by Rawls? Why should we hold that Rawls' definition of reasonableness and rationality is more reasonable and just than that of

others? More importantly, it is one thing to say that a conception of the person is reasonable and rational, but it is another thing to say that such a conception of the person is uncontroversial. Rawls must assert that his (hypothetical) conception of the person is not only reasonable and just but also uncontroversial. But why does Rawls think that it is uncontroversial?

Rawls cannot use the weak-strong argument (or referring to actual people) because, as I argued, his assumptions may be uncontroversial to some but may be controversial to others. Rawls might say that his assumptions should still be viewed as uncontroversial even if some might find it controversial because he cares only “reasonable and rational” people defined by Rawls.

But as I said, others may have different conceptions of reasonableness and rationality. Then, they might claim similarly that their assumptions should be viewed as uncontroversial even if some (such as Rawls) might find it controversial because they care only “reasonable and rational” people defined by themselves.

Undoubtedly, Rawls would argue that they cannot do so because their conception of reasonableness and rationality are less reasonable and just than his. My point is not to argue whose conceptions are more reasonable and just, but that Rawls' claim is controversial.

My argument, in this section, is *not* that Rawls claims that his political conception of the person is uncontroversial because its assumptions are currently accepted by every actual person, and as not every actual person currently accepts it, Rawls' conception of the person is controversial. Instead, my argument is that Rawls claims that his political conception of the person is uncontroversial because its assumptions *could be reasonably accepted* (or could not be reasonably rejected) by “actual people”<sup>50</sup> under the condition that they are not

---

<sup>50</sup> It should be noted that “actual people” here do not include those who violate basic human rights. Rawls does not mean that his political conception of the person must be acceptable to *every* actual person, but only to actual people who at least respect basic human rights. These “actual people” have different metaphysical/comprehensive claims, and Rawls claims that his conception of the person could be reasonably accepted by them because it does not require them to change their beliefs. Some might wonder why I argued that the criteria of a political conception of the person is that it could be reasonably accepted by “actual people” rather than by “idealized people.” They might claim that Rawls (1993; 1997) always requires that a political conception of justice must be reasonably accepted by “reasonable and rational persons” (or idealized people) rather than by actual people; actual people are required to view themselves as “idealized people.” They might claim that Rawls cares only about “idealized people.” Then, they would ask, why did I claim that, according to Rawls, a political conception of the person must

required to change their metaphysical/comprehensive claims or their weak-strong distinctions.

But as I showed that “actual people” could not reasonably accept his conception of the person without changing their weak-strong distinction, his conception of the person is controversial. And if Rawls insists that some people may need to change their belief about the weak-strong distinction, then I would say that his judgement is controversial because he must discuss controversial debate about which metaphysical/comprehensive claims should be more reasonable and just to be used as an assumption.

Rawls views his selected assumptions as uncontroversial because they could be reasonably accepted, e.g., as they are not too demanding and do not presuppose the existence or non-existence of God, everyone, religious or not, should be able to accept them, although they may not currently accept them. In contrast, Rawls would say that other assumptions are controversial because they could not be reasonably accepted, e.g., as they are too demanding and presuppose the existence of God, nonreligious people should not be expected to accept them. But why does Rawls hold that the former claim could be reasonably accepted, while the latter claim could not be reasonably accepted?

I would say that Rawls does not make his own judgement without referring to anything at all; instead, he refers to how “actual people” hold their metaphysical/comprehensive claims. He implies that his selected assumptions are uncontroversial because they could be reasonably accepted as they do not require people to change their metaphysical or comprehensive claims, including their weak-strong distinctions.

Those who believe in God, those who disbelieve in God, and so on could reasonably

---

be reasonably accepted by “actual people” rather than “idealized people”? I would say that this is because I am now talking about “a political conception of *the person*” rather than “a political conception of *justice*.” It is true that Rawls claims that a political conception of *justice* must be reasonably accepted by *idealized people* (or a political conception of *the person*), but I am now asking how and why *his* political conception of *the person* (or idealized people) should be considered justified that we must accept in the first place. Why can't we embrace *other idealized* conceptions of the person? Of course, Rawls would argue that this is because *his idealized* conception of the person is more reasonable and justified than *others*. But how and why? I would claim that Rawls tries to defend his claim here *not* by just insisting that because he thinks so without using any objective criteria at all. Indeed, Rawls uses the criteria that any political conception of *the person* would be justified only if it could be reasonably accepted by ordinary “actual people” (excluding basic human rights violators), that is, given certain actual people's comprehensive views, they could be expected to accept his idealized conception of the person. To sum up, Rawls argues that we (actual people) must view ourselves as idealized people in order to accept his principles of justice, and he claims that his idealized conception of the person is justified (and uncontroversial) because it could be reasonably accepted by us (actual people).

accept the assumptions because they are not incompatible with their beliefs, and they do not need to change their beliefs, e.g., those who believe in God (*and* hold the belief in God as a *strong* motivation) could reasonably accept Rawls' assumptions because they are not incompatible with their belief (in God), and they do not need to change their belief (in God) and their own weak-strong distinction.

But as I argued, some “actual people” do not accept his weak-strong distinction. For instance, some might say that as the presupposition of the existence of God is not too demanding, everyone, religious or not, should be able to accept this assumption, although they may not currently accept them. Rawls would surely reject this claim as unreasonable. But the point is that Rawls' conception of the person and his weak-strong distinction could be reasonably accepted *only if* these “actual people” must change their beliefs about the weak-strong distinction.

And as he implies that any conception of the person would be uncontroversial (or could win general acceptance) only if people could accept it without changing their beliefs, this indicates that his conception of the person is controversial because his selected assumptions could be reasonably accepted only if some “actual people” must change their weak-strong distinction.

But if he claims that some people may be required to change their belief about the weak-strong distinction, then he cannot avoid controversial debate about which metaphysical/comprehensive claims should be viewed as more reasonable and just to be used as an assumption in the first place. For example, the *assumption* that there is no essence of man is *more* reasonable and appropriate than the assumption that there is an essence of man.

I do not mean that his conception of the person reflects (even implicitly) how he thinks the metaphysical truth about humans really is, but that it reflects how he thinks which metaphysical/comprehensive claims about humans should be viewed as reasonable and justified for the sake of political agreement. As his judgement is not based on a general acceptance of actual people nor on the result of the contract, but on his own way of thinking, his justification of his conception of the person is comprehensive, not political.

For me, this is the controversial debate.<sup>51</sup>

It is true that Rawls argues that people may be required to change their comprehensive beliefs if they are incompatible with political conceptions of justice, and Rawls claims that this is still uncontroversial because they are not required to embrace other comprehensive doctrines, but only to embrace political doctrines which are fair and neutral for them. But this argument cannot be applied here because we are now discussing “before” any (political) conception of the person (or justice) is constructed; we are discussing how to construct a (political) conception of the person in the first place.

This is not to claim that *because* we are discussing “before” any (political) conception of the person is constructed, Rawls' conception of the person cannot be political at all. But to claim that *because* we are discussing how to construct a (political) conception of the person, and *because* a conception of the person could be called “political” only if it must meet a crucial condition, which is the uncontroversy condition (i.e., it could be reasonably accepted by people without making them change their metaphysical/comprehensive claims about the weak-strong distinction).

But since, as I showed, Rawls' conception of the person could be reasonably accepted only if one is required to change their view about the weak-strong distinction, Rawls cannot say that his conception of the person could be called “political.” Therefore, Rawls cannot say that people are simply required to embrace “political” doctrines.

#### 4.4.3 Rawls' Worst-Case Scenario Argument

Rawls may argue that his design of the original position is uncontroversial because it is not based on his moral judgment on controversial metaphysical debates, but on a general claim that they simply reflect the worst-case scenario that could happen in reality. The design is to reflect how we could solve the problem that might happen in the worst-case scenario rather than to reflect the best-case scenario.

---

<sup>51</sup> Mulhall and Swift (1996: 196) argue that Rawls does not take a metaphysical conception of the person because it does not refer to “ontological claims about the essence of human beings.” I agree with them. My argument is not that Rawls has such an ontological claim, but that the justification of his “weak” (metaphysical) assumptions is controversial because he needs to argue why those metaphysical assumptions should be called “weak” rather than “strong.” This does not necessarily mean that, by arguing this, Rawls would see those “weak” assumptions as the essence of human beings.

People are supposed to be mutually disinterested rather than benevolent not because it is more just and moral, but because it is more reasonable to assume that people are mutually disinterested as this is the source of a conflict of interest. If they are assumed to be benevolent, then there would be no conflict of interest among them, and they would not need justice to solve their conflict in the first place.

In other words, the assumption that people are mutually disinterested is the worst-case scenario that might happen, and it should be made in the original position so that justice would solve a problem for ordinary people rather than for people who are already benevolent. Let's call this the worst-case scenario argument or the disinterest thesis. The contrast between the disinterest thesis and the benevolence thesis is as follows.

The Disinterest Thesis:

1. People are disinterested.
2. They have a conflict of interest.
3. They need justice to solve this conflict.
4. They find out a conception of justice that solves their conflict in a way that they are not required to change their characteristics (e.g., they can be self-interested as usual).

The Benevolence Thesis:

1. People are benevolent.
2. They do not have a conflict of interest.
3. They do not need justice to solve any conflict.

In this sense, benevolence should be ruled out from the original position, otherwise justice would be unnecessary in the first place. I would argue that while it is true that there is a good reason to use the disinterest thesis, it does not always mean that benevolence needs to be ruled out from the original position. Let's consider the following revised benevolence thesis:

The Revised Benevolence Thesis:

1. People are disinterested.
2. They have a conflict of interest.



3. They need justice to solve this conflict.
4. They find out a conception of justice that solves this conflict in a way that they are required to change their characteristics (e.g., they need to become more benevolent and less self-interested) so that the very source of their conflicts of interest would be reduced.

We may assume that people are currently disinterested as Rawls assumes, but claim that the best conception of justice must be the one that deals with the very source of their conflict (i.e., disinterest), which is to encourage people to become more benevolent and less self-interested. Therefore, a conception of justice chosen by the revised benevolence thesis would promote benevolence among people.

This is possible only if we assume the characteristics of the hypothetical person as follows: they are currently self-interested, they have a sense of justice, and they think that although they are currently self-interested, they hold that they should be more benevolent and less self-interested but they do not want to do this unless they are assured that everyone else would do the same.

They are not currently benevolent but they hold that everyone should be benevolent; benevolence is not what people currently have, but what they want to have, given that everyone else would do the same. They do not see benevolence as a strong assumption; instead, it is a general and weak assumption that everyone should have.

According to Rawls' worst-case scenario argument, benevolence should be ruled out because it would make justice unnecessary. But the revised benevolence thesis shows that benevolence can be assumed in the original position without undermining the necessity of justice. That is, people who are currently disinterested would cause a conflict of interest, but they also possess a solution, which is to become more benevolent.

This is different from Rawls' disinterest thesis which assumes the characteristics of the hypothetical person as follows: people are currently disinterested, they have a sense of justice, and they consider benevolence as too demanding, so they think that a conception of justice must not promote benevolence (being neutral toward this motivation) even if they are assured that everyone else would do the same. The difference between the

disinterest thesis and the revised benevolence thesis is that while the former considers benevolence as too strong, the latter views it as weak.

Rawls (1971: 476) argues that a sense of justice differs from benevolence (or the love of mankind): "The difference between the sense of justice and the love of mankind is that the latter is supererogatory, going beyond the moral requirements and not invoking the exemptions which the principles of natural duty and obligation allow."

According to Rawls, therefore, while everyone is morally required to have a sense of justice, they are free to choose whether they would have benevolence (the love of mankind) or not. Benevolence, in other words, is the motivation that one wants to do something for others even if they know that others are not required to do the same.

This raises questions. How can we call people who require others to be benevolent really benevolent? If they are really benevolent, then why do they need to ask others to be benevolent, too? Doesn't this imply that the revised benevolence thesis is incoherent? I agree that people who would be benevolent only if others are required to do the same are not fully benevolent. But, according to Rawls, benevolence is also defined as a matter of degree: to be benevolent is to do something more than Rawls' principles of justice require.

For instance, if Rawls' conception of justice requires me to give 3 to others, then I would be called benevolent if I am willing to give more than 3. The disinterest thesis may view that giving more than 3 is too demanding (or too strong) for ordinary people, even if everyone would be required to do the same. But the revised benevolence thesis may view that giving more than 3 is not too demanding (or weak) for everyone, but only if everyone would be required to do the same.

Therefore, people who view benevolence as a weak motivation can claim that they are willing to be benevolent only if others are required to do the same. This will not happen to people who view benevolence as a strong motivation: they disagree that everyone should be required to be benevolent. We can see that to decide between the disinterest thesis and the revised benevolence thesis is to decide how to distinguish between weak and strong assumptions. In this sense, the worst-case scenario argument takes us back to the weak-strong argument; our controversial consideration would turn back again.

## 4.5 Summary

I argued that Rawls' hypothetical conception of the person is comprehensive rather than political because his reasons in choosing certain characteristics of the hypothetical person must engage in controversial debates about human characteristics. Since different conceptions of the person lead to different conceptions of justice, his conception of the person plays a crucial role. As his conception of justice is chosen by the hypothetical person, and as the hypothetical person is unjust in the first place, then any theory chosen by them would be unjust automatically, Rawls needs to ensure that his conception of the person must possess just human characteristics in the first place. I claimed that Rawls cannot do this without engaging in controversial debates.

His weak-strong argument cannot help avoid controversial debates about which human characteristics should be viewed as weak or strong because, given that people could not reasonably agree upon the same distinction of weak-strong motivations, Rawls can claim that his conception of the person is acceptable (and uncontroversial) only if he must require people to change their weak-strong distinction. This is controversial because he must discuss which metaphysical/comprehensive claims about human characteristics should be viewed as more reasonable and just to be used as an assumption.

His worst-case scenario argument also cannot help avoid controversial debates because one who believes that benevolence, for example, is a weak assumption may employ the worst-case scenario argument as Rawls does; the point of discussion would turn back to the weak-strong argument again. Rawls must reason why his selection of certain human characteristics (i.e., hypothetical assumptions), among others, are more justified than others.

## Chapter 5 Rawlsian Public Reason

### 5.1 Introduction

In the previous chapter, I have shown that Rawls' theory of justice is not neutral because in the process of constructing his own political conception of the person he cannot avoid engaging in controversial debates in deciding which metaphysical/comprehensive claims are more reasonable and just to be used as an assumption for a thought experiment, that is, the background of the Rawlsian state is justified on the ground that certain nonreligious human characteristics are more justified than religious ones in terms of being a moral agent who is entitled to choose conceptions of justice.

However, later on Rawls comes up with a new justification of the neutral state. Instead of focusing on a *particular* theory of public reason (his own political conception of justice, conception of the person, reflective equilibrium, etc.), he now focuses on a *general* theory of public reason (the fact of reasonable pluralism, the family of reasonable political conceptions, public reason, etc.).

Rawls proposes that, under certain conditions, other conceptions of justice and public reasons than his own may be justified: the neutral state is justified only if it protects liberty and promotes the reciprocity for citizens (*characteristics*), and they are justified on a public justification independent of any controversial comprehensive claim (*justification*). Rawls claims that his theory of justice (*justice as fairness*) is only a particular example of how to use public reasons; it is simply a possible public reason among others.

Given this, Rawls could claim that his conception of neutrality still holds even if one would reject his justice as fairness as the best conception of justice. In this chapter, I will deal with Rawls' *general* theory of public reason.

This chapter consists of two main sections. First, I will provide the outline of Rawlsian public reason. Second, I will examine two objections against Rawlsian public reason: the silence and disguise objection. I will show that while the silence objection fails to show that Rawlsian public reason is incoherent, the disguise objection succeeds.

## 5.2 The Outline of Rawlsian Public Reason

I have discussed the general idea of public reason in Chapter 1: for the state to be neutral, it needs to be neutral not only toward competing comprehensive doctrines but also toward reasons/justifications of conceptions of justice. In this section I will discuss Rawls' idea of public reason in detail to show why he thinks that his theory offers a neutral public reason.

Before I proceed, I would like to remind my terminology, discussed in Chapter 1, that the term “comprehensive doctrines” not only refer to people's ways of life but also people's ways of justification; comprehensive doctrines may include controversial debate concerning the good life, epistemology, metaphysics, morality, philosophy, religion, and so on. This is why Rawls (1993) argues that the neutral state must be neutral toward all comprehensive doctrines, whether religious, philosophical, metaphysical, epistemological, and so on.

Although the state may not advocate any particular way of life, it is not neutral if it still endorses some metaphysical or epistemological doctrines, and it may do this indirectly through public justification. The non-neutral state does not need to endorse a particular metaphysical conception directly by explicitly announcing that a conception is correct and people should pursue it; rather, the state may simply apply such a conception to public reasons.

In general, public reason is reason “we” give when justifying laws and public policies or fundamental political questions concerning rights and legal obligations. But this may cause misunderstanding as it is not clear who “we” are. Does “we” mean “everyone” or just “the state”? If “we” means “everyone,” does this mean that citizens are required to be neutral when discussing fundamental political questions? Does this mean that citizens need to think of themselves as the hypothetical person when discussing fundamental political questions even in the real life? If “we” only means “the state,” does this mean that citizens are not required to be neutral? And so on. In order to answer these questions, I will try to articulate the characteristics of Rawls' theory of public reason.

I propose that Rawls' theory of public reason (or Rawlsian public reason) has three related levels: the state level, the civil society level, and the private level. This distinction is

hinted by Habermas's interpretation of Rawls. Habermas (2011: 23-25) explains that, at the state level, Rawls holds that the state's public reasons must be neutral toward “the cognitive claims of competing worldviews,” but at the civil society level, instead of proposing that citizens are allowed to use any reason according to the conception of an overlapping consensus, Rawls rather proposes that comprehensive justifications are legitimately allowed only if they meet some certain criteria.

Habermas (2011: 24) argues that, according to Rawls, when it comes to public reasons at the civil society level, even an overlapping consensus is irrelevant because it does not primarily belong to the public sphere (or “the political” in Habermas' term). Habermas implies that, according to Rawls, public reason has three levels: the state level, the civil society level, and the private level. Let's discuss them in turn.

### **5.2.1 The State Level**

At this level, public reason means a reason “the state” gives to its “citizens” when justifying laws and public policies (Wall and Klosko, 2003: 4). This is the most straightforward meaning of public justification used in this thesis. In Chapter 2, I tried to show that the non-neutral state is the state that justifies its actions by appealing to comprehensive doctrines, whether religious or not.

For example, the Islamic state's justification appeals to a branch of Islam; the Thai state's justification appeals to Theravada Buddhism; the comprehensive liberal state's justification may appeal to God, natural laws, happiness, and human nature. These states are all not neutral because of their ways of justification.

Rawls considers himself distinct from many previous liberals like Locke, Mill, and Kant on the basis of public justification. While the aim of all liberals is to protect individual rights, they differ on how to justify such a notion. Rawls believes that for *the state* to be fair and just, it also needs to be neutral in terms of justification.

Rawls (1993, 1997) argues that his principles of justice could be justified without appealing to any controversial reason. His justification does not appeal to controversial claims like God or human nature, but it simply appeals to what Rawls believes that it is

shared and uncontroversial values like pluralism and democracy. The justification can go like this. In a pluralist and democratic society, citizens hold different irreconcilable but reasonable comprehensive doctrines – the fact of reasonable pluralism (Rawls, 1993: xvi, xxiv) or the background culture (Rawls, 1993: 14).

Since citizens are free and equal, and have different comprehensive doctrines, they should be able to pursue their comprehensive doctrines. The state should also be neutral toward their doctrines. Rawls (1993: 144) claims that this justification is a “freestanding view” – a reason that is independent of any controversial comprehensive doctrine. This freestanding view is a “public reason” – a reason which could be reasonably accepted by all free and equal citizens.

It is important to add that, as Larmore (1987: 50) argues, simply “the fact that different people hold different conceptions of the good life does not strictly entail the demand for a neutral state. Other responses are possible. The government might look to means of repression, or set up a lottery to pick the one ideal to be politically favored.” Because of this, Rawls could not simply argue that the state must be liberal and neutral because people hold different comprehensive doctrines, but he needs to further insist that since they are free and equal, the state is obligated to treat them equally.

It should be noted that, as I have already discussed in Chapter 4, Rawls' argument for the notion that people are free and equal has changed from *A Theory of Justice [Theory]* to *Political Liberalism*. In *Theory*, Rawls claims that people are free and equal by nature. In *Political Liberalism*, Rawls claims that the notion is accepted by actual citizens in a democratic society.

In *Political Liberalism*, Rawls still holds that the notion that citizens are free and equal is related to the actual world in one way or another, i.e., in *Theory*, it is related to the actual world because it is human nature, while in *Political Liberalism*, it is because it is how actual democratic citizens view themselves. Rawls holds that when deciding about a matter of justice, the state must view citizens as free and equal, and he justifies his notion by claiming that it is how actual citizens in democratic societies already accept.

It is important to understand, as I have mentioned and as we shall see more below, that

Rawls (1997: 774) now proposes that although he still believes that his conception of justice (justice as fairness) and his public reason are *the best* among other potential conceptions and public reasons, he contends that it is simply a possible and particular one among others. The justification of the neutral state could be based on *other* political conceptions/reasons, given that they belong to the family of reasonable public reasons, which is a freestanding view.

His theory of public reason, therefore, is broader than his own justification of theory of justice, including his political conception of the person. It generally argues that public reason must be in the form of a freestanding view in one way or another. This does not mean that Rawls now abandons his earlier argument (justice as fairness) at all, but only that his emphasis has moved from a *particular* use of public reason to a *general* use of public reason.

Methodologically speaking, it is claimed that there are two main approaches to make the justification of conceptions of justice neutral: the deductive approach and the ecumenical approach (Wall and Klosko, 2003: 11). The deductive approach is the idea that public justification is derived from “certain substantive moral considerations” or “shared moral commitments” (12) that are acceptable to people who hold different comprehensive doctrines. The ecumenical approach is the idea that there are so many “argumentative paths” for the justification of conceptions of justice, and the state could be neutral by not choosing between them.

It is claimed that Rawls' political liberalism combines both approaches: in terms of the deductive approach, Rawls justifies conceptions of justice by appealing to values shared among people in a democratic society; in terms of the ecumenical approach, Rawls claims that conceptions of justice could be justified by different reasons according to different comprehensive views (Wall and Klosko, 2003: 13). Rawls' deductive approach is his idea of freestanding view (or public reason) and Rawls' ecumenical approach is his idea of an overlapping consensus.

Rawls proposes that many potential conceptions of justice and public reasons (in the family of reasonable political conceptions of justice) may be different both in terms of contents and ways of justification, but what they all must share is that they must be



acceptable to every reasonable person who views themselves as a free and equal, reasonable and rational citizen. It may be possible that reasonable people evaluate different political conceptions of justice and public reasons differently, e.g., one may evaluate that one conception of justice and public reason is more justified than others, and other people may say otherwise. But every political conception of justice and public reason must be justified (acceptable) to every reasonable person.

For example, suppose that there are three political conceptions of justice and public reasons (A, B, C) belonging to the family of reasonable political conceptions of justice. These all three conceptions and reasons must be justifiable and acceptable to every reasonable person, but each person may rank these three conceptions and reasons differently; some might value A over B and C, others may value B over A and C, and so on. The important point is that if all these three conceptions and reasons are justifiable to all people, then the neutral state can legitimately embrace any of them.

Let us examine more on how Rawls constructs his public reason. As I have illustrated in Chapter 3, Laborde's public reason is constructed *not* by every actual person, but by (weakly) idealized people defined by herself. Thus, to see if a reason should be called a public reason is *not* to see if it can be understood by every actual person, but by her (weakly) idealized people. This is also the case for Rawls. But Rawls' conception of idealized people may be more demanding than that of Laborde.

Rawls, therefore, does not claim that public reasons must be acceptable to every actual person because it is easy to see that there must be someone who cannot understand or accept any reasonable conception of justice and public reason (e.g., Nazis, fascists, religious theocrats, etc.).

Rawls argues that public reasons must be constructed by people with the following *general* characteristics (reasonable people).<sup>52</sup> First, they must have a sense of justice. They must take other people's interests into account seriously. They must want to comply with justice, given that they know that others will do the same. In other words, they must meet the criterion of reciprocity (Rawls, 1993: 6-7; 1997; 774, 805). Given this, right

---

<sup>52</sup> According to Rawls (1993: 52), "reasonable" people are those who have a sense of justice and recognize the claims of others, while "rational" people are those who have their own ends they want to achieve. Rawls argues that people that should be the concern of public reason must be reasonable and rational.

libertarians like Hayek (2001; 2006; 2013), Friedman (2002), and Nozick (1974) would be called unreasonable people and must be excluded from the consideration of public reason.

Second, they must recognize the burdens of judgement (Rawls, 1993: 54, 58, 60-61). Given the fact of reasonable pluralism, they must understand that they cannot forcibly impose their own comprehensive doctrines/reasons on others, otherwise they would disrespect others as free and equal citizens. Given this, those who always insist that only their own comprehensive doctrines/reasons are true, and demand that others must accept them would be called unreasonable people and must be excluded from the consideration of public reason.

Third, they must accept the distinction between the political (public) and comprehensive (private) identity. As the private identity, they are free to view themselves according to their changing comprehensive doctrines/identities, given that they must not violate the public identity. As the public identity, they must leave their and other people's comprehensive doctrines/reasons/identities aside when they consider the construction of conceptions of justice and public reasons, otherwise they would disrespect other free and equal citizens by imposing their own comprehensive doctrines on others (Rawls, 1997: 799-800).

Everyone's public identity is always the same (as free and equal) and it does not change according to their changing comprehensive doctrines/identities (Rawls, 1993: 30, 280). Given this, people who refuse the distinction between the public-private identity would be called unreasonable people and must be excluded from the consideration of public reason.

Nevertheless, to say that reasonable people must possess the above characteristics is not to say anything specific about the characteristics of reasonable people. Indeed, we may have different ways to specify the characteristics of reasonable people, provided that they must be compatible with the above general characteristics (Rawls, 1997: 774). Rawls' political conception of the person, illustrated in Chapter 4, is a specific example. Others may come up with different specific characteristics.

### 5.2.2 The Civil Society Level

At this level, public reason means a reason “citizens” give to each other “in public” when justifying laws, public policies, and even their proposals. According to Rawls, not only the state but also ordinary citizens are demanded to be careful of their ways of reasoning *in public*. Rawls (1997: 769) proposes that citizens need to ask themselves how to make political agreements in public discussion. A question concerning public reason at the civil society level, therefore, could be asked as Rawls asks: “How though is the ideal of public reason realized by citizens who are not government officials?”

According to Rawls, the state's justification is discussed both in the original position and in the actual world. In the original position, Rawls holds that everything he assumes is just an assumption for the sake of the derivation of principles of justice. At this stage, the state would perceive citizens as free and equal individuals.

Rawls claims that this hypothetical identity is not meant to represent the truth of human nature or the ideal of human characteristics, so Rawls believes that appealing to such an identity is not controversial. Moreover, Rawls argues that this assumption is just for the sake of political agreements used only in the original position; after principles of justice are derived, actual citizens are free to perceive themselves according to their comprehensive doctrine.

However, this does not mean that citizens are totally free to perceive their identity as they want *in any case*, even in the actual world. Rawls (1997: 766, 799-800) proposes that, even in the actual world, citizens have the obligation to think of themselves and others in a certain way in a certain sphere: to think of themselves and others as free and equal, reasonable and rational beings when discussing fundamental political questions in the public sphere.

Rawls argues that if we do all these requirements, any reason we use could be called “public reason.” Rawls calls citizens' obligation to appeal to public reasons as “the duty of civility”<sup>53</sup> (Rawls, 1993: 226).

<sup>53</sup> According to Rawls, this duty is a moral rather than legal duty in the sense that citizens are expected to use public reason in order to affirm the legitimacy of the state power, as Rawls (1993: 217) writes that “since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty – the duty of civility – to be able to explain to one another on those fundamental

Thus, according to Rawls, public reasons must be applied not only to *the state* but also to *citizens* in the public sphere. This seems, at first glance, odd as Rawls always implies that the state should be neutral so that citizens could be equally free to pursue any comprehensive doctrine. So, one might question that if this is the case, then how could Rawls propose that citizens should also be neutral? Does this suggest that even citizens are not allowed to justify conceptions of justice according to their comprehensive reasoning? Is this not opposed to Rawls' idea of an overlapping consensus?

I propose that we distinguish between the public and private sphere. For Rawls, citizens need to use public reasons when discussing and justifying conceptions of justice “in public.” They are allowed to use nonpublic reasons in public only if they also support them with public reasons, and they are allowed to use nonpublic reasons in private even if they do not use public reasons at all. Rawls' conception of an overlapping consensus plays a role only in private, but in public citizens need to use public reasons (their nonpublic reasons are just optional).

But what does it mean to be “in public” and “in private”? According to Rawls, I would claim, the distinction is this: justifying conceptions of justice “in public” means when we discuss and justify fundamental political questions with those who hold different comprehensive doctrines, whereas “in private” means when we justify them with ourselves or with those who hold the same comprehensive doctrine.

The public-private distinction does not primarily lie in “where” (e.g., school, park, home, etc.), but in “who” (e.g., different religious people, etc.). Citizens are not legitimately<sup>54</sup> allowed to discuss and justify fundamental political questions by appealing to their comprehensive doctrine. They are expected to appeal to political reasoning or what Rawls calls “a reasonable family of political conceptions of right and justice” and “the idea of the politically reasonable addressed to citizens as citizens.” (Rawls, 1999: 125).

That is, citizens, when discussing these problems with others in public, need to view themselves and others as free and equal citizens. However, this does not mean that citizens cannot view themselves as a particular comprehensive identity in public discussion. It only

---

questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.” Habermas (2006: 5) calls this duty as “the ethics of citizenship” – “the kind of political virtues the liberal state must expect from its citizens.”

<sup>54</sup> I need to put the adverb “legitimately” here in order to make it distinct from “legally.”

means that they can do so only if they also view themselves as free and equal citizens. (More on this later). Given this, Rawls believes that they all could reasonably reach a political agreement for all citizens as free and equal (Rawls, 1999: 171).

Nevertheless, by saying that all citizens could reach a political agreement, Rawls does not mean to say that all citizens must end up with agreeing with the same particular public reason, but that they may reasonably appeal one of the family of reasonable public reasons. Rawls (1997: 773-74) argues that

“I have proposed that one way to identify those political principles and guidelines is to show that they would be agreed to in what in *Political Liberalism* is called the original position. Others will think that different ways to identify these principles are more reasonable. The content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one ... Political liberalism, then, does not try to fix public reason once and for all in the form of one favored political conception of justice. That would not be a sensible approach”

According to Rawls, then, his justification of principles of justice illustrated in *Theory* is just a kind of public reason among many others. Public reasons which are sharable and acceptable to all citizens, therefore, do not have just one reason; instead, we may use many public reasons, given that they fall in a family of reasonable political conceptions.

In this sense, while citizens are expected to perceive themselves and others in public as free and equal citizens, they do not need to appeal to Rawls' own public reason in particular. Given the requirement of a family of reasonable political conceptions, citizens are allowed not only to use different public reasons but also to different conceptions of justice than that of Rawls. Rawls (1997: 776) writes that

“Thus, the content of public reason is given by the principles and values of the family of liberal political conceptions of justice meeting these conditions. To engage in public reason is to appeal to one of these political conceptions – to their ideals and principles, standards and values – when debating fundamental political questions. This requirement still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support”

According to the above passage, “comprehensive doctrines” are *nonpublic* reasons which fall out of a family of reasonable political conceptions. And “principles and policies” refer to conceptions of justice. Under the certain requirement, which will be discussed more later, Rawls allows that citizens may support any conceptions of justice, given that they could be justified by public reasons.<sup>55</sup>

Rawls' principles of justice are just ones of the reasonable conceptions of justice as Rawls (1997) writes that “there are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one” (773-74), and that “we get different formulations of the principles of justice and different contents of public reason” (774).

Although Rawls himself sees his “justice as fairness” as the best conception of justice, he also sees other *political* conceptions of justice as reasonable and legitimate. This point is important if we are to understand Rawls' conception of legitimacy. According to Rawls, any conception of justice would be justified only if they could be accepted as reasonable by all free and equal citizens.

Such conceptions are said to be imposed on all citizens fairly and justly because they are not based on any comprehensive doctrine and could reasonably be supported by all citizens, though *some* citizens may prefer other political conceptions of justice to the existing ones. Citizens do not need to use the same content of public reason as the state is using at the moment, but they need to accept such the state's public reason as legitimate.

One may ask why ordinary citizens should have the duty of civility in the first place. Rawls (1997: 769, 781-82) argues that all citizens have the moral duty to stabilize, secure, and realize the legitimacy of democracy. In order for democracy to be enduring, all citizens need to feel relevant to laws imposed on them, in which they can do this by thinking as if they were legislators themselves so that they would feel that they were the ones who imposed laws on themselves rather than being imposed by others.

Since any conception of justice must be imposed on everyone, both conception and its justification must be acceptable and sharable to all citizens so that no one would feel that

---

<sup>55</sup> In other words, any conception of justice which could be justified by public reasons are the *political* conceptions of justice.

they are arbitrarily and unfairly governed by other people's comprehensive doctrine, and because of this, all citizens have the moral obligation to make their argument concerning fundamental political questions acceptable and sharable to all citizens, otherwise they are trying to impose their comprehensive view on other fellows.

Rawls believes that, given his criterion of public reason, enforcing democratic laws on everyone is legitimate even if some actual citizens may say otherwise. However, despite that, Rawls is still afraid that society would be insecure if citizens are unwilling to comply with them – the stability problem. The question concerning the stability problem is not whether democratic laws are legitimate but about how to make democratic society secure. Rawls argues that although democratic laws may be legitimate, they could be insecure if citizens simply accept them for the wrong reason (nonpublic reason).

In *Theory* (Part III), Rawls argues that citizens should comply with democratic laws (or principles of justice) because they reflect their human nature. But in *Political Liberalism* and *The Idea of Public Reason Revisited*, he argues that citizens should comply with democratic laws because they reflect their democratic citizenship and democratic culture (the priority of public reason over nonpublic reason or comprehensive reason). Citizens need to use public reasons in public discussion to secure democratic culture: they should separate between public reason and nonpublic reason, and recognize that they belong to different spheres.

If democratic culture is secured, Rawls believes, democracy would be unconditionally accepted and for the right reasons. But if they use nonpublic reasons to justify basic rights of all citizens, then they would fail to secure this priority, and they would be more likely to reject democracy whenever they find that democracy is no longer an effective means for their comprehensive doctrine to flourish.

To justify democracy for the right reason (public reason) is to accept it unconditionally for its own sake, e.g., democracy is justified because it is fair and just for everyone, regardless of their comprehensive doctrine. But to justify democracy for the wrong reason (nonpublic reason) is to accept it conditionally as long as it serves their comprehensive doctrine, e.g., democracy is justified because it helps secure or make their comprehensive doctrine prosper. Rawls fears that, one day, they would resist democracy if it becomes useless for

their comprehensive doctrine. Therefore, Rawls (1997: 799) proposes that the duty of civility would help secure the political culture/norm of a democratic society.

It should be noted that one of the most recent debates on the role of religious reason also lies in the civil society level. Many scholars discuss whether, and to what extent, citizens should be legitimately permitted to use religious reasons when discussing fundamental political questions in public.

There are two main positions concerning this question: exclusivism and inclusivism. The former is the position that comprehensive doctrines, including religious reasons, should be excluded from public justification.<sup>56</sup> The latter is the position that comprehensive doctrines, including religious reasons, should be allowed in public justification.<sup>57</sup>

Many exclusivists and inclusivists are the supporters of the neutral state as they agree that the state should be neutral toward religion; exclusivists argue that religious reasons should be excluded from public justification not because it is inferior to other reasons but because they believe that it is not shareable to all members of the public (Thunder, 2006: 678; Gaus and Vallier, 2009: 56); inclusivists include religious reasons in public justification not because it is superior to other reasons but because they believe that it does not violate the principle of state neutrality (March, 2013: 523-24).

Interestingly, Rawls could be put into both positions, depending on what versions of Rawls. It is said that Rawls used to stand for the too restrictive exclusivism as he proposes that public justification must be a reason which could be supported by all reasonable citizens, and any comprehensive doctrine must be excluded from public justification. This position can be called the standard approach (Boettcher and Harmon, 2009: 8) or the original Rawlsian approach (March and Steinmetz, 2018: 205).

However, Rawls later revises his position by adding that citizens may legitimately introduce their comprehensive doctrine, religious or nonreligious, in public justification *provided that* they must also provide public reasons to justify conceptions their comprehensive doctrine is said to support – the *Rawlsian proviso* (Rawls, 1997: 776;

<sup>56</sup> There are different degrees, from weak to strong, of exclusivism. See March and Steinmetz (2018: 204-05).

<sup>57</sup> Again, there are different versions of inclusivism. See March and Steinmetz (2018: 207-12).



1999: 125, 144; March and Steinmetz, 2018: 208-09).

As Rawls' revised idea gives more role for comprehensive doctrines to play in public justification, this approach could be put into inclusivism.<sup>58</sup> To put it concretely, the Rawlsian proviso is the idea that one could use comprehensive reasons, religious or nonreligious, to discuss fundamental political questions in public, but they must also use public reasons (a freestanding view).

For example, one may justify laws with their religious language (e.g., laws are justified because they are compatible with God's law) only if they also use public reasons to justify those laws (e.g., laws are justified because they are fundamental to citizens' liberty and equality). While public reason is compulsory, comprehensive reason is optional; without public reason, comprehensive reason is not allowed.

Rawls (1993: 254) argues that President Abraham Lincoln legitimately criticizes slavery on his religious reason without violating public reason because, firstly, in *his* day,<sup>59</sup> his religious reason was uncontroversial among citizens (it was widely shared by citizens), and secondly, his religious reason does not affect the foundation of matters of justice, or even if they do, his religious reason could be supported by public reason. Given this example, one might conclude that the Rawlsian proviso could be applied to state officials and citizens.

However, I do not think that Rawls means to imply that the Rawlsian proviso could be applied to the state. At first glance, it seems that Rawls allows state officials to appeal to comprehensive reasoning, given that it must provide public reason, as he argues that Lincoln as a president may use his religious reason in criticising slavery. But I would argue that Rawls simply discusses whether Lincoln's religious reason violate public reason in *his* day, not in *ours*, and according to Rawls, as Lincoln's religious reason is a public reason itself, his religious reason is not a comprehensive reason in *his* day.

Rawls does not imply that the state may use any comprehensive reason even if it can provide public reasons. One may question whether Rawls' claim that Lincoln's religious

<sup>58</sup> I hold that Rawls' position is inclusivism because the Rawlsian proviso is his latest position.

<sup>59</sup> Rawls (1993: 254) argues that "Lincoln does not violate public reason as I have discussed it and as it applied in his day – whether in ours is another matter."

reason is a public reason in his day is historically correct, but one should not conclude that the Rawlsian proviso could be applied to the state level.

Apart from Rawls, many scholars have been discussing the role of religious reason at the civil society level. Fish (1999), for example, proposes that citizens do not need to think about mutually understandable public reason; they should be legitimately permitted to use any sort of reason; “all reasons are potentially public reasons” (March and Steinmetz, 2018: 212-13). This view may be called the *laissez-faire* view (Boettcher, 2005: 499).

Gaus and Vallier (2009) propose what they call the “convergence justification” – citizens may justify laws according to their religious reason in public, given that they could be accepted as reasonable by others; they do not need to search for public reasons shared by everyone; they may legitimately use their comprehensive reasons because doing so is not inconsistent with the fact of reasonable pluralism and the notion that everyone is free and equal, properly understood.

Habermas (2006: 10) argues that the Rawlsian proviso restricts religious citizens too much; he, therefore, provides his own proviso – “the institutional translation proviso.” He proposes that the public sphere is divided into the formal public sphere (parliaments, courts, etc.) and the informal public sphere (public discussion among citizens). While he agrees with Rawls on the role of religion in the formal public sphere, he disagrees with him in the informal one.<sup>60</sup>

For him, religious citizens should be allowed to legitimately use their religious reasoning in the informal political sphere *even if* they cannot translate it into accessible nonreligious language,<sup>61</sup> given that they must accept that only accessible nonreligious reasons can be

<sup>60</sup> Habermas (2011) uses the term “the political” to refer to the public sphere as a whole (the *formal* and *informal* political sphere).

<sup>61</sup> In fact, Habermas (2006: 15) uses the term “secular language.” According to Habermas, secular citizens are both nonreligious citizens (those who use comprehensive reasoning but do not oppose religion directly) and anti-religious citizens (those who oppose religion directly). Anti-religious citizens, for example, have the view that religion will wither away when science is developed. He demands that secular citizens of the second kind have the burden to change their mentality by viewing religious argument in the informal political sphere as a reasonable disagreement. According to Habermas, “secular” language is the language of actual nonreligious citizens without a negative view on religion. He understands that such a nonreligious language is accessible to all citizens. But since this thesis uses the term “secular” as a freestanding view independent of any comprehensive doctrine, I would prefer, for the sake of clarity, to use “nonreligious” language instead of “secular” language when Habermas refers to accessible language, and to use “anti-religious” citizens instead of “secular” citizens when Habermas refers to those with a negative view on religion. Although Habermas agrees with Rawls that anti-religious doctrines are publicly inaccessible, he argues that nonreligious doctrines are accessible. C.

available in the formal political sphere.

Habermas argues that some religious doctrine could be the source of the understanding of laws and policies, but as religious language cannot be accessed by other nonreligious fellows, he suggests that religious doctrines must be translated into nonreligious language in order to pass the threshold of the formal public sphere. He believes that his proviso gives more role for religious citizens to play in public discussion than Rawls' proviso.

Habermas (2006: 14-18; 2011: 26-27) argues that his proviso is fair to everyone, religious or not, as he claims that the burden of translation is not unfairly imposed on only religious citizens (i.e., to translate their religious language into accessible language in the formal political sphere), but the burden is also imposed on anti-religious citizens (i.e., to translate their anti-religious language into accessible nonreligious language in the informal and formal political sphere).

Whether the Habermasian proviso is substantially alternative to the Rawlsian proviso, or which proviso, including other provisos, is more reasonable has been discussed by many scholars such as Weithman (2002), Boettcher (2009), Thaler (2009), Hedrick (2010), Sikka (2016), Tsz Wan Hung (2017), Finlayson (2018), and Jakobsen and Fjortoft (2018).

This debate is concerned about the role of “citizens” rather than “state”; it focuses mainly on the following questions. Should “citizens” be neutral in terms of public justification? Should “citizens” be legitimately permitted to use religious reasons in public justification?

This thesis, however, focuses primarily at the state level and asks the following questions: Can “the state” be really neutral in public justification? Should “the state” be permitted to use controversial reasoning in public justification? What should be the role of “the state” in terms of public justification? Nevertheless, I will deal with the relationship between the role of the state and public discourse in the civil society in the final chapter.

---

Taylor (2011) is right in saying that Habermas does not treat religion in the same way as other nonreligious comprehensive doctrines. Habermas accepts that there are differences between religious and nonreligious comprehensive doctrines (e.g., Kantianism, Utilitarianism, Hegelianism); while the former is not publicly accessible, the latter is (Habermas and Taylor, 2011: 61). In this sense, although Habermas agrees with Rawls that public reason in the formal public sphere must be accessible, he disagrees with Rawls that nonreligious comprehensive doctrines are public inaccessible.

### 5.2.3 The Private Level

At this level, public reason means a reason “citizens” give to “themselves” and “other citizens in private” when justifying fundamental political questions. “Other citizens in private” are those who already hold the same comprehensive view. For instance, Muslims use their religious reason to each other when discussing fundamental political questions.

However, although Rawls makes a distinction between the public and private sphere, this does not mean that he treats the private sphere as totally separate from the public sphere. Instead, Rawls (1997: 791) treats the whole society as “a single social system” in which the protection of basic rights is extended throughout our life.

This does not mean that the family life must apply conceptions of justice internally, but that even the family life is protected by conceptions of justice. Our private life, including our comprehensive view, are not allowed to contradict with conceptions of justice and public justification, but must be compatible and supportive of them.

According to Rawls, public justification would be fully completed and secured only if citizens could relate conceptions of justice to their comprehensive doctrine in the private sphere so that they would willingly affirm conceptions of justice both in public and in private.

In order for a democratic society to be fully unified and stable, Rawls (1993: 134; 2001: 34) proposes “the idea of an overlapping consensus of reasonable comprehensive doctrines” (let's call this “the idea of an overlapping consensus”) – the idea that “the reasonable doctrines endorse the political conception, each from its own point of view.” We use our comprehensive reasoning as the justification of conceptions of justice. For instance, one may reason that we should follow conceptions of justice because they are God's law (Church, 1996).

At the civil society level, as we have seen, citizens are allowed to use their comprehensive reasons in public discussion only if they also provide public reasons. In contrast, at the private level, citizens are not expected to use public reasons at all. They are allowed to use their comprehensive reasons even if they do not use public reasons.

Since this all happens in the private sphere, in which their doctrine is not addressed to other fellows who hold different comprehensive views, deriving conceptions of justice from comprehensive views is justified as they are not required to be acceptable to all citizens.

According to Rawls (1993: 150-51; 1997: 804), everyone must adjust their comprehensive doctrine to be compatible with political conceptions of justice, that is, they must justify conceptions of justice as “true, or right, by a reasonable comprehensive doctrine.” For instance, if one's comprehensive doctrine originally says that God says that humans are morally unequal, then they may revise that God actually says that humans are morally equal.

To recall Rawls' ecumenical approach (or the overlapping consensus argument), there are many argumentative paths for the justification deriving from comprehensive doctrines, and the state could be neutral by not choosing between them or by appealing to a freestanding view. At first glance, this approach seems to have nothing to do with the state's public reason as it is relevant to citizens (in the private sphere) rather than the state. This approach tells that citizens could justify conceptions of justice according to their comprehensive doctrines.

However, this approach is also relevant to the state in the sense that it implies that the state should respect the overlapping consensus: given that citizens' comprehensive reasons are reasonable in the sense that they do not violate Rawlsian public reason, the state must allow them to use their comprehensive reasons and must not judge which comprehensive reasons are more reasonable. I will discuss this in the final chapter.

So far, I have shown that Rawlsian public reason could be categorized into three levels: the state level – reasons the state gives to its citizens; the civil society level – reasons citizens give to each other in public; the private level – reasons citizens give to themselves and others in private. Next, I will examine whether Rawlsian public reason at the state level is coherent .

### 5.3 The Incoherence Objections

In this section, I will examine whether Rawlsian public reason (Rawls' general idea of public reason) is coherent. Again, my focus is confined only to state neutrality in terms of justification, not in terms of characteristics, which has been debated by many scholars such as Kymlicka (1989a), Patten (2012, 2014), and so on. I will discuss two main objections claiming that Rawlsian public reason is incoherent, i.e., it cannot be neutral in a way that it claims to be.

The first objection may be called the silence objection – the state, know it or not, cannot avoid controversial moral reasoning, that is, the state implicitly justifies itself by not using any reason or argument at all. The second objection may be called the disguise objection – the state, know it or not, cannot avoid judgements of controversial metaphysical or comprehensive moral questions. I will argue that while the silence objection fails to show that Rawlsian public reason is incoherent, the disguise objection succeeds. Therefore, I conclude that Rawlsian public reason is incoherent, according to the disguise objection.

#### 5.3.1 The Silence objection

The silence objection may be articulated as follows. Rawls proposes that the state's public reason (a freestanding view) must be uncontroversial, but, in fact, the Rawlsian state is implicitly based on controversial moral reasoning. The foundation of Rawlsian secularism is based on no reason or argument at all. It implicitly appeals to the following line of argument: xxx is reasonable because it is reasonable, yyy is unreasonable because it is unreasonable.

As the reasoning provides no reason at all, this may be called the silence argument. This argument may be uncontroversial to those who already share the same values, but it would be controversial to those who do not. Therefore, this objection would imply, Rawlsian public reason is incoherent because it fails to be neutral in terms of public reason as it claims to be.

I should say at the beginning that, indeed, this objection against Rawlsian secularism is not explicitly defended by any existing scholar, as far as I know. Some scholars (e.g., Bedi,

2009; Greene, 2013) use an argument similar to the silence argument, as above characterized, in some respects. But they use it to criticize anyone who simply defends the conception of human rights without giving any further reason rather than Rawls' philosophy in particular. And by using this argument, they do not explicitly conclude that this argument is controversial; instead, they simply conclude that this argument is unjustified because it fails to give any reason.

In this sense, strictly speaking, we cannot say that their argument aims to criticize Rawlsian public reason as incoherent. However, for the sake of discussion, I would claim that the silence objection, as above characterized, could be articulated from some aspects of their argument.

One may begin by asking why we need to search for and defend a freestanding view (Rawlsian public reason at the state level) in the first place, or why the state should view citizens as free and equal in the first place. Rawls (1993: 60-61, 129, 150-51, 174) could reason that since we are living in pluralist societies where people recognize and value “the fact of reasonable pluralism,” “democratic culture,” “citizens as free and equal,” and so on, we should search for a political regime based on these notions.

For example, Rawls (1993: 13) argues that “[a] feature of a political conception of justice is that its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.”

Rawls does not try to give an answer to the question of why we should justify “the public political culture of a democratic society” in the first place, but he rather holds that such a culture is already justified; he, therefore, just tries to work out a political conception of justice congruent with such a democratic culture. Rawls' argument begins with democratic culture as if it is justified in itself and needs no any further justification; he sees it unimportant to discuss why we should begin with it in the first place.

One may ask further why we should recognize and value the fact of reasonable pluralism, democratic culture, and so on in the first place, or how Rawls can justify them. And even if Rawls provides any argument, one may keep asking why we should value them again and again. If Rawls says that we should value democratic culture because of xxx, then he

may be asked why xxx in the first place, and if he says that we should value xxx because of yyy, then he may be asked why yyy in the first place, and so on.

At the end, one may claim, Rawls must stop his argument (reason) somewhere; he cannot keep providing arguments forever. For example, he may just say that people should recognize the fact of reasonable pluralism because it is reasonable to do so (the silence argument).

The silence argument is similar, *in some aspect*, to the argument against a conception of rights by Bedi (2009: 7): “it’s problematic simply to say that we all have a right not to be harmed by others. Rights problematically distract us from considering the rationale on which the state acts”; and by Greene (2013): “arguing about rights is a dead end. When you appeal to rights, you’re not helping to resolve the issue. Instead you’re pretending that the issue has already been resolved in some abstract realm to which you and your tribespeople have special access” (305); “when we appeal to rights, we’re not making an argument; we’re declaring that the argument is over” (351).

According to Bedi and Greene, the assertion on rights is nothing but making any argument over as we do not need to provide any further reason of why people should have certain rights in the first place; instead, the assertion on rights makes sense only to those who already share the same view.

Just as Bedi and Greene argue that appealing to the rights claim makes “reason” unnecessary (one should have certain rights because one should have certain rights), the silence objection could argue that giving *no reason* for actions makes “reason” unnecessary (xxx is justified because it is justified).

One may argue that this indicates that the Rawlsian state implicitly appeals to the silence argument. And since the silence argument is controversial, the Rawlsian state fails to be neutral as it claims. In other words, it is incoherent. Now I will examine whether this objection succeeds to criticize Rawlsian secularism as incoherent.<sup>62</sup>

---

<sup>62</sup> As I said earlier, the silence objection is articulated from *some* aspect of Bedi’s and Greene’s argument, not from their argument as a whole. Therefore, to say that the silence objection fails is *not* to say that Bedi’s and Greene’s original arguments fail.



I will argue that the silence objection fails to show that Rawlsian public reason is incoherent. If to assess whether one is coherent is to assess whether one can do as one promises to do, then Rawls may claim that he never promises to do as the silence objection claims that he promises to do. He can claim that although he promises to be neutral, he never promises to be neutral *in the way* as described by the objection in the first place. Thus, the silence objection cannot conclude that Rawlsian public reason is incoherent.

Rawls begins his argument with certain judgements. That is, he already judges that the fact of reasonable pluralism, democratic culture, citizens as free and equal, and so on are crucial and must be taken as the starting point. Given this, he can claim that the aim (promise) of his theory is just to work out a political system that best fits with those starting facts. He may claim that the question why we should begin with those facts is not his concern in the first place. As Rawls (1997: 805-06) argues that

“Of course, fundamentalist religious doctrines and autocratic and dictatorial rulers will reject the ideas of public reason and deliberative democracy. They will say that democracy leads to a culture contrary to their religion, or denies the values that only autocratic or dictatorial rule can secure. They assert that the religiously true, or the philosophically true, overrides the politically reasonable. We simply say that such a doctrine is politically unreasonable. Within political liberalism nothing more need be said”

According to Rawls, if one argues that democratic culture is unjust, then what we could do is to simply assert that such a claim is “politically unreasonable,” and “nothing more need be said.” Rawls would say that while he promises that public reason must be acceptable to people, this only means “reasonable” people, not “unreasonable” people. He never promises that public reason must be acceptable to every actual person, including whom he views as unreasonable people.

Thus, even if some “unreasonable” people would complain that they cannot understand and endorse Rawlsian public reason, Rawls would not find this problematic because he never tries to make these people accept his public reason in the first place. In other words, Rawls may say that although he may employ the silence argument, he just uses it toward “unreasonable” people, not “reasonable” people.

Rawls might hold that every “reasonable” person should not question why we should begin with the fact of reasonable pluralism, democratic culture, and so on in the first place.

Moreover, given that every reasonable person accepts the same starting point, they may justify them according to their different reasons. In this sense, the Rawlsian state, even if it uses the silence argument toward “unreasonable” people, is still uncontroversial and acceptable to every “reasonable” person as it promises to do in the first place.

The silence objection may argue further that the silence argument is also controversial and unacceptable to even the so-called “liberal” people. The objection may claim that even if we exclude someone like Nazis, fascists, religious extremists, and so on out of our concern, we should still find the silence argument controversial and unacceptable to some “liberal” people because they may find the way of justification too controversial. For example, someone who respects basic human rights but believes that we cannot justify any laws and policies without mentioning God (Cross, 2018).

These people are liberal as they respect human rights. But they cannot understand any reason that fails to mention God; as they really believe that human rights are given by God, to fail to mention God is to disrespect God. Let's call this kind of people “seriously religious people.” The silence objection may claim that Rawlsian public reason is incoherent because it cannot be endorsed by seriously religious people.

However, I believe that this argument still fails to criticize Rawlsian public reason. I believe that Rawls never promises to make his public reason justifiable to seriously religious people. For Rawls, “reasonable” people must not only respect basic human rights but must also take the fact of reasonable pluralism seriously (in terms of justification). That is, they must be able to view other people as a free and equal person who cannot accept our own comprehensive doctrines/reasons.

They must be able to understand that they should not demand others to accept their own comprehensive doctrines/reasons. In this sense, “seriously religious people” cannot be called “reasonable” according to Rawls' standard, and they must be excluded from the consideration of Rawlsian public reason in the first place.

According to Quong (2011: 139-40), this discussion may be characterized as the difference between what he calls “the *external* conception of political liberalism” and “the *internal* conception of political liberalism”:

“The external conception supposes that liberalism must be justifiable to persons who cannot be assumed to endorse any basic liberal norms or values. This supposition, however, is too ambitious. I do not believe liberal rights and principles can be consistently justified to persons who do not already embrace certain abstract liberal values (e.g. the moral ideal of persons as free and equal, and of society as a fair system of cooperation). The internal conception's more modest ambition – to work out a model of political justification *for liberals* – is not an attempt to do the impossible, and thus it avoids the difficulties that beset the external model”

According to the external conception, the Rawlsian state would be justified only if it must be justifiable to every actual *liberal* person, including seriously religious people who respect basic human rights (Quong, 2011: 141). In contrast, according to the internal conception, the Rawlsian state would be justified only if it must be justifiable to only “Rawlsian reasonable” people. I think that Quong (2011: 139) is right that Rawls himself is committed the internal conception, not the external one.

However, the silence objection might argue further that Rawls' distinction between reasonable and unreasonable people is undesirable. Someone who is viewed as “unreasonable” according to Rawls should rather be viewed as “reasonable” instead. In other words, Rawls' conception of reasonableness is undesirable.

But, however convincing this argument may be, this reply still has nothing to do with the incoherence objection against Rawlsian public reason. Although it may convincingly show that Rawls' conception of reasonableness is undesirable, it still does not show how Rawls' conception of reasonableness is incoherent. Therefore, the silence objection fails to criticize Rawlsian public reason as incoherent.

### 5.3.2 The Disguise Objection

The heart of Rawlsian public reason lies in the claim that there are significant differences between disagreements on political questions (political disagreements) and disagreements on comprehensive moral questions (comprehensive disagreements), and that it is possible to keep them apart. This must be true, otherwise the state would fail to be neutral.

For instance, if political and comprehensive disagreements are not significantly different, then it does not make sense to say that the state should treat them differently. If even

political disagreements are too foundational, controversial, and irreconcilable just as comprehensive disagreements, and if the state must engage in such a political disagreement, then the state cannot claim to be neutral toward comprehensive disagreements.

Rawls argues that whereas it is unreasonable to assume that comprehensive disagreements could be reconcilable, it is reasonable to assume that political disagreements could. This is because while the former is concerned about the ultimate truth which is controversial, the latter is simply concerned about how democratic citizens should live together. He believes that these two kinds of disagreement can and should be separated.

This argument may be attacked from different angles. For example, one may argue that it is not true that political and comprehensive disagreements are significantly different, that they cannot be separated, that the state should be neutral toward both political and comprehensive disagreements, that the state should not be neutral toward both, and so on.

In this section, I will defend the claim that while it may be true that political disagreements are significantly different from comprehensive disagreements, it is not always possible to keep them apart, and therefore, the state cannot be neutral toward comprehensive disagreements as it promises. The Rawlsian state is incoherent in some cases. While it promises to distinguish between political and comprehensive disagreements, it fails to keep them apart because the state, know it or not, cannot avoid implying some certain view on comprehensive disagreements. What Rawls calls a freestanding view is a comprehensive judgment in disguise. Let's call this argument "the disguise objection."

I will illustrate and defend the disguise objection through the case of abortion because I believe that this is the most compelling case. I would say that the disguise objection is similar in some respects to what some may call "the incompleteness objection" (Williams, 2015: 24). However, there are some differences between the incompleteness objection and the disguise objection.

According to the incompleteness objection, the state cannot give an answer to the political questions of abortion (e.g., Is abortion justified? Should women have abortion rights?) unless it must deal with the comprehensive moral questions of abortion (e.g., Does a fetus

have a moral status? Is a fetus a moral person? When exactly does human life begin morally?). But since Rawlsian public reason can only deal with political questions, not comprehensive moral questions, it is incomplete and indeterminate on the abortion case. Since it cannot deal with the comprehensive moral questions of abortion, it cannot give an answer to the political questions of abortion. The incompleteness objection implies that Rawlsian public reason should be rejected because it cannot answer the political questions of abortion.

Williams (2015: 41-42) argues against the incompleteness objection. He insists that Rawlsian public reason can give an answer to the political questions of abortion even if it cannot deal with the comprehensive moral questions of abortion. This is possible because, he argues, if Rawlsian public reason is limited to deal only with the “political” questions and not any “comprehensive” ones, then the state should just leave all comprehensive questions about abortion aside, which means that we should give a fetus no weight at all.

In effect, the state would hold, and requires citizens to hold, that a fetus has no moral status. According to Rawlsian public reason, therefore, abortion is always justified. Although Rawlsian public reason may be indeterminate on the question of the moral status of the fetus, it is determinate on the political questions of abortion.

I agree that as long as the incompleteness objection implies that Rawlsian public reason is indeterminate on the political questions of abortion, it fails because, as Williams argues, Rawlsian public reason can give an answer to the political questions of abortion even if it cannot deal with the comprehensive moral questions of abortion directly. But the disguise objection that I defend does not say that Rawlsian public reason is indeterminate on the political questions of abortion.

Instead, it claims that the state's answer to the political question of abortion *already* disguises some certain answer about the moral status of the fetus. The state does not need to deal with the comprehensive moral questions of abortion directly. It may rule that a fetus has (or has no) moral status by simply *ignoring* such a question. The state that legalizes abortion, know it or not, already rules that a fetus has no moral status, although the state may really believe that it does not deal with the comprehensive moral questions of abortion.

As Williams (2015: 42) argues, Rawlsian public reason requires us to “ignore” the comprehensive moral questions of abortion, and this is equivalent, in effect, to saying that a fetus has no moral status.<sup>63</sup> This supports my disguise objection in the sense that the state cannot avoid implying the moral status of the fetus in one way or another. The state cannot just say that women should have abortion rights, and that it will not say anything about the moral status of the fetus. It cannot hold that people's view on the moral status of the fetus (whether they judge that a fetus has or has no moral status) would not affect the answer to the political questions of abortion.

He does not claim that the Rawlsian state allows citizens to have different views on the moral status of the fetus in the public sphere; instead, he claims that it requires citizens to hold that a fetus has no moral status in the public sphere (for political purposes).

The disguise objection says that the fact that the state implies the moral status of the fetus, whether by engaging in the question directly or by ignoring such a question, indicates that it cannot avoid a controversial claim about the moral status of the fetus. Ideally, the neutral state wants to grant women abortion rights without saying anything about the moral status of the fetus. It wants to say that abortion is justified, whatever one would say about the moral status of the fetus.

I argue that the Rawlsian state is incoherent because while it claims to be neutral, it indeed cannot avoid implying the moral status of the fetus. I do not claim that Williams would agree with me that Rawlsian public reason is incoherent. He might believe that Rawlsian public reason is coherent because although it has a say on the moral status of the fetus, it does not engage in the comprehensive moral questions about abortion; instead, it says that a fetus has no moral status because it ignores such a question. But this does not deny the fact that the state cannot avoid implying the moral status of the fetus, which is controversial among citizens.

My claim that the fact that the Rawlsian state implies a certain view on the moral status of the fetus in the public sphere is an indicator that it is incoherent because it implies a controversial view may be misunderstood. For instance, some might argue that the

---

<sup>63</sup> The strategy of this claim is that if any question falls *outside* the scope of Rawlsian public reason, then we should *ignore* those questions. If a comprehensive moral question of abortion falls outside Rawlsian public reason, then we should ignore the question, and we may exclude a fetus from our concern.

Rawlsian state must also ignore the question if God commands laws, and this would be equivalent, in effect, to implying that God does not command laws in the public sphere.

They might argue that if I claim that that the Rawlsian state implies the moral status of the fetus is controversial, then I should conclude that that the Rawlsian state implies that God does not command laws (in the public sphere) is controversial for the same reason. But this is wrong, they could argue, because the Rawlsian state does not promise to be neutral toward any comprehensive view. Rather, it views those who argue that the state should say that God commands laws in the public sphere as unreasonable people. The view that God has nothing to do with laws in the public sphere should not be viewed as controversial.

I agree that that the Rawlsian state implies that God does not command laws in the public sphere is uncontroversial. But I would argue that these two cases (abortion and God) are incomparable, and my argument in the case of abortion cannot be applied to the case of God. Let's make it clear that Williams' claim that the Rawlsian state implies that a fetus has no moral status is confined to the public sphere only.

Williams (2015: 42) argues that “without denying that fetal life warrants respect in some form, then, public reason requires that citizens ignore claims to that effect for political purposes, just as they must, say, ignore without denying claims to the effect that such-and-such a policy is commanded by God.” According to Williams, citizens may argue that a fetus has moral status in the private sphere, but the state must say that it has no moral status in the public sphere, just as citizens may argue that God commands laws in the private sphere, but the state must say that God does not command laws in the public sphere.

It should be clear that when I say that the Rawlsian state cannot avoid implying the moral status of the fetus, I do not mean that it must always engage in the comprehensive moral questions; instead, I mean that it could just assert the view in the public sphere, and this is enough to make it controversial. As the question if a fetus is a moral person is a controversial dispute among reasonable people, the state is controversial to imply a certain view on the dispute in the public sphere (even for political purposes).

But, I would argue, this argument cannot be applied to the case of God. Although the

question if laws and policies are commanded by God is also a controversial dispute among reasonable people in the private sphere, it would be uncontroversial even if the state implies a certain view on the dispute in the public sphere (for political purposes).

This is because, according to Rawls, reasonable people must recognize that while they may reasonably hold different comprehensive views in the private sphere, they must subject those views to public reason when they debate and justify laws in the public sphere. So, reasonable people should accept that they may believe that laws are commanded by God in the private sphere, but they cannot ask the state to say that God commands laws in the public sphere.

The Rawlsian state is uncontroversial to claim that God has nothing to do with laws in the public sphere. The premise of the Rawlsian state is to protect “persons,” and there is no way that reasonable people could say that God could be a person. Whether one believes in God or not, everyone accepts that God cannot be counted as a person. No one, from any side of the debate, claims that God may be counted as a person like humans.

But the state would be controversial to claim that a fetus has or has no moral status even in the public sphere. Every reasonable person, from any side of the debate, accepts that a fetus has the potentiality to become a person *if* they are allowed to grow up. But they disagree whether this claim is strong enough to count a fetus as a person. The pro-choice camp argues that this claim is not strong enough to count a fetus as a person. The pro-life camp argues otherwise. It is controversial among people whether a fetus can and should be counted as a person.

As Rawlsian public reason aims to protect persons, the question about the moral status of the fetus cannot be put in the public-private distinction paradigm. Instead, this comprehensive question is *internal* to the premise of Rawlsian public reason. Reasonable people could claim that as they are required by Rawlsian public reason to respect and protect “persons,”<sup>64</sup> they cannot avoid the question if a fetus is a person who deserves their

<sup>64</sup> My argument is that as Rawlsian public reason requires us to respect “persons,” we need to ask who those “persons” are. I consider this question comprehensive rather than political. As we shall see later, we cannot hold that “persons” who deserve our respect are only those who possess some certain capabilities. We may have to respect even “persons” who lack certain capabilities at the moment. Even Rawls (1971: 505) himself claims that our respect should be extended to those who have the potentiality to become “persons” in due course. To respect “persons” we need to find out who “persons” are in a comprehensive sense, e.g., who could have certain capabilities (to be able to think of themselves as free and equal) in due course. We cannot just say that “persons” who deserve our respect are only those who



respect or not.<sup>65</sup> But the question about God can be easily put in the public-private distinction paradigm. This comprehensive question is *external* to the premise of Rawlsian public reason. Reasonable people cannot claim that they need to discuss, in the public sphere, whether God commands laws or not, because they are required by Rawlsian public reason to respect only “persons,” and there is no way that God could be counted as a person.

In the case of abortion, that the state implies that a fetus has no moral status (even for political purposes) is controversial among reasonable people because reasonable people could hold that this comprehensive question is *internal* to Rawlsian public reason. The Rawlsian state is incoherent, in the case of abortion, because implying that a fetus has or has no moral status (even for political purposes) is a controversial claim.

But in the case of God, that the state implies that God has nothing to do with laws (for political purposes) is uncontroversial among reasonable people because reasonable people would hold that this comprehensive question is *external* to Rawlsian public reason. The Rawlsian state is not incoherent, in the case of God, because implying that God has no moral power (for political purposes) is not a controversial claim.

There are many scholars who use the disguise objection against Rawlsian public reason. One of those is Sandel (1989b; 1994). He claims that Rawls cannot bracket controversial moral judgments without violating his own premise of political liberalism. While Rawls' political liberalism proposes that the state must keep away from any controversial moral judgment, Sandel (1994: 1776) points out instead that “where grave moral questions are concerned, whether it is reasonable to bracket moral and religious controversies for the sake of political agreement partly depends on which of the contending moral or religious doctrines is true.”

---

can think of themselves as free and equal at the moment as this would rule out even young children. But this argument does not apply in the case of God. Saying that God has nothing to do with laws is not a comprehensive claim because citizens are required to respect only “persons.”

<sup>65</sup> According to Williams (2015: 42), we are required by Rawlsian public reason to *ignore* the question about the moral status of the fetus. But ignoring the question does not mean that we are allowed to answer the question as we want (e.g., one may say that a fetus is a person, another may say otherwise) nor that Rawlsian public reason does not have an answer to such a question. Instead, it means that abortion is justified because a fetus is not a moral person. His argument supports my claim that Rawlsian public reason cannot avoid the question if a fetus is a person who deserves our respect or not, and his answer is that a fetus (even at full term) is not a person who deserves our respect. His argument implies a certain view on the moral status of the fetus (though it may answer the question by *ignoring* it).

To put it concretely, Sandel (1994: 1778) takes the abortion debate for example. According to Rawlsian public reason, the state must not engage in a controversial moral question concerning abortion, instead the state should decide this issue only in political terms. The state may claim that since citizens disagree about a moral status of abortion (a moral comprehensive question), the state should be neutral toward such a disagreement. But Sandel argues that this argument cannot hold because one, whether citizens or the state, cannot settle the political/legal question about abortion (a matter of justice) without disputing when exactly human life morally begins.

In other words, whereas Rawls may want to distinguish between political questions and comprehensive questions, and claims that the state must deal with the former only, Sandel argues that Rawls cannot do so because one cannot answer the former question without some presuppositions about the latter question, know it or not.

Even if the state confines itself to a matter of justice (political/legal questions) about abortion by claiming that the state must protect all human life, whether men, women, adult, children, baby, and so on, but, aware of it or not, the state cannot avoid a moral comprehensive question if a fetus should be considered a human or not. Whether women could have the abortion right (a matter of justice) depends on whether we should view a fetus as a human whose rights are inviolable (a moral comprehensive question).

Since Rawls' public reason is designed to be able to deal only with a matter of justice, not a moral comprehensive question, we may say that Rawlsian public reason cannot deal with the constitutional or political question of abortion because the question concerning prenatal moral status falls outside Rawlsian public reason.

A moral status of the fetus must be discussed and decided before we can decide whether fetuses should have the right to life or whether women should the right to abortion (Steinbock, 1992: xiv). And it is always controversial, and often related to religious and philosophical arguments, to argue when exactly human life begins morally. Sandel's point is not that Rawls fails to deal sufficiently with this moral issue, but that Rawls, know it or not, *already* presupposes a particular answer to the question, although he would claim that he is not interested in such a question at all.

One cannot criticize Sandel by saying that “Rawls does not want to settle the matter on the basis of metaphysical claims concerning the status of the early fetus, but rather in political terms” (Dombrowski, 2001: 127).

Sandel could easily respond to such a criticism that he *already* realizes that Rawls claims to be neutral and to lean on a freestanding view, but he argues that despite that Rawls claims so, he still fails to do so because there is no such thing as a freestanding view in the first place. The state cannot bracket this moral controversy, and what Rawls calls a freestanding view is nothing but a comprehensive judgment in disguise (Sandel, 1989b: 531).

This does not mean that Sandel is against the abortion right in any case. In fact, Sandel (1994: 1778) believes that women should have the right to abortion, but he disagrees that the state can justify the right without appealing to a controversial moral claim; he claims that we need to *reason* that “there is a relevant moral difference between aborting a fetus at a relatively early stage of development and killing a child.”

Laborde (2017) also employs the disguise objection against Rawlsian public reason (and Quong's public reason). Quong (2011) agrees with Rawls that political and comprehensive disagreements are significantly different, and they could be separated. Therefore, he has the same conclusion as Rawls that the state should be neutral toward comprehensive disagreements but should not be neutral toward political disagreements. Quong claims, following Rawls' logic, that the significant difference between political and comprehensive disagreements is this.

The former disagreement could be reconcilable among reasonable people because they could agree upon the same set of political values (freedom, equality, justice, etc.) and they simply disagree how to weigh, rank, and implement these shared political values. So, their political disagreements are solvable (justificatory disagreements). But the latter disagreement is irreconcilable among reasonable people because they could not even agree on any same set of comprehensive values (God, afterlife, good life, etc.) in the first place. So, their comprehensive disagreements are unsolvable (foundational disagreements).

Laborde (2017: 108) also uses the abortion debate<sup>66</sup> as an example of how Quong's (and Rawls') argument is unsuccessful. Laborde's argument is not that political and comprehensive disagreements are not significantly different, but that although we might accept that these two disagreements are significantly different and should be separated, we cannot keep them apart anyway.

Like Sandel argues, the state cannot avoid deciding about the moral status of fetuses before it can deal with political questions. Therefore, Laborde concludes that even political disagreements are indeed foundational just as comprehensive disagreements because they cannot be separated as Rawls and Quong would assume.

In contrast to the silence objection, I believe that the disguise objection, as articulated from Sandel's and Laborde's argument, is successful in criticizing Rawlsian public reason as incoherent. Rawlsian public reason fails to be neutral because, in some cases (e.g., abortion), it is impossible to distinguish between political and comprehensive moral questions as it claims.

Next, I will try to defend the disguise objection from some criticisms. First, I will examine the claim that Rawlsian public reason is coherent even in the abortion case because it is possible to discuss the abortion case within Rawlsian public reason. Second, I will examine the claim that Rawlsian public reason is coherent even if we may accept that it cannot deal with some cases (e.g., abortion) because it can still be neutral in many other cases. Let me deal with these two criticisms in turn.

The claim that it is possible to discuss the abortion case without implying anything about the moral status of the fetus has been defended by so many scholars that it goes beyond my capacity to deal with them all. I will choose to deal only with some arguments that I think are sophisticated and typical.

The first argument I want to examine says that a fetus does not have interests because they do not have sentience yet. And since they do not have interests, they are not covered by justice. This may be called “the interests view” (Simmons, 2012: 57). The interests view

---

<sup>66</sup> Apart from the abortion case, Laborde (2017: 107-08) also refers to other cases like animal rights and marriage. She claims that these cases cannot be settled “without taking a substantive stance about the status of fetuses, animals, and marriage.”

has been defended by many scholars (e.g., Dworkin, 1993; Dombrowski, 2001; Steinbock, 2011; Simmons, 2012). For example, Dworkin (1993: 16-17) argues that “it is also very much against the interests of a fetus with a nervous system sufficiently developed to feel pain to inflict pain on it. But a fetus cannot be aware of pain until late in its mother's pregnancy, because its brain is not sufficiently developed before then.” And Dworkin (17) also cites a scientific study to claim that a fetus does not have sentience (and also interests and rights) until around 25 weeks.

What I am interested in here is not whether abortion is justified or whether a fetus has interests, but whether the interests view falls inside or outside Rawlsian public reason. However, not all proponents of the interests view claim that the view can be supported by Rawlsian public reason. In fact, some argues that the interests view is the sign that Rawlsian public reason is unable to deal with the abortion debate, whereas some argues otherwise.

For instance, Dworkin (2006: 253-54) believes that we cannot settle the abortion debate without addressing some comprehensive moral question about abortion. He thinks that we, at least, must debate whether a fetus has interests or not, and this is, he believes, a comprehensive moral question. Thus, Dworkin concludes that Rawlsian public reason cannot deal adequately with abortion. In contrast, Dombrowski (2001: 127) implies that the interests view can be endorsed by Rawlsian public reason. I want to argue against only those who believe that the interests view is compatible with Rawlsian public reason.

Some may believe that the interests view is uncontroversial as, they believe, it is simply based on an uncontroversial empirical science everyone could reasonably accept. For them, it is unreasonable to argue otherwise (e.g., a fetus under 25 weeks or so already has sentience, etc.). This would imply that although we may base our judgement on a comprehensive moral claim (e.g., human nature, human psychology, scientific claims, etc.), it is only an uncontroversial and acceptable claim rather than a contentious claim. However, I find the interests view falls *outside* Rawlsian public reason.

According to Rawls, discussion on human nature is always controversial and irreconcilable, and it is unreasonable to hold that people could reasonably agree with each other on this topic. Rawls (1993: 87-88) writes that “[a] political conception of justice is a

normative scheme of thought. Its family of fundamental ideas is not analyzable in terms of some natural basis, say the family of psychological and biological concepts, or even in terms of the family of social and economic concepts.” Moreover, Rawls (56) also says that the scientific claim is one of the burdens of judgment (or the sources of disagreement between reasonable persons): “The evidence – empirical and scientific – bearing on the case is conflicting and complex, and thus hard to assess and evaluate.”

I believe that, by saying this, Rawls does not mean that we cannot base our judgement on any empirical and scientific claim *in any case*. If this is the case, then police and judges cannot even appeal to empirical evidence concerning the criminal case in question. He rather wants to say, I believe, that if comprehensive moral questions (and *not* political questions) are at stake, then even appealing to empirical and scientific claims is too controversial, and any political conception of justice must avoid. Therefore, Rawls would claim that even *scientific* disagreements on a *comprehensive moral question* of abortion are too controversial, and Rawlsian public reason must avoid.<sup>67</sup>

The interests view, thus, falls *outside* Rawlsian public reason because it violates the burdens of judgement or the fact of reasonable pluralism. This is not to say that the view is unreasonable, but that, however reasonable, it would make the state that takes this view fail to be neutral because it must engage in the controversial comprehensive moral questions about abortion (human nature, the moral status of the fetus, etc.). The state must assert that a fetus is not yet a moral person.

Next, let's examine Thomson (1971)'s argument. The heart of Thomson's defence of abortion is that we can justify abortion without spending time to discuss the moral status of fetuses. The disguise objection says that every answer to the political questions of abortion disguises a certain view on the moral status of the fetus. If a fetus is a moral person, then abortion would be equal to killing a person, but if it is not, then abortion would be justified. But Thomson argues that we can justify abortion even if we hold that a

<sup>67</sup> As Quong (2011: 196) argues that “the scientific and empirical evidence surrounding the abortion debate is certainly complex and conflicting. There is no real agreement on when the foetus becomes a sentient being; indeed it is doubtful that science alone can provide an answer to this question.” Quong agrees with Rawls that we cannot discuss a *comprehensive moral question* of abortion within Rawlsian public reason. Nevertheless, this does not mean that Quong (or Rawls) argues that we cannot discuss a *political question* of abortion within Rawlsian public reason at all. On the contrary, Quong (2021: 55) believes that we can and should discuss a political question of abortion within Rawlsian public reason without addressing a comprehensive moral question of abortion (e.g., discussion on when human life begins, etc.). Quong's and Rawls' view on abortion debate will be discussed shortly.

fetus is a moral person who has the right to life like adults. If Thomson is right, then it is possible for the state to be neutral toward the dispute on the moral status of the fetus.<sup>68</sup>

Thomson (1971: 48-49) argues by way of thought experiment. Suppose that, one day, we wake up to find that we are plugged into another person (a violinist) on a bed. We are told by a doctor that the violinist suffers from some disease, and the only way to help him is to use our blood. So, we were kidnapped and plugged into him so that he can use our kidneys to extract poisons from his blood. The doctor says further that he does not expect this process to last more than nine months. After that, we will be unplugged from the violinist and we can return to live a normal life. But if we unplug now, he will be dead.

The question is whether the violinist has the right to use our body? Thomson (1971: 52) argues that he has no such a right until we give him the right. To refuse to give him the right to use our body is *not* to say that he has no right to life, but only that he has no right to use our body.

Given this thought experiment, Thomson argues that, when it comes to the abortion case, we can justify abortion even if we may hold that a fetus has the right to life. To refuse to give a fetus the right to use a mother's body is *not* to say that a fetus is not a person or has no right to life, but only that a fetus has no right to use her mother's body. A mother has the right to choose whether to allow a fetus to continue using her body or not. She has the right *not* to be used by someone else. Someone else can use her body only if she gives them the right herself.

This sounds a powerful defence of abortion because it seems to avoid the controversial debate about the moral status of the fetus. However, I find her argument problematic as it still cannot avoid the debate about the moral status of the fetus. The logic of her argument is that one (A) has the right *not* to be used by another (B), and simply the fact that B has the right to life is insufficient to impose A an obligation to make B continue their life. According to this logic, it is easy to conclude that a mother can have the right to abortion because simply the fact that a fetus has the right to life is insufficient to impose on her an obligation to make a fetus continue their life.

---

<sup>68</sup> Strictly speaking, Thomson (1971) does not say anything about Rawlsian public reason. However, it is easy to conclude that if her argument is right, then this would make Rawlsian public reason possible too because it allows us to deal with abortion without addressing any metaphysical or comprehensive claim.

But how about a one-day-old baby? Does a mother have the right to abandon her one-day-old baby even if doing so would let them die? Thomson (1971: 65) argues that a mother has no such a right:

“If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot *now* withdraw support from it at the cost of its life because they now find it difficult to go on providing for it. But if they have taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it. They may wish to assume responsibility for it, or they may not wish to. And I am suggesting that if assuming responsibility for it would require large sacrifices, then they may refuse”

According to Thomson, then, while a mother has the right to protect her own body even if doing so would make a *fetus* die, she does not have the right to do so in the case of *baby*. Thomson claims that by letting a fetus born to be a baby (from living *inside* a mother's body to living *outside* her body) means that a mother has already given a baby the right to life, and she has assumed all obligations to take care of a baby. Therefore, a mother has no right to kill a baby.

What I find problematic about her argument here is that I cannot see a *significant* difference between the case of fetus and baby. I rather think that Thomson's argument and conclusion in the case of a fetus could be applied to the case of baby. If, in the case of a fetus, a mother has the right not to be used by a fetus, and simply the fact that a fetus has the right to life is insufficient to impose a mother any obligation, then I cannot see why, in the case of a baby, a mother should be obligated to a baby for the same reason.

Thomson might argue that the difference is that while a fetus must use her mother's body to live on, a baby does not need her mother's body. So, in the case of baby, a mother has no right to kill a baby.

I agree that, biologically speaking, a baby does not use her mother's body *in the same way as* a fetus uses. But does this make a *significant* difference? In the case of a fetus, it is clear that a fetus cannot live without her mother. In the case of a baby, I think that it is also reasonable to say that a fetus cannot live without her mother. How can we expect a one-



day-old baby to live on without any help from her mother? Of course, a baby does not use her mother's body in the same way as a fetus uses, but a baby still needs her mother's help to live on, anyway.

I cannot see why, following Thomson's logic, we should not conclude that a mother also has the right not to be used by a baby. In order to make a baby live on, a mother must use her body to feed a baby (mother's milk) if she has no other options, spend time to take care of a baby even if this may make her tired and sick, spend her money on a baby's cloths, foods, and so on. A baby still needs to *use* her mother to live on in one way or another.

Thomson would argue that there is a difference between a mother being used by a fetus and a baby. A fetus lives *inside* her body, but a baby *lives* outside. To live inside her body means that a mother has no choice but to be used, otherwise a fetus will die. But to live outside her body means that a mother can choose to be used or not. She may choose to let others take care of her baby instead (adoption, letting her relatives to take care of her baby, etc.) So, the argument would conclude, a mother has no right to kill a baby.

But I also cannot see the significant difference between living *inside* and *outside* the body. Thomson's logic is that "anyone" has the right *not* to be used by others even if others have the right to life. In this sense, "anyone" could mean "mother," "father," and everyone. The fact is that a one-day-old baby cannot live without "someone." There *must* be someone who must take care of a baby, otherwise a baby will die.

Suppose that a mother has the right to transfer the obligation to take care of her baby to someone else (say, C). Does this impose the obligation on C? Does C have the right not to take care of the baby if he does not want to? Can C say that he will take care of the baby only if he wants to do so, and he will not when he does not want to?

Thomson would say NO: a mother or anyone else who has been given the obligation from a mother cannot do so because they have already assumed the obligation to take care of a baby in the first place, and this obligation cannot be canceled. But this reply still does not refuse the fact that a mother or others *must* be used in one way or another, otherwise a baby will die. According to Thomson's argument, someone can be used by others *only if* they agree to do so, and whenever they refuse to do so, they should be able to cancel the

right of others to use them.

For instance, I may agree to be used by others “today,” but this does not give others the right to use me forever. I may change my mind tomorrow and say that I refuse to be used by others anymore. If this is the case, then I cannot see why a mother (or others) *must* have the obligation to take care of a baby and cannot cancel the obligation even if they no longer want to someday.

Thomson may argue that there is a significant difference between assuming obligations in the case of fetus and baby. In the case of a fetus, a mother can choose to assume an obligation to her fetus, and this obligation can be canceled at any time because the obligation is not compulsory. But in the case of a baby, a mother cannot choose to cancel obligation to her baby because the obligation is compulsory. A mother should have known that once she assumes the obligation to her baby, she cannot cancel this.

For example, there are two contracts. One contract clearly says at the beginning that once you sign this contract you will be obligated to its conditions for a year. Another contract also clearly says at the beginning that once you sign this contract you will be obligated to its conditions for ten years. So, if you decide to sign the second contract (with the 10-year commitment), then you cannot complain that you cannot cancel the contract because you should have known the conditions of the contract at the beginning.

This sounds attractive. But the question is, in the case of fetus and baby, who determines the conditions of the obligation at the beginning? Who has the right to say that once a mother decides to have a fetus she may choose to be used or to stop being used, but once a mother produces a baby she *must* be obligated to take care of the baby for ten or more years? What makes a baby have the right to demand someone (mother or others) to take care of them in the first place?

If in the case of fetus, Thomson claims that simply the fact that a fetus has the right to life is *insufficient* to command anyone to keep them alive, then why, in the case of the baby, she says that simply the fact that a baby has the right to life is *sufficient* to command someone (mother or others) to keep them alive.

My argument is that there is no significant difference between the case of fetus and baby: if Thomson argues that a fetus has no right to use someone to live on until someone gives them the right, then she should apply the same conclusion to the case of a baby too. This is not to say that abortion is wrong, but that we cannot avoid deciding on the moral status of the fetus. I believe that if we are to make a significant difference between killing a fetus and a baby, we must be able to tell the difference between the moral status of the fetus and baby. We cannot avoid the debate about the moral status of the fetus.

Next, I want to examine the argument claiming that the abortion case can be discussed without implying anything about the moral status of the fetus (e.g., when does human life begin morally?); instead, we may appeal to “political personhood” (e.g., when does human life begin politically?). The difference is that if we appeal to the moral status of the fetus, we imply the metaphysical or comprehensive moral status of a person (human nature), but if we appeal to political personhood, we just imply the political capabilities of a person (citizens).

This argument holds that discussing political personhood is much less controversial than discussing the moral or metaphysical status of the fetus because while the former can appeal to some uncontroversial (concrete) evidence (e.g., the capacity to cooperate with other people, etc.), the latter must appeal to controversial (abstract) claims (e.g., when life begins morally, the right to life, etc.).

This argument could say that since the Rawlsian state is meant to govern only a person who possesses the capacities of political personhood, and since a fetus clearly lacks those capacities, abortion could be justified. The argument claims that it does not matter whether we see that a fetus is a moral person because what is more important is that a fetus cannot be a person in a political sense, i.e., a fetus cannot be a person who has the political powers as a free and equal person.

S. Freeman (2004: 2059) argues that although Rawlsian public reason cannot solve the metaphysical personhood of the fetus, it can address the constitutional question of abortion by claiming that “there is no compelling case that the fetus is a person, constitutionally speaking. It does not have the capacities of political personhood (the moral powers) even in an undeveloped state,” and that “there has to be some compelling case for the

constitutional personality of the fetus if we are to limit altogether women's freedom to choose, and it has not been (and it is not clear how it could be) established in terms satisfactory to public reason.” According to him, then, the constitutional or political questions of abortion can be discussed without implying anything about the moral status of the fetus.

His argument is even more convincing as Rawls seems to use the similar line of argument. Rawls (1971: 504-05) argues that justice is applied only to humans, not to animals or other living things, because only humans have certain natural capacities (i.e., a capacity to have a conception of the good life and a sense of justice). Rawls believes that only humans are capable of operating with others under conceptions of justice, while other living things do not have such a capacity. This is why S. Freeman (2007: 407-08) claims that Rawls would argue that justice is not owed to a fetus because they clearly have no such a capacity at all.

However, I find S. Freeman's argument problematic. First, I believe that, indeed, Rawls would not agree with S. Freeman on this point, although Rawls' argument looks similar to that of S. Freeman. It is true that Rawls claims that justice (and Rawlsian public reason) are not extended to cover “anything” which lacks “political personhood.”

But Rawls (1971: 505) also argues further that “equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation. One should observe that moral personality is here defined as a potentiality that is ordinarily realized in due course. It is this potentiality which brings the claims of justice into play.” Although a fetus lacks “political personhood” at the moment of being a fetus, they certainly have a *potentiality* to develop such a capacity in due course. So, “equal justice” should cover even a fetus because they certainly have a potentiality to develop “political personhood” in due course.

Second, I wonder how S. Freeman can explain why we should hold that while a fetus does not have political personhood, a one-day-old baby does. How can one reasonably hold that a one-day-old baby has the moral powers to cooperate with other citizens as free and equal? He does not discuss this issue in detail. He might say that, at least, a one-day-old baby has the potentiality to develop the moral powers when they grow up. But this can be applied to the case of fetus as well. It is unclear how his argument can help deciding the

political questions of abortion without addressing the moral status of the fetus.

Finally, I want to examine the last argument saying that the political questions of abortion can be discussed without implying anything about the moral status of the fetus. Although we may assume that a fetus is a person, we may still reasonably justify abortion as we may rank and weigh the “political” values differently. This argument claims that, as a reasonable person, we all value the same set of political values, but we may rank and weigh their importances differently.

Suppose that two reasonable people (A and B) value the same set of political values (x and y). But they give different weights to these two shared political values. A values x over y, and B values y over x. Rawlsian public reason does not say that reasonable people must value them similarly. It allows A and B to rank and weigh them differently. It simply requires that both A and B, insofar as they are reasonable, should accept those two political values (even if with different degrees). The state may value x over y by endorsing and promoting x over y, but it cannot prevent citizens to choose y over x.

This line of argument can be applied to the abortion case. We do not need to get involved in a comprehensive moral question of abortion, e.g., when human life begins. We may assume that a fetus is a person, and that it is a political value. Then, we may just put this political value (a fetus' life) into a group of political values. The question we face is not whether a fetus is a person (in any sense), but how we should rank and weigh different “political” values.

Some may value a fetus' life over a woman's choice, while others may value a woman's choice over a fetus' life. However, insofar as they are reasonable, they all should justify women's abortion rights. Those who value a fetus' life over a woman's choice can still disagree with abortion, but they cannot prevent others from having an abortion just because they weigh and rank the political values differently. This argument sounds convincing as it is endorsed by Rawls (1993: 243) himself:

“Consider the troubled question of abortion. Suppose first that the society in question is well-ordered and that we are dealing with the normal case of mature adult women ... Suppose further that we consider the question in terms of these three important political values: the due respect for human life, the ordered reproduction of political society over time, including the

family in some form, and finally the equality of women as equal citizens. (There are, of course, other important political values besides these.) Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required to give it substance and force. Other political values, if tallied in, would not, I think, affect this conclusion. A reasonable balance may allow her such a right beyond this, at least in certain circumstances”

Rawls argues that we may balance three political values: the due respect for human life, the ordered reproduction of political society over time, and the equality of women as citizens. In other words, there are three parties we have to take into account: a fetus, a society as a whole, and a woman. Rawls seems to recognize that both a fetus and a woman are a person. But a woman should have the right to abortion in the early stages because her claim (the equality of women as citizens) is overriding. Quong (2011: 282) argues similarly that:

“Consider the case of abortion. Even if both pro-choice and pro-life citizens agree on a core set of political values (liberty, the sanctity of human life, the equality of men and women) there is little reason to suppose that the content of public reason can be complete if each citizen is permitted to weigh or rank these values differently. The pro-life citizen might place an infinite amount of weight on the sanctity of human life, whereas the pro-choice citizen might rank the values of liberty or the equality of men and women first and foremost. Our two citizens thus arrive at diametrically opposed conclusions despite the fact that they were apparently reasoning from the same premises”

According to Rawls and Quong, then, the political question of abortion can be discussed without addressing the comprehensive moral question of abortion at all. However, I find their argument problematic as I believe that it ultimately falls outside Rawlsian public reason, even if Rawls himself endorses this argument.

It is true that Rawlsian public reason leaves the contents of public reason open rather than closed in the sense that reasonable people can rank and weigh the political values differently. But what makes Rawls believe that it is justified to set “a fetus' life” as a political value people may balance in the first place?

I would claim that this is because Rawls must presuppose beforehand that a fetus is not yet the person as morally equal as adults. Rawls may assume that a fetus is a person, but he

must presuppose that they are not morally equal as adults, otherwise putting their life in a set of values people can balance would violate the principle of the separateness of persons.

If we put the abortion case aside, and just assume that there are only reasonable adults, then would Rawls set the life of adults as a political value people can balance with other political values? Would Rawls justify someone who says that he values other political values over the life of an adult, and so this adult may be deprived of his freedom or even his life? Surely Rawls would not justify this claim because this clearly violates the separateness of persons. According to Rawls, we cannot bargain individuals' lives even if that would make us achieve other values. If this is the case, then why does Rawls allow "a fetus' life" to be balanced with other values?

If one really believes that a fetus is a moral person just as adults, then one would not allow people to choose whether to keep or kill a fetus in the first place. But if one believes that a fetus is not yet a moral person just as adults, then one would allow people to choose because even if someone chooses to kill a fetus this would not violate the separateness of persons (because a fetus is not a person yet). Therefore, I argue that this argument cannot avoid implying the moral status of the fetus, e.g., they must imply that the moral status of the adult (or the baby) and the fetus are significantly different in the first place.

So far, I have examined a number of arguments claiming that abortion could be justified without implying the moral (or metaphysical) status of the fetus in one way or another. For instance, some argues that abortion could be justified even if we may hold that a fetus is a moral person who has the right to life. I have shown that those arguments are unsuccessful. We cannot justify abortion without implying the moral status of the fetus.

Therefore, Rawlsian public reason that claims to be neutral toward comprehensive moral doctrines is incoherent because it cannot find a reason to justify abortion without implying the moral status of the fetus in one way or another.

However, one might argue that although I may be right that Rawlsian public reason cannot be neutral toward some comprehensive questions, this is not a strong reason to claim that Rawlsian public reason *in general* is incoherent. They would argue that my discussion so far simply focuses on a particular case. But there are so many other cases that Rawlsian

public reason can be neutral toward any comprehensive questions (Klosko, 2003: 171-72).

I would argue that it is true that Rawlsian public reason can still be neutral and coherent in many other cases, and my discussion so far just focuses heavily on a particular case like abortion. But I believe that this is a strong reason to conclude that Rawlsian public reason is incoherent. It does not matter in how many cases the state is neutral and in how many cases the state is not.

The point is that if the state fails to be neutral even in only one case, among many cases, this indicates that the state embraces some certain comprehensive doctrines, which makes the state non-neutral. Suppose that the state uses public reason in every case except in only one case. I would claim that, generally speaking, the state is non-neutral because, even if it does not use nonpublic reason in other cases, it is enough to show that the state already reveals its own comprehensive (or metaphysical) claim.

## **5.4 Summary**

This chapter dealt with Rawlsian public reason. I argued that Rawlsian public reason is incoherent in some cases like abortion. I examined a number of arguments claiming that it is possible to discuss the political questions of abortion without implying the moral status of the fetus. I argued that they are unsuccessful in one way or another. The abortion case shows that Rawlsian public reason is incoherent because the state cannot avoid implying a certain view on the moral status of the fetus. I also claimed that that the state cannot be neutral in the abortion case is a sufficient reason to conclude that, in general, the Rawlsian state is incoherent because it uses nonpublic reason, even in some limit cases.



## Chapter 6 The Moral Limits of Rawlsian Secularism

### 6.1 Introduction

In this final chapter, I will deal with the question if the state should be neutral toward comprehensive doctrines in terms of characteristic and justification. So far I have argued that the Rawlsian state is incoherent because it fails to be neutral in terms of justification. But my argument has not yet revealed what I think the ideal relationship between state and comprehensive doctrine should look like. In this chapter, I will discuss how the state should treat them.

I will argue that the Rawlsian state is morally undesirable because it treats all reasonable comprehensive doctrines, defined by Rawls, equally. Ideally, I propose that the state, while needs to protect all citizens, should not treat all reasonable comprehensive doctrines equally: some doctrines could be more promoted than others, and some doctrines could be questioned or even criticized by the state, even if they might be reasonable in the Rawlsian standard.

In this chapter, like the previous chapters, I will focus on justification rather than characteristics of Rawlsian secularism. My argument is *not* that Rawlsian secularism has the limits because it cannot justify religious exemptions/accommodations. I consider the religious accommodations problem, for example, as concerned about the characteristics of Rawlsian secularism because it discusses whether and how the secular state could give special exemptions/aids (financial helps, legal exemptions, minority rights, group rights, religious symbols, religious dressing codes, etc.) to some religious citizens in a way that does not violate the principle of neutrality.

In fact, some Rawlsian scholars argue that we can justify some religious exemptions/accommodations within Rawlsian secularism (Quong, 2006; Hartley and Watson, 2018). However, my concern in this chapter, and throughout the thesis, is about justification rather than characteristic.

This chapter includes two sections. First, I will discuss my philosophical position

regarding moral responsibilities. I will discuss the ideal relationship between state and religion through my discussion on moral (and political) responsibilities because I believe that my philosophical position regarding moral responsibilities will show how the state should treat comprehensive doctrines/identities, including religion, and how it differs from Rawlsian secularism.

Second, I will discuss the importance of reason. I will argue that the state may need to promote or challenge some comprehensive doctrines among citizens, even if those comprehensive doctrines would be reasonable according to the Rawlsian standard. This is because some reasonable reason, according to Rawls' standard, may still produce undesirable attitudes toward certain people according to my standard.

I will argue that Rawlsian secularism has moral limits not because it treats all reasonable comprehensive doctrines unequally or because it disallows some comprehensive doctrines, but because it treats all reasonable comprehensive doctrines equally.

## 6.2 Moral Particularism

Rawls treats religion as a comprehensive doctrine like other nonreligious comprehensive doctrines. As long as comprehensive doctrines, religious or not, are compatible with Rawlsian conceptions of justice and Rawlsian public reason, they would be called reasonable comprehensive doctrines. Rawls argues that the state should treat all reasonable comprehensive doctrines equally (by being neutral in terms of characteristic and justification).

In this chapter, I will argue that while the state should protect individuals' freedom, it should not treat all comprehensive doctrines/identities equally even if they may be reasonable in the Rawlsian standard.

While the Rawlsian state claims to be neutral in terms of characteristic and justification, I argue that the state *should not* be neutral in both terms. At first glance, my argument looks similar to the moderate religious and anti-religious state as they claim that the state should not be neutral in both terms. But as we shall see shortly, my argument is different not only from the Rawlsian state but also from the moderate religious and anti-religious state.

It is often thought that the state that is not neutral toward citizens' comprehensive doctrine in terms of characteristic must be the state that gives the privilege to a particular religion or non-religion legally/financially like the religious or anti-religious state. The Thai state, for example, allows citizens to hold different beliefs, but explicitly supports Buddhism legally/financially, e.g., every Buddhist important day is taken seriously by the Thai state (public holidays); Buddhist temples receive financial support from Thai governments; Buddhism is taught in public schools;<sup>69</sup> and so on.

Or we may think of the moderate anti-religious state, e.g., anti-religious institutions receive financial support from governments; atheism is taught in public schools as the truth of the world; and so on. Given this, a question inevitably arises: Does my argument justify such a state? I would argue that my argument is different and critical of such a state.

Before I proceed, let's quickly review the status of religion and the role of the state in Rawlsian secularism. The state exists to protect citizens and promote economic equality (fairness), and it must not intervene in people's comprehensive doctrines, provided that those comprehensive doctrines are reasonable according to the Rawlsian standard. Religion, in this paradigm, is nothing special but one of many comprehensive doctrines.

The Rawlsian state aims to treat all reasonable comprehensive doctrines, religious or not, equally by being neutral toward them all. So, it does not promote or give the privilege to any particular comprehensive doctrine, religious or not.

The Rawlsian state, therefore, rules out the claims of religion, family, or community imposed forcibly on individuals by arguing that no one can impose duties (that go beyond the duties to abide by Rawlsian justice) on individuals without their consent – any religious or community value is just an optional choice people can choose rather than a legal duty they must comply with.<sup>70</sup>

<sup>69</sup> In Thailand, Buddhism is taught in public school not as a religion in comparative religion course, but as the truth of the world and as a religion of Thai people. This is taught along with the teaching (or more like state propaganda) that the Thai monarchy is legitimate and necessary from the Buddhist worldview. For example, the former Thai King's philosophy of sufficiency economy (which is mainly constructed from Buddhist morality) is put in the school curriculum as the right philosophy (or religion) rather than as merely a philosophy among others in comparative study (Isager & Ivarsson, 2010: 232; Fry, 2018: 67). Surprisingly, despite this, students are still allowed to hold other religions, but no one is allowed to have a negative view on the monarchy at all (Winichakul, 2016: 9).

<sup>70</sup> According to Rawlsian secularism, everyone has the legal duty to comply with Rawlsian justice even if

In Chapter 4 and 5, I argued that Rawlsian secularism is incoherent, that is, the Rawlsian secular state fails to be neutral as it claims in one way or another. In this chapter, I will argue that Rawlsian secularism is morally undesirable *not* because it fails to be neutral, but because even if we assume that it is coherent and neutral, it still fails to do what I believe the just state should do. For example, I believe that the state sometimes should be able to use nonpublic reason rather than public reason and should be able to promote or encourage some particular comprehensive doctrines/identities over others.

It should be clear that I focus on the role of the state, not of citizens. I recognize that citizens are allowed to use nonpublic reason and view themselves as a particular comprehensive identity. But the state cannot. So, my argument, in this section, is *not* to argue that the Rawlsian state prevents citizens from using nonpublic reason or favour some comprehensive doctrines. Instead, I argue that the Rawlsian state is prevented from using nonpublic reason and from promoting or encouraging any comprehensive doctrine/identity. And this is why I think that the Rawlsian state is morally undesirable.

I agree with Rawls that the state must respect and protect “the person.” However, I disagree with Rawls about what it means to respect “the person.” For Rawls, each individual is free to interpret themselves as a particular comprehensive identity, and free to set their own moral obligations, given that they do not violate Rawlsian justice.

For instance, given that one abides by Rawlsian justice (e.g., to comply with Rawlsian conceptions of justice, to fulfil the duty of civility, etc.), one is free to interpret themselves as they want. They may view themselves as an autonomous being, a religious being, and so on. They may hold that they are not only responsible for what they have done, but also for what other people (their ancestors, friends, etc.) have done.

I do not think that this should be the way the state perceives of the person. In some cases, I think that the state should *encourage* (not just allow) people to view themselves as a particular comprehensive identity, to have some certain moral obligations attached with the comprehensive identity in one way or another even if they might disagree, and even if this goes beyond their duties to comply with Rawlsian justice. The state should not view citizens as free and equal, and leave their comprehensive identity aside. Instead, the state

---

they do not actually consent to it. But beyond these duties, no one can impose religious duties, for example, on people without their consent. I will come to discuss this point more later.

should take their comprehensive identity into account because it is part of the self in one way or another.

I do not talk about the *sociological* account of the person (e.g., whether the person is capable of detaching themselves from their national/religious heritage), but about the political/moral obligations of the person (e.g., whether the person is legitimate to ignore certain moral obligations attached with their identity).

According to Rawls' conception of the person, while the person cannot detach themselves sociologically from their communal heritage (one must be born in a certain nation, family, and so on), they can legitimately keep away from any obligations attached with their identity, i.e., one can choose whether one wants to take the obligations related to their identity. Thus, the Rawlsian state cannot implement my comprehensive conception of the person at the state level.

Nevertheless, my argument differs from a version of cultural relativism which argues that our moral obligations are determined by our culture, tradition, religion, and so on. This cultural relativism conception of the person is interpreted by Kymlicka (1989b: 57):

“A Christian housewife in a monogamous, heterosexual marriage can interpret what it means to be a Christian, or a housewife – she can interpret the meaning of these shared religious, economic, and sexual practices. But she can't stand back and decide that she doesn't want to be a Christian at all, or a housewife. I can interpret the meaning of the social roles and practices I find myself in, but I can't reject the roles themselves, or the goals internal to them, as worthless. Since these attachments and ends are constitutive of me, as a person, they have to be taken as given in deciding what to do with my life; the question of the good in my life can only be a question of how best to interpret their meaning. It makes no sense to say that they have no value for me, since there is no 'me' standing behind them, no self prior to these constitutive attachments”

Cultural relativism views the person as whose obligations are determined by religious and communal value. If the state takes this conception, it could give a special support to certain religious people as it could claim that to protect “the person” is to protect “their religious practice” as it is part of the self in the first place. But as Kymlicka points out, a serious problem is that the state could also restrict people's liberty by claiming that they do not have rights to reject any heritage attached to their identity.

Because of this, Rawls claims that the state should not take this conception of the person as it may not guarantee people's liberty. Of course, the Rawlsian state “allows” people to take this conception of the person as long as they voluntarily endorse it. But the state cannot “force” or “encourage” people to take this conception.<sup>71</sup>

I would claim that my conception of the person is also significantly different from this cultural relativism. I would argue that the idea that people should take some obligations attached with their comprehensive identity could be interpreted differently from Kymlicka's account.

Kymlicka implies that one's *obligation* and one's *identity* are exactly the same thing: if one was born in a religious family, and if their religious heritage requires them to do xxx, then they are obliged to do xxx. But I would argue that although one's obligation and one's identity are related, it could be interpreted in a very different way. Let's consider the following passage from Sandel (2009: 215):

“If, in thinking about justice, we must abstract from our particular identities, it is hard to make the case that present-day Germans bear a special responsibility to make recompense for the Holocaust, or that Americans of this generation have a special responsibility to remedy the injustice of slavery and segregation. Why? Because once I set aside my identity as German or an American and conceive myself as a free and independent self, there is no basis for saying my obligation to remedy these historic injustice is greater than anyone else's”

One would feel that Sandel is talking about how citizens understand their moral obligations rather than how the state understands citizens' obligations, and about international rather than national problems. I suggest that we overlook this aspect of the passage, and just replace “we” and “I” with “the state,” *national* identities (German, American, etc.) with *religious* identities so that this would be more related to the role of the state and the status of comprehensive identity. I quoted this passage just to show that one's *obligation* is related but not exactly the same thing as one's *identity*.

---

<sup>71</sup> Given Kymlicka's interpretation, one would conclude that the state taking such a cultural relativism conception of the person must be the *repressive* religious state rather than the *moderate* religious state because the state would not allow people to have freedom. But I do not think that this is always the case. Take Thailand for example. The Thai state explicitly employs the cultural relativism conception of the person; it explains that all Thais have duties to keep their religious heritage (Buddhism). But the state does not force them to do so. This may be because (1) Buddhism itself teaches non-violent means, and (2) force is not an effective means.

As Sandel implies, saying that one's identity is inherited from Nazi Germany does not necessarily mean that they must accept and practice Nazi values, but may mean that their obligation to remedy any injustice made by their ancestors is *greater and more urgent* than others who do not share this identity. One's obligation is not the same thing as one's identity; one's identity does not determine the contents of one's obligation. While one's obligation tells one "what" to do in general (e.g., everyone should help others), the identity tells one "who" they should have greater and urgent obligation with in particular (e.g., *certain* people should make *more* effort to help *certain* others).

My philosophical position regarding moral responsibilities may be called a version of moral particularism.<sup>72</sup> Moral particularism that I defend consists of two levels of moral judgement. The first level, the ultimate level, is concerned about the question of what the right thing to do in general is. The second level, the identity level, is about the question of who we should have special moral obligations with in particular.

At the first level, I would say that everyone should commit to what I generally call "humanitarianism" – the very general idea that everyone should respect basic human rights, help promoting human welfares, help others who are in urgent need, and so on. I do not mean to refer to something special about humanitarianism. Nothing special or controversial about it. I introduce humanitarianism here just to make it clear that I do not advocate any political regime that justifies basic human rights violations in the name of culture, tradition, social benefit, religion, and so on. I would claim that my account at the first level is not different from many liberals, including Rawls.

At the second level, I would say that not everyone should have *equal* political/moral obligations in every case, but we must consider case by case and it is possible that some certain people with certain comprehensive identity should bear *more* special obligations. The identity consideration tells us who are close to or distant from us, and our responsibilities should be *more* to those who are close to us than those who are distant from us (Walzer, 1983: 33; Miller, 2007: 43-44, 104; Sandel, 2009: 225-26). It is concerned about how each individual should be assigned moral responsibilities in particular.

---

<sup>72</sup> I do not mean to discuss my account of moral responsibilities in a very systematic way because, in this thesis, discussion on moral responsibilities is not the centre issue. I just want to show why and how my account on this topic may suggest that the state should not be neutral toward comprehensive doctrines in a way that Rawls suggests.

I would say that each individual's actual comprehensive identity would play a significant role in a way that is incompatible with both cultural relativism and Rawlsian secularism. Therefore, there are two challenges I need to meet. On the one hand, I need to show how my claim that our actual comprehensive identity could shape our special moral obligations significantly differs from cultural relativism. On the other, I have to show how my claim (at this second level) cannot be compatible with Rawlsian secularism.

My argument differs from the religious or anti-religious state, in which the state, in those societies, views everyone as the *same* comprehensive identity, e.g., the Thai state views everyone as a Buddhist and encourages (but not forces) them to be a good Buddhist. But my argument is that the state views people as *different* comprehensive identities according different situations.

For example, the state may view certain people as a German who has the special moral responsibility to what their ancestors have done, but may view them as other identities in other situations. And my argument also does not say that one's obligation is determined by one's identity.

To view someone as a Buddhist does not necessarily mean that one's obligation is to do whatever Buddhism tells them to do. It could simply mean that they must still comply with humanitarianism. But *if* it is the case that their Buddhism teaches something incompatible with humanitarianism, then they should have special moral obligations to remedy the injustice.

This is also incompatible with Rawlsian secularism. Of course, Rawlsian secularism also requires everyone to act against anti-humanitarian values. But my argument is that sometimes someone should have *more* obligations than others even if they do not produce anti-humanitarian values themselves. Moreover, I propose that sometimes the state should encourage people to adjust their comprehensive doctrines even if they are already reasonable according to the Rawlsian standard. I will discuss more on these later.

The characteristics of my argument combining the ultimate and identity level may be illustrated in the following case. Humanitarianism would rule out mafia values, so we are not allowed to take such a value, and we are all obliged to eliminate it. However, while we



*all* should take anti-mafia values as the ultimate value, the identity consideration indicates that not everyone should have equal responsibilities to remedy or promote them.

Let's assume that A belongs to a certain community/religion that used to practice mafia values, whereas B belongs to a community/religion that has nothing to do with it. My common sense is that while both A and B should resist mafia values, it is implausible and undesirable to say that their responsibilities should be equal. Instead, I find it more desirable that A should have *more* responsibilities than B *just because* A shares the actual identity with the mafia community/religion, though they never supported mafia values themselves. A should recognize that they are a member of a certain community/religion and have more special responsibilities than others.

The fact that A claims themselves as a member of a mafia community/religion does not mean that A still holds mafia values, but that A addresses the fact that those anti-humanitarian values are more related to their identity than others. For example, if I was born in a certain religious family (let's say, Religion A), and I never embraced the religious teaching, but it produced anti-humanitarian values. Although I myself did not hold Religion A, I should feel *more* responsible to deal with them (to challenge, remedy, or even eliminate it) just because my identity is linked to that religion through my family.

It is important to note that my argument (especially at the second level) is very far from a *fixed* formula applicable to every case *universally*. In contrast to Kant's categorical imperative, for instance, which claims to work in every moral case *universally*, I would rather claim that my argument is *particular* in that to decide in what way the identity account would affect our judgements depends on what moral cases we are talking about. I do not believe that we could have any single universal formula applicable to every moral case (Sandel, 2009: 211).

For example, if we talk about international politics, our national identity would affect our judgement more than our religious identity (if it has something less to do with the case in question). Or if we encounter a situation where two people are in urgent need of us; while one is the same nationality as us, another is not. Who should we help? The answer would be that we should help both of them because, in this *particular* case (*urgent* need), the national identity consideration is much less relevant.

Moreover, my argument on special obligation in relation to one's identity is about whether one should have *more* obligation than others, not about whether one should have any obligation *at all*. Thus, we have an obligation to help both of them, but our obligation should not be equal toward them in some other cases, e.g., later on, these two people are not in urgent help anymore, we may need to take care *more* of our fellow citizen than another. Walzer (1983) and Miller (2007) illustrate this point clearly:

“It is the absence of any cooperative arrangements that sets the context for mutual aid: two strangers meet at sea or in the desert or, as in the Good Samaritan story, by the side of the road. What precisely they owe one another is by no means clear, but we commonly say of such cases that positive assistance is required if (1) it is needed or urgently needed by one of the parties; and (2) if the risks and costs of giving it are relatively low for the other party. Given these conditions, I ought to stop and help the injured stranger, wherever I meet him, whatever his membership or my own. This is our morality; conceivably his, too. It is, moreover, an obligation that can be read out in roughly the same form at the collective level. Groups of people ought to help necessitous strangers whom they somehow discover in their midst or on their path. But the limit on risks and costs in these cases is sharply drawn. I need not take the injured stranger into my home, except briefly, and I certainly need not care for him or even associate with him for the rest of my life” (Walzer, 1983: 33)

“Suppose a child goes missing and there are fears for her safety. This is equally bad no matter whose child it is, and there are some agents, for instance the police, who should devote equal resources to finding the child in all cases. But there are other agents whose reasons for action will depend on their relationship to the child. If the child is mine, then I have a strong reason, indeed an overwhelming reason, to devote all my time and energy to finding her – a *moral* reason, to be clear, not merely strong desire, by virtue of our special relationship. If the child comes from my village, then I have a stronger reason to contribute to the search than I would have in the case of a child from another community” (Miller, 2007: 29)

According to Miller's example, our *special* obligation does not come from our own actions, but from our unchosen comprehensive identity: we did not choose our community members, and more importantly, we did not even get involved in making the child go missing in the first place (casual responsibility) (Miller, 2007: 104).

Or if we think about a different particular case: two people are in urgent need of us, and a particular situation at that time does not allow us to help both (even if we are willing to do so), who should we help? We may answer that we should help our fellow national. But the answer may be different in some other cases, e.g., if one is our partner with a different

nationality, another is just our fellow citizen: we could answer that we should help our partner despite of a different nationality because, in this particular case, our family member identity is more relevant than our national identity.

Or if we think about a situation where we encounter two children who need our food; one is our child, another is other's. This simple scenario may be too abstract. But if it is assumed further that while our child is already full, another child is quite hungry, then we may decide that we should give food to other's child because, in this particular case, our family member identity is less relevant. We cannot have any single universal principle which automatically dictates us what to do in particular, e.g., we cannot say that we must *always* help our fellow citizens more than others in *every* case.

My argument is *not* that the comprehensive identity (national, familial, religious, etc.) must always tell us who we should have more obligation with, but that it must have a *chance* to play a significant role in *some* relevant cases. I do not talk about what citizens can do, but about what the state should do.

As I said, I recognize that the Rawlsian state certainly “allows” citizens to view themselves as a comprehensive identity and to take obligations attached with those identities. But I propose that the state itself should be able to take some comprehensive identity into account when assigning people moral and political obligations.

My moral particularism is influenced by David Miller's account of moral responsibilities. Miller (2007: 45, 49) treats different contexts with different considerations. According to Miller, our comprehensive identity may be much relevant in some particular cases, but may be not in other particular cases. And when our comprehensive identity is relevant, this is not merely as a means to implement our general duties as Goodin (1988) suggests, but as an end in itself.

A clear example of this is provided by Miller (2007: 45): “Suppose that a flu pandemic breaks out and the government only has sufficient vaccine to inoculate a limited number of vulnerable people against the disease. It does not seem wrong in this case to give priority to treating compatriots, that is to supply the vaccine to all those fellow-citizens identified by age or other relevant criteria as belonging to the vulnerable group, before sending any

surplus abroad, even though it is reasonable to assume that some foreigners will be *more* vulnerable to the flu than some compatriots selected for vaccination. And this remains true even if we know that those more vulnerable foreigners will not receive the vaccine from their own health services.”

I would claim that Miller's account can be called a version of moral particularism because he justifies special moral obligations due to our national identity. Nevertheless, this is *not* to say that my claim on the role of the state (i.e., to promote moral particularism over other accounts) is implied by Miller's account. I do not claim that Miller would support my claim here.

It might be possible to say that Miller would justify the state promoting or even enforcing moral particularism concerning national identity. But Miller *might* disagree with me in applying it to other comprehensive identities (cultural, religious, etc.), and in requiring the state to promote it.

One may criticize that my argument is indeterminate as it varies in each particular case. I totally accept this criticism, but I do not think that this is a weakness of my argument. I think that this should be the way we should tackle with different moral cases. I do not believe that we can have any single universal formula applicable to every case.<sup>73</sup>

To be more controversial and provoking, let's consider a real case: *some* Muslims<sup>74</sup> and anti-LGBTQ teaching. According to some Muslims, all humans are created by Allah as men and women only; any deviant from this (e.g., gay) is the violation of God's rule and should be severely punished (Wood, 2017: 287).

This is against humanitarianism, and Muslims should have *more* responsibilities to deal with this issue, e.g., to promote LGBTQ rights, to eliminate anti-LGBTQ values, to

<sup>73</sup> As Miller (2007: 13-14) says that “there is no one master principle (or connected set of principles) that defines justice in all times and all places. Instead, the relevant principle will depend on what is being distributed, by whom, and among whom: especially on the kind of relationship that exists between the people among whom the distribution is occurring.”

<sup>74</sup> I intentionally say that *some* Muslims (e.g., ISIS) rather than Islam as a whole believe in anti-LGBTQ teaching, because I know that some Muslims interpret the Quran in a way that supports LGBTQ, e.g., Kugle (2014), and I do not want to argue who accurately interprets Islam. I just refer to the fact that *some* Muslims believe that the Quran teaches anti-LGBTQ values, while some Muslims believe otherwise. The point is that they should have special obligations to deal with the issue because they are related to Muslim in one way or another.

convince Muslims with anti-LGBT attitude to value LGBTQ. Those who are connected to them (as a family, for example) should also have more responsibilities than those who are not. Even some Muslims who claim that the Quran could be reinterpreted in a way that supports LGBTQ rights should have more responsibilities than those whose identity is not related to Islam at all.

My account of responsibility here is *non-voluntaristic* and *non-Rawlsian* but desirable in my opinion because I think that the source of one's obligation does not need to stem from their individual actions, but may stem from their cultural or religious identity.

Before I proceed, I want to make it clear that while I insist that my account of responsibility is non-voluntaristic and non-Rawlsian, I do not claim that my account of responsibility is nonliberal because while some particularist (e.g., MacIntyre, 1984) claims that it is nonliberal, other particularists (e.g., Scheffler, 1997) say that it is liberal.

Scheffler (1997: 204) argues that most liberals accept this particularist account of responsibility (especially special responsibility in relation to one's nationality), though they may have the difficulty of explaining why it is acceptable within liberalism. He (1997: 195) also argues that even Rawls, know it or not, accepts this account as Rawls says that he is concerned with “the problem of justice for a society” or for a nation-state.

According to Scheffler, then, even Rawls accepts that people have more responsibilities to their national fellows than the rest of the world. I agree with Scheffler that, in the end, Rawls himself cannot avoid a particularist account. But my point here is that although Rawls would want to accept a particularist account, his theory cannot allow him to do so because it says that we must leave our comprehensive identity (national, religious, familial, class, race, etc.) aside when deciding about a matter of justice.

Therefore, that Scheffler rightly points out that even Rawls accepts a particularist (non-voluntaristic) account should imply that Rawls is incoherent rather than that Rawls' *theory* explicitly accepts a particularist account. I do not want to debate whether a particularist account of responsibility should be called liberal or not, but just to argue that it has no place in Rawls' theory because it is incompatible with his political conception of the person; therefore, it is non-Rawlsian.

Moreover, even if we assume, for the sake of discussion, that Rawls' theory is consistently based on a particularist account (i.e., the national identity) as Scheffler might believe, this is still far from my particularist account which requires the state to take more than just one's national identity (e.g., the religious and familial identity, etc.) into account seriously when deciding about justice.

Scheffler might argue that Rawls' theory begins with and only focuses on a particular nation-state (i.e., the U.S.) rather than the whole world, and that Americans have more obligations to apply Rawlsian justice to American fellows in the first place. Despite this, I would argue that Rawls' theory cannot allow my moral particularism because it is based on a comprehensive account in Rawls' standard.

First, while Rawls' theory begins with a particular national identity, he insists that no duties, including historically national inheritances, can be imposed on individuals without their consent, and the state, for the sake of neutrality, cannot even support the view that historically national inheritances should be imposed on individuals. He can, at best, claim that we have more obligations, which are given by our rationally voluntary agreement, to our national fellows, e.g., we need to act according to the difference principle to our national fellows.

But according to my particularist account, we not only have more obligations to our national fellows but our obligations sometimes may derive from our historically national inheritances, e.g., we need to accept some past wrongdoing of our ancestors as ours and to correct it.

Second, Rawls' theory can, at best, takes one's national identity into account when considering a matter of justice, i.e., everyone in the same nation has obligations to comply with Rawlsian justice. But according to my particularist account, the state takes more than one's national identity (e.g., the religious and familial identity, etc.) into account when deciding about a matter of justice, e.g., sometimes someone has *more* obligations than other national fellows due to their different religious and familial identities.

Now, let's get back to discussion of my account of responsibility concerning Islam and anti-LGBTQ values. Some may try to convey one's obligation by showing how they

*choose* to get involved in the first place, e.g., as a person chooses to be a Muslim and value anti-LGBTQ values, they should have an obligation to challenge such a value among Muslims; or one may argue against my argument that since some Muslims do not get involved in making other Muslims homophobic, they should not have a special obligation to challenge such a value among Muslims.

Let me reply to these claims. The heart of these two claims is that one's obligation must stem from one's own action: one should be responsible for what they do. For the second claim, I disagree that the Muslim should not have an additional obligation to their fellow Muslims because although they themselves do not value anti-LGBTQ values, they still have a *collective* obligation as the Muslim identity: they may not value anti-LGBTQ teaching in particular, but that they still value Islam as a whole (except anti-LGBTQ teaching) could help sustain the Islamic culture (including anti-LGBT values). They should do something (*more* than other non-Muslims, and *less* than other anti-LGBTQ Muslims) to change such a culture among Muslims.

Compared to other non-Muslims. If pro-LGBTQ Muslims do nothing to challenge anti-LGBTQ teachings, then they still value Islam as a whole which would make other Muslims take for granted that they value every teaching of Islam. But if non-Muslims do nothing, then they do not value Islam as a whole which would have nothing to do with every teaching of Islam at all. In this aspect, we can say that even pro-LGBTQ Muslims still get involved in maintaining anti-LGBTQ teaching *more* than non-Muslims.

Compared to other pro-LGBTQ Muslims: it is clear that anti-LGBTQ Muslims should have more obligation than pro-LGBTQ Muslims in challenging anti-LGBTQ values because they get involved in maintaining anti-LGBTQ teaching more than pro-LGBTQ Muslims.

Nevertheless, my reply to this particular case so far still takes the idea that one should be responsible only for one's actions. But, indeed, my account of responsibility goes beyond this: *in some cases*, one may be responsible for what one does not choose or do in one way or another. I would argue that the justification (or the foundation) of my argument on the identity consideration is based on human's emotional attachment (in relation to a comprehensive identity), feelings, and so on.

To say that these factors are the *foundational* sources of our (special) obligation is to say that they cannot be supported by any further reason, otherwise they would become merely an instrumental factor. Our *comprehensive identity* is sometimes a legitimate moral foundation in determining justice just as concepts of right, freedom, consent, mutual-benefit, effectiveness, and so on, rather than merely an *arbitrary* factor we should avoid when considering on a matter of justice.<sup>75</sup>

My argument may be criticized that it restricts people's freedom and undermine equality among citizens: if the state takes my moral particularism, then it would prohibit people from taking other accounts, and it would be biased against some competing accounts among people. I would argue that my argument does not need to end up with the restriction of people's freedom. We must distinguish between the liberal state and the neutral state: the liberal state guarantees people's freedom, but may be not neutral. The religious or anti-religious state, for instance, is not necessarily hostile to people's freedom.

For instance, the Thai state may publicly states that citizens should value Buddhism, but they should not be forced to do so because that would violate Buddhism. In this sense, my argument could simply mean that the state should *promote* some comprehensive doctrine/identity and protect people's freedom. The state may promote a particular non-voluntaristic account of obligation (e.g., moral particularism) without restricting people's freedom. The state may hold that although people should be encouraged to take moral particularism, they should not be forced legally to do so because this would make them do the right thing for the wrong reason.

Alternatively, one may propose that the state may do two things at the same time: it may reason that people should have certain moral obligations attached with their identity, and that it is wrong to force people to accept those obligations as people may think differently. How is this possible? Think about citizens who hold different comprehensive doctrines. It is possible to propose, on the one hand, that everyone should do xxx instead of yyy, and, on the other hand, that no one should be forced to do so because they may think differently.

---

<sup>75</sup> In this sense, my argument differs from the “assigned responsibility model” proposed by Goodin (1988), which claims that our comprehensive identity matters only as a device (or means) for implementing our general duties toward all human beings. According to this model, our comprehensive identity is relevant only if it is an effective means in every case. But according to my argument, our comprehensive identity can be relevant as a moral foundation (in some cases) even if it is not effective in implementing our general duties.



Now, if we just think of the state in the same way, then it is possible for the state to do two things at the same time: it may reason that citizens may think differently and it is wrong to force them to think the same, and that, morally speaking, citizens should do xxx instead of yyy. It is possible that the state protects people's freedom but is non-neutral toward comprehensive doctrines. And this is where my proposal differs from Rawls: while Rawls proposes that the state must use only public reason and should not have a say on moral doctrines, I propose that the state may use both public and nonpublic reason.

Now, let's consider some criticisms that my moral particularism is compatible with Rawlsian secularism, and so my argument fails to differ from Rawlsian secularism. First, some might argue that citizens in the Rawlsian state could take my moral particularism; the Rawlsian state does not prevent them from doing so. I would argue that my account of moral particularism is not confined only to discussion on citizens, but I want to extend my discussion to the role of the state as well.

I want *the state* to be able to do more than what Rawlsian secularism allows it to do. For instance, the state should be able to promote (not just allow) moral particularism among people. And this is how my moral particularism (at the state level) cannot be possible within Rawlsian secularism.

Rawlsian secularism could accommodate my moral particularism only in the sense that it “allows” citizens to justify and pursue moral particularism if they want to, but it could not accommodate it in another sense. It cannot “promote” or “encourage” citizens to justify and pursue moral particularism over other accounts because the Rawlsian state must be neutral toward people's ways of life and justification.

What the Rawlsian state can do regarding moral responsibilities is to guarantee everyone's freedom to pursue their preferred account of moral responsibilities, given that they do not violate other people's rights and their obligations that every citizen under the Rawlsian state should do (e.g., the legal duty to comply with conceptions of justice, the moral duty of civility, etc.). The Rawlsian state would violate the principle of neutrality if it *encourages* people to do more than what they are expected to do as free and equal citizens.

This notion must be clarified. What I try to say here is *not* that the Rawlsian state wants

everyone to do only what free and equal citizens must do, and should not do more than that, e.g., citizens should only use public reason and do not use nonpublic reason at all. Instead, what I want to say is that the Rawlsian state simply requires that everyone should do what they should do as free and equal citizens should do, whereas whether they should do more than that (e.g., religious duties, etc.) entirely depends on each individual.

In this sense, “citizens” can pursue my moral particularism in the Rawlsian state because it does not violate the conceptions of justice. But “the state” cannot promote or encourage people to value or pursue it over other accounts because this would go beyond the role of the Rawlsian state.

Second, some might argue that my argument that the state should encourage people to take some certain obligations even if they do not want to take is also compatible with Rawlsian secularism. Even Rawls asks the state to enforce or encourage people to take some certain obligations even if they do not want to take.

For instance, Rawls would justify the state imposing on citizens *legal* obligations to comply with conceptions of justice even if they do not want to comply with, and Rawls would justifying the state encouraging people to take the (*moral*) duty of civility to use public reason in public discussion even if they do not want to do.

Therefore, people in the Rawlsian state would have certain obligations even if they do not choose it themselves (unchosen duties). In this sense, one might say that my argument is not different from Rawlsian secularism.

I would argue that my argument is significantly different from Rawls' view on unchosen duties. It is true that even Rawls would ask people to take some obligations even if they may not actually want to take them. For example, everyone has an obligation to respect other people's property rights, under certain conditions. One cannot complain that the Rawlsian state forces them to do what they do not want to do. This is because, Rawls would claim, although they may *actually* disagree with the Rawlsian laws and policies, there is nothing wrong in forcing them to comply with them because they could reasonably be accepted by them if they were *reasonable* enough.

Rawls defines reasonable people as those who understand that they should comply with the Rawlsian laws and policies because they are justified to everyone as free and equal. They understand that they could view themselves as a comprehensive identity, but laws and policies cannot be constructed to favour their particular comprehensive identity. Laws and policies must be constructed to be neutral toward any particular comprehensive doctrine/identity.

However they view themselves as a comprehensive identity, they must understand that they must comply with laws and policies designed to govern citizens as free and equal. In this sense, they cannot complain that since they never choose the Rawlsian laws and policies themselves, they do not need to comply with them. Instead, they must comply with them even if they never choose them because they would have chosen them if they were reasonable enough. This is Rawls' view on unchosen duties.

However, this is not what I mean when I say that the state should encourage people to take some certain obligations even if they do not choose or want to do. I agree with Rawls that people may be encouraged to do something even if they actually do not want to do by claiming that they would have done it if they were reasonable enough. But I disagree with Rawls' conception of reasonableness. I think that, in some cases, reasonable people are not the ones who leave their comprehensive identity aside when deciding on a matter of justice.

Again, I should emphasize that the notion that people leave their comprehensive identity aside when deciding on a matter of justice does not mean that people must view themselves as free and equal citizens *all the times* or that they cannot use their nonpublic reason in public discussions. It simply means that when they have to discuss and decide on a matter of justice (fundamental political questions), they are required to view themselves as free and equal citizens so that laws and policies could be reasonably accepted by other people who also view themselves as free and equal citizens.

Given this, they are allowed to use their nonpublic reasons in public discussions. Reasonable people, according to Rawls, would leave their comprehensive identity aside when deciding on a matter of justice *in this sense*. And the Rawlsian state needs to view people as free and equal when deciding on a matter of justice *in this sense*, too. That is, the

Rawlsian state must launch only laws and policies (including its justifications) that could be reasonably accepted by citizens who view themselves as free and equal.

For example, there are two laws (A and B) the state must decide. Law A could be accepted by everyone if they view themselves as free and equal, but if people view themselves as a comprehensive identity, this law could be accepted only by those who view themselves as a particular comprehensive identity. Law B could not be accepted by everyone even if they view themselves as free and equal, and it could be accepted only by those who view themselves as a particular comprehensive identity.

The Rawlsian state would justify Law A because what the state cares about is that a justified law must be the one that could be reasonably accepted by citizens as free and equal. The fact that Law A could not be accepted when people view themselves as a particular identity is not the reason to conclude that Law A is unjustified. In contrast, the Rawlsian state will not justify Law B because it could not be accepted by people as free and equal, but it could be accepted only if people must view themselves as a particular identity. This is what I mean when I say that the Rawlsian state views citizens as free and equal, and leave their comprehensive identities aside when deciding on a matter of justice.

But my moral particularism suggests that *the state* may take some comprehensive identity into account when deciding on a matter of justice. The state may justify its actions by claiming that they could be accepted only if citizens view themselves as a particular identity (in other words, laws may still be justified even if they could not be accepted by citizens who view themselves as free and equal).

For instance, the state may publicly say that certain German people should have special moral obligations to remedy the past injustice done by their German ancestors, and that they would fail to fulfil their moral obligations as a German if they refuse to view themselves as a German in this way and instead view themselves as a free and equal person independent of any comprehensive identity.

Of course, “citizens” under the Rawlsian state are absolutely allowed to view themselves and set their moral obligations that way. But my point is that the Rawlsian “state” is not allowed to view citizens that way. Given that they comply with the Rawlsian laws and

policies, fulfil their duty of civility, and do not violate other people's rights, the Rawlsian state cannot *encourage* them to view themselves as a particular identity. If they view themselves as free and equal, then they could say that it depends on them whether they would take what someone in the past has done as part of their moral obligations, and the state would be non-neutral in encouraging them to do what they do not want to do. Whether people would view themselves that way and whether they would take certain obligations (attached to a particular comprehensive identity) must depend on them.

The state that encourages people to view themselves as a particular comprehensive identity in this way cannot be called the neutral state in the Rawlsian sense. This is why I say that the Rawlsian state cannot encourage people to have certain obligations that they do not choose or want to take. My view on unchosen obligations differs significantly from Rawls' view, and my moral particularism at the state level cannot be compatible with Rawlsian secularism.

Third, some might argue that my argument that the state may promote the notion that not everyone should have equal obligations, but some should have more than others is also compatible with Rawlsian secularism. As Rawls argues that the poor (or the least advantaged) should be prioritized to the rich (or the most advantaged). They may claim that, therefore, my argument is not different from Rawlsian secularism. It should be clear that I do not just argue that someone should have more obligations than others, but that someone should have more obligations *due to* one's comprehensive identity.

Although Rawls' difference principle says that someone (e.g., the rich) has more obligations to contribute to society than others (e.g., the poor), these unequal obligations are not *due to* their different comprehensive identities, but due to the different roles assigned to a free and equal person. They are all perceived as a free and equal person, and consider how to assign obligations among them. At the end, they all agree that those who happen to accidentally have more advantages (e.g., born talented, born wealthy) should have more obligations.

These considerations do not take different comprehensive identities into account seriously; the identity as the rich or the poor is just the *general* identity independent of any comprehensive identity. As Rawls argues that his difference principle aims to provide

everyone resources sufficient to pursue their preferred conception of the good life, this implies that people's comprehensive identity cannot affect the difference principle. But my argument is that the state should view people as a comprehensive identity and consider how obligations attached to their comprehensive identity could affect them.

Although I consider my discussion in this section a discussion on justification rather than characteristics, I would claim that if the state promotes my moral particularism, it would be non-neutral both in terms of characteristic (as a by-product) and justification. In terms of characteristic, the state that promotes moral particularism would *in effect* promote a particular way of life over others.

As Kymlicka (1989a) argues, the state may be non-neutral simply by promoting some particular ways of life over others even if it may tolerate other ways of life. Moral particularism, discussed in this section, may focus particularly on people's justification of moral obligations, but this also partially shapes their ways of life. As people would be encouraged to view themselves as a particular comprehensive identity, they are in effect discouraged (by the state) to value other ways of life and identities.

For instance, suppose that the state publicly says that a particular person should view themselves as a particular comprehensive identity (rather than as a free and equal person or other comprehensive identities) and should be responsible for what their ancestors have done wrongly, although they have not done it themselves in one way or another. This would, in effect, be equal to discouraging them to view themselves other ways.

In the eye of the state that takes this view, then, they would fail to fulfil their moral obligations if they view themselves as a free and equal person. This is because they could claim that they are a free and equal person who freely chooses their own identity, so given that they do nothing wrong themselves, they are free to choose whether they would take responsibility for what people who shared the same identity as them have done wrongly. The state that promotes my moral particularism would discourage them to view themselves that way. The state fails to be neutral toward competing accounts of the comprehensive identity.

In terms of justification, the state that takes my moral particularism would fail to be

neutral in the Rawlsian sense because it uses nonpublic reason. As we have seen, Rawlsian public reason requires “the state” to use only public reason in the sense that it must leave citizens' comprehensive identity aside when deciding on a matter of justice. But my moral particularism requires the state to take citizens' comprehensive identity into account even if this would sometimes interpret their identity in a way that they do not accept.

For example, the state sometimes may interpret a citizen as a German who should be responsible for what their German ancestors have done. But it may be the case that this citizen may rather want to view themselves as a free and equal person independent of any comprehensive identity so that they do not need to take responsibility for what their ancestors have done. So, this citizen would not accept being interpreted as a German in a way as the state interprets them. My moral particularism, therefore, requires the state to use nonpublic reason rather than Rawlsian public reason in some cases.

### **6.3 The Importance of Reason**

As I mentioned in Chapter 5 (section 5.2.2), apart from the legal duty to abide by Rawlsian justice, Rawls also requires citizens to have a (moral) duty of civility to use public reason in public discussion on fundamental political questions. I have argued that Rawls has at least two reasons for this requirement.

First, by using public reason, they would feel relevant to laws imposed on them as if they impose those laws on themselves. This is also to respect other citizens as free and equal. If any laws can be justified only by appealing to nonpublic reason, then people could not understand and accept them.

Second, by using public reason, they could secure democratic culture because they would justify it for the right reason. If they simply justify democratic culture because it helps them realize their comprehensive doctrines (nonpublic reason), then they may stop protecting democratic culture once it no longer promotes their comprehensive doctrines.

Citizens need to use public reason so that others could understand one another's political arguments, otherwise they would feel being unfairly excluded from the public sphere; nonpublic reason would fail to respect the person as an ends in themselves (as the person

who can choose their own ends). To use nonpublic reason is to support democracy for the wrong reason as it would conflate our comprehensive doctrine with democracy, which is supposed to be independent of any comprehensive doctrine as it is the condition (or framework) of all reasonable comprehensive doctrines in the first place. This would undermine democratic culture that requires the recognition of the distinction between public reason and nonpublic reason.

People are free to use their nonpublic reasons as they prefer, provided that they fulfil the duty of civility and those nonpublic reasons are not incompatible with Rawlsian public reasons. In other words, people are free to use any nonpublic reason which is reasonable according to the Rawlsian standard. According to Rawls, then, the state may encourage people to have a duty of civility. But the state cannot encourage or discourage any reasonable comprehensive doctrine or nonpublic reason; the state must treat them all the same by being neutral toward them all.

According to the Rawlsian proviso, a religious citizen may publicly reason that LGBTQ should be accepted because, *as a free and equal citizen*, they should be able to choose their own sex (public reason), but after that, they may further reason that LGBTQ also should be accepted because they are created by God just as other men and women (nonpublic reason). Rawls would have no problem with this religious citizen as they show that they understand “the right reasons” (public reason) in justifying laws and policies. Although other citizens may not accept their latter claim about God (nonpublic reason), they could accept their former claim (public reason).

In this section, I will argue why Rawls' argument is morally undesirable. My argument is *not* that his argument is undesirable because it fails to be neutral toward some comprehensive doctrines, nor that it prevents someone from having some comprehensive doctrines by calling those doctrines as unreasonable.

Instead, I argue that his argument is undesirable because it tries to be neutral toward comprehensive doctrines, and it actually calls some comprehensive doctrines as reasonable, despite that they should be called unreasonable. Some reasonable comprehensive reason according to the Rawlsian standard should be viewed as unreasonable and should be discouraged and challenged by the state.



In general, I agree with Rawls that democratic culture is important and should be supported actively by citizens. I agree that citizens should be expected morally to have certain characters (to use the right reason in a certain issue in a certain time). However, I have the different thought on the contents of the goal (a different understanding of democratic culture). The problems I have with Rawls' argument are these.

First, morally speaking, I disagree that citizens who use public reason should be able to use any (reasonable) nonpublic reason because even if some comprehensive reason could support public reason, it does not make sense to assume that those who use both public and nonpublic reason would really be motivated by "the right reasons."

Rawls wants everyone to support toleration (or democratic culture) not from the standpoint of any comprehensive doctrine, but from the right (public) reason that we need to tolerate each other because others may disagree with our comprehensive doctrines. Rawls believes that this motivation would secure the toleration regime. But how can we be sure that those who also reason from their comprehensive standpoint would subject their comprehensive reason to public reason (the right reason)?

For example, after using public reasons to justify toleration, one may add that we need to tolerate each other because this is commanded by God. While these two reasons may possibly go together, it does not necessarily mean that this person really justifies toleration for the right reason. They may just use public reasons to satisfy the Rawlsian proviso without really believing in such a "right" reason. If this is the case, then it is not clear why Rawls should believe that democratic culture would be secured as they do not really support democracy for the "right" reason.

I do not mean that those who use nonpublic reasons would always be motivated by the wrong reason, but that the Rawlsian proviso is inadequate to guarantee that those who follow the proviso would be motivated by the right reason, and therefore, the Rawlsian proviso fails to secure democratic culture, even from his own premise.

Second, Rawls proposes that, given that the Rawlsian proviso is met, citizens may use nonpublic reason as the justification of laws and policies as long as their comprehensive reason is reasonable according to the Rawlsian standard (the overlapping consensus). For

instance, one may legitimately reason that we should tolerate each other because this is God's law, and so on. Rawls believes that this strategy would help firmly secure democratic culture as everyone can find the relevance between laws and policies and their own comprehensive doctrines, between public reason and their nonpublic reason.

But sometimes we need to ask if it is desirable that some comprehensive doctrine should be considered reasonable and supportive of democratic culture just because they are not in conflict with Rawlsian public reason. Before we could answer this question, we need to ask a fundamental question: what does it mean to respect the person? The respect of the person is undoubtedly vital. But there may be more than one way of showing our respect. I can think of at least two different ways. On the one hand, to respect someone is to just tolerate them as a free and equal person. On the other, to respect someone is to recognize them as their comprehensive self.

For example, if we are to respect homosexuals, we may tolerate them as a free and equal person (being a homosexual is just their choice), or accept them as a homosexual (being a homosexual is part of their self). While both ways defend homosexuality, they differently affect the feeling and dignity of the homosexual person. If we respect homosexuals just because they are a free and equal person just like others, this implies that what we really respect is not their comprehensive self (homosexuals) but simply their general self (free and equal person); in other words, we do not respect them *particularly*. We may even disagree with their comprehensive self as long as we respect them as a free and equal person.

Some may reason that while they respect homosexuals because they are a free and equal person, they find them morally unacceptable according to their religious belief. Although they would only say the latter reason in the private sphere, this would still affect how homosexuals would feel about their self. Indeed, some may even produce their religious claim on the dignity of homosexual in public discussion without violating the Rawlsian proviso as they may claim that they do not discuss fundamental political questions, but moral comprehensive questions.

A fundamental political question about homosexuality would go like this: Are homosexuals politically equal and should be protected legally? In contrast, moral

comprehensive questions would go like these: What makes one homosexual in the first place? Are they morally acceptable? Should we avoid being a homosexual ourselves? These questions are concerned about the good life and human nature because the answers to these questions do not necessarily lead to the rejection of LGBTQ rights. One may argue that those who criticize homosexuals as morally unacceptable would always reject LGBTQ rights. But this is not always the case.

Think about the abortion debate. Rawls (1997: 798-99) claims that abortion law is neutral for those who see abortion as morally acceptable *and* those who see it morally unacceptable. This suggests that even Rawls accepts that the political question is not necessarily implied by the moral question. It is possible that those who find homosexuals morally unacceptable may respect them politically and legally.

Think about the perspective of *some* Buddhists<sup>76</sup> toward homosexuals: everyone's sex is determined by their own actions in past lives (karma), e.g., one was born heterosexual if one did good things about their marriage life in past lives, and homosexual if one cheated their partner. Homosexuals are a bad karma. Some Buddhists holding this view accept and promote LGBTQ rights, e.g., gay marriage. Nevertheless, they do this *not* because of humanitarian reason, but because they feel pity for them that they must suffer from a bad karma. They reason that, as a Buddhist, we should not disdain homosexuals because they already suffer from their bad karma (of being a homosexual), and we should not make them feel even worse.<sup>77</sup>

Some Buddhists are motivated to tolerate homosexuals as part of their making-merit. They believe that if they help others, they would receive material comforts in return as a reward of their good karma, in this present life and afterlife. From this perspective, homosexuals should be tolerated not because they are a free and equal person nor because being a homosexual is something naturally normal.

Rawls may argue that this nonpublic reason is not allowed in public discussion. So let's

---

<sup>76</sup> I intentionally say that only some Buddhists rather than Buddhism as a whole because I realize that some Buddhists may support LGBT on different reasons, e.g., Vermeulen (2017). Moreover, some Buddhists, like Dhammakaya Buddhism, even disapprove of LGBT (Dhammakaya, dmc.tv).

<sup>77</sup> As Sizemore and Swearer (1990: 11-12) argue, some Buddhist views that any present situation of a person is what one really deserves as it is their karma, and no one has moral obligation (as required by justice) to help them; instead, if someone wants to make merit for themselves or if they are kind enough, then they may try to help them. This is not their moral obligation, but their voluntarily meritorious action.

assume that they refrain from this nonpublic reason and turn to public reason by viewing homosexuals as a free and equal citizen rather than as according to this Buddhist perspective. Given this, Rawls would have no problem as they use their Buddhist nonpublic reason only in the private sphere and only when discussing nonpolitical questions in public.

However, they may still produce the negative attitude toward homosexuals. At the civil society level, they use public reason to discuss and justify LGBTQ rights, but they may use Buddhist nonpublic reason to discuss nonpolitical questions in public. At the private level, they may use Buddhist nonpublic reason to discuss and justify LGBTQ rights, and they may also use Buddhist nonpublic reason to discuss nonpolitical questions in private.

We cannot know how Rawls himself would react to this Buddhist perspective, but I do not think that his public reason has a ground to criticize or reject it even if he himself wanted to do so. I find such a negative notion on homosexuals morally unacceptable as it undermines the dignity of homosexual and the state should be able to do something about it. Of course, I do not think that the state should ban or punish such a negative view and the state needs to allow people to express those negative views publicly.<sup>78</sup>

In this sense, I agree with most liberals, including Rawls. But I disagree that the state should be allowed to use only public reason. Instead, the state should be able to use nonpublic reason to challenge religious or nonreligious comprehensive doctrines that have the negative views, even if they are reasonable according to the Rawlsian standard.

For example, instead of simply saying that, as a free and equal person, all people should be able to choose their own sex, the state may reason that homosexuals are naturally and morally acceptable just like heterosexuals, and it is morally unacceptable to view homosexuals as morally inferior.<sup>79</sup> This would allow the state to deal with cultural or

<sup>78</sup> Legally speaking, Rawls would surely agree with me that people should be allowed to express such a negative view in public.

<sup>79</sup> The Buddhist perspective on homosexuals as shown above views homosexuals morally inferior as it implies that they are morally different from heterosexuals, and this difference occurs because of their bad actions in the past, so homosexuals deserve more special sympathy than heterosexuals whom these Buddhists consider normal. This kind of argument which seems to require sympathy but indeed based on the notion that people are not morally equal can be also seen in the case of how *many* Thai men view women. For instance, women should be respected and helped specially, e.g., men should always give up a seat for women in public transportation even if those women are not pregnant or anything at all. They claim that this is the way men should treat women. Again, I feel that this reason is based on the notion that men and women are not morally equal, but that women are weaker than men.

social norms of society, e.g., to challenge any negative view on homosexuals even if they do not discuss political questions directly or even if those reasons are reasonable according to the Rawlsian standard.

I disagree with Rawls that people may legitimately use nonpublic reason to justify and discuss political questions even if their nonpublic reason is reasonable according to his standard. Instead, I think that some comprehensive reason, which is reasonable according to the Rawlsian standard, is unreasonable and disrespectful of the person.

The state should not be neutral toward comprehensive doctrines; positive and negative views on homosexuals should not be treated equally. But the state should not ban or punish those with negative views because it is not an effective way to promote the good in society; instead, it would make people do the right thing for the wrong reason.

I disagree that the only way to respect the person is to treat them as a free and equal person as Rawls understands. Instead, there may be another (better) alternative meaning of respect: we not only respect their self but also their comprehensive ends; we not only take their self but also their comprehensive ends into account seriously.

However, what I mean by “respect” does not mean that we must accept or approve of one's ends, whatever they are, but that we recognize their ends and examine if they are compatible with humanitarian values or not. We may support or challenge their ends; if we really respect someone, we sometimes need to criticize them. This conception of respect is unavailable in Rawls' public reason, as Sandel (1994: 1794) articulates as follows:

“It is necessary to distinguish two conceptions of mutual respect. On the liberal conception, we respect our fellow citizens' moral and religious convictions by ignoring them (for political purposes), by leaving them undisturbed, or by carrying on political debate without reference to them. To admit moral and religious ideals into political debate about justice would undermine mutual respect in this sense. But this is not the only, or perhaps even the most plausible way of understanding the mutual respect on which democratic citizenship depends. On a different conception of respect – call it the deliberative conception – we respect our fellow citizen's moral and religious convictions by engaging, or attending to them – sometimes by challenging and contesting them, sometimes by listening and learning from them – especially if those convictions bear on important political questions. There is no guarantee that a deliberative mode of respect will lead in any given case to agreement or even to appreciation for

the moral and religious convictions of others. It is always possible that learning more about a moral or religious doctrine will lead us to like it less”

I would claim that only if we hold what Sandel calls “the deliberative conception of respect” we can make sense of my earlier claim that the LGBTQ self would be disrespected when others have a negative view on them even if such a negative view is reasonable in the Rawlsian standard. Therefore, I suggest, the state sometimes should be able to address or even challenge some comprehensive doctrine even if they are deemed reasonable in the view of the Rawlsian standard.

Third, I think that democracy cannot be secured if citizens lack the capacities of criticism, self-criticism, and skepticism of some comprehensive doctrines. Rawls could agree with me on this. But Rawls may only suggest that people should be critical and skeptical of any comprehensive doctrines only if they are unreasonable in the Rawlsian standard.

Rawls would require citizens to adjust their comprehensive doctrines only if they are unreasonable according to the Rawlsian standard. But if they are reasonable in the Rawlsian standard, Rawls would prevent the state from encouraging or discouraging people to be critical and skeptical of their (reasonable) comprehensive doctrines.

However, I would argue that in order to sustain and secure democracy the state sometimes should be able to encourage or discourage citizens to adjust, revise, or even challenge their own comprehensive doctrines even if they are reasonable in the Rawlsian standard. As I argued that even some reasonable comprehensive doctrine (according to Rawls' standard) could be covertly hostile to humanitarian and democratic values, it is implausible to believe that one can really advocate democracy for the right reason and also subscribe to their comprehensive doctrine uncritically.

As I just argued, the right reason for democracy should not be understood simply as the respect of the person as a free and equal person, but as a comprehensive identity. If one believes that LGBTQ are morally unacceptable, they cannot really support democracy for the right reason even if they may use public reason. Thus, it is legitimate to encourage them to be critical and skeptical of their comprehensive doctrine, and it is even their moral responsibility, in some cases, to criticize their (reasonable) comprehensive doctrine. Since Rawlsian secularism does not require citizens to be critical and skeptical of any reasonable

comprehensive doctrine, it cannot morally ask people to question the notion that homosexuals are politically equal but morally inferior.

To sum up, I discussed the role of citizens that the state should expect by arguing against the Rawlsian proviso. I agree with Rawls that citizens should be morally expected to support and secure democratic culture, and citizens should be motivated by certain “right” reason when discussing and justifying a matter of justice in order to secure democratic culture. But I disagree with Rawls on the meaning of democratic culture, especially the meaning of the respect of the person.

I provided three objections to the Rawlsian proviso. First, the Rawlsian proviso is inadequate to guarantee that citizens would use “the right reason” in a way that secures democratic culture, even defined as Rawls' public reason because they may use public reason just to satisfy the Rawlsian proviso without taking seriously the distinction between public and nonpublic reason.

Second, the Rawlsian proviso may justify (in a moral sense) some anti-humanitarian or anti-democratic values (defined as my understanding) because they may advocate equality for the anti-humanitarian reason (some version of Buddhist conception of homosexuals), and they may be allowed to introduce some anti-humanitarian interpretations of humans in public discussion because this is not categorized as discussion on a matter of justice.

Third, sometimes citizens should be morally required to be critical and skeptical of their comprehensive doctrine even if they are reasonable according to the Rawlsian proviso because some may be hostile to humanitarian and democratic values.

## 6.4 Summary

This chapter argued that the state should not be neutral toward comprehensive doctrines in terms of justification. The state may encourage citizens to view themselves as a particular comprehensive identity and to take responsibility for what those who share the same comprehensive identity as them have done.

The state may take a comprehensive account of the self and a non-voluntaristic account of

obligation (citizens may have different degrees of political and moral responsibilities due to their different comprehensive identities) into account.

This chapter also argued that although Rawls is right in saying that citizens should secure democratic culture for the right reason, his meaning of democratic culture and the respect of the person may be limited and undesirable. First, there is no guarantee that citizens would use the right reason in a way that secures democratic culture because they may use public reason to satisfy the Rawlsian proviso without taking seriously the distinction between public and nonpublic reason.

Second, the Rawlsian state may, in a moral sense, justify undesirable attitudes, defined by my understanding. Third, sometimes citizens should be required to be critical and skeptical of their comprehensive doctrine even if they are reasonable according to the Rawlsian standard.



## Conclusion

For many modern people, secularism or the secular state seems to be the only possible and plausible form of state in dealing with religious matters. The secular state is often portrayed as the opposite of the repressive religious state that severely punishes nonbelievers. Many people believe that state and religion must be separated; the state has no business in telling citizens which religion they should hold; citizens should have religious freedom. And this is why, they would argue, we need the secular state. Their account is surely an important element of the secular state. But, theoretically speaking, the secular state may be more demanding and specific than that.

This thesis proposes that, as a matter of definition, secularism should be defined according to Rawlsian secularism – a particular version of secularism influenced by the political theory of John Rawls. It proposes that the secular state must not only protect citizens' religious freedom but also be neutral toward religion all the way down (in terms of characteristic and justification).

Apart from the protection of religious freedom, the secular state must not favour any particular religion over other religions or non-religion financially or legally, and it must not appeal to any particular religious or nonreligious reason when it justifies laws and public policies.

Religion, in this paradigm, is treated not as something special, but as a comprehensive moral doctrine like other nonreligious comprehensive doctrines. Rawlsian secularism does not begin with the question of how to maintain any particular religion as if it is something special that deserves state protection in the first place.

Instead, it begins with the question of how to treat citizens justly and fairly under a certain circumstance (i.e., the fact of reasonable pluralism). It proposes that laws and policies must be neutral toward all comprehensive moral doctrines, religious or not, both in terms of characteristic and justification.

Nevertheless, this thesis argues that Rawlsian secularism is problematic: it is incoherent

and morally undesirable. It is incoherent because, in terms of state justification, it cannot be neutral as it claims. Rawls' own political conception of the person is constructed in a way that cannot avoid some comprehensive claims about human characteristics and conditions. And Rawlsian public reason, which claims to be neutral toward comprehensive moral questions, cannot be neutral in some political issues (e.g., abortion).

Moreover, it is morally undesirable because it restricts the state to do something morally desirable. For instance, the Rawlsian secular state cannot promote or encourage some particular comprehensive identity. And sometimes it justifies some comprehensive moral doctrines as reasonable because they are compatible with Rawlsian public reason, despite that, in my opinion, they should rather be considered as unreasonable and be challenged by the state.

Therefore, this thesis proposes that Rawlsian secularism should be rejected. However, this is not equal to the justification of the repressive religious or anti-religious state that violates religious freedom. Instead, I propose that the state should protect religious freedom and respect the person, but it should not be neutral toward religion, especially in terms of state justification.

## List of References

- An-Na'im, A. A. (2008) *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge, MA.: Harvard University Press.
- Aristotle. (2009) *The Nicomachean Ethics*. Translated by D. Ross. Oxford: Oxford University Press.
- Audi, R. (2000) *Religious Commitment and Secular Reason*. Cambridge: Cambridge University Press.
- Bahlul, R. (2003) Toward an Islamic Conception of Democracy: Islam and the Notion of Public Reason. *Critique: Critical Middle Eastern Studies*, 12 (1), 43-60.
- Basic Law of Governance. [online], available from: <https://www.wipo.int/edocs/lexdocs/laws/en/sa/sa016en.pdf> [Accessed 18 September 2020].
- Bedi, S. (2009) *Rejecting Rights*. Cambridge: Cambridge University Press.
- Belke, T. J. (1999) *Juche: A Christian Study of North Korea's State Religion*. Bartlesville: Living Sacrifice Book.
- Boettcher, J. W. (2005) Strong Inclusionist Accounts of the Role of Religion in Political Decision Making. *Journal of Social Philosophy*, 36 (4), 497-516.
- Boettcher, J. W. (2009) Habermas, Religion, and the Ethics of Citizenship. *Philosophy and Social Criticism*, 35 (1-2), 215-238.
- Boettcher, J. W. and Harmon, J. (2009) Introduction: Religion and the Public Sphere. *Philosophy and Social Criticism*, 35 (1-2), 5-22.
- Caney, S. (1991) Sandel's Critique of the Primacy of Justice: A Liberal Rejoinder. *British Journal of Political Science*, 21 (4), 511-521.

- Caney, S. (1992) Liberalism and Communitarianism: a Misconceived Debate. *Political Studies*, XL, 273-289.
- Chah, A. (2002) *Food for the Heart: The Collected Teachings of Ajahn Chah*. Somerville: Wisdom Publications.
- Chaloemtiarana, T. (1979) *Thailand: The Politics of Despotic Paternalism*. Bangkok: Social Science Association of Thailand and Thai Khadi Institute.
- Che Man, W. K. (2003) Democratization and National Integration: Malay Muslim Community in Southern Thailand. *Intellectual Discourse*, 11 (1), 1-26.
- Church, F. (1996) *God and Other Famous Liberals: Recapturing Bible, Flag, and Family From the Far Right*. New York: Walker and Company.
- Cordelli, C. (2017) Neutrality of What? *Critical Review of International Social and Political Philosophy*, 20 (1), 36-48.
- Crimmins, J. E. (1986) Bentham on Religion: Atheism and the Secular Society. *Journal of the History of Ideas*, 47 (1), 95-110.
- Cross, D. (2018) *What's Wrong With Human Rights? Uncovering a False Religion*. Lancaster: Sovereign World.
- Curtis, G. E. and Leighton, M. (1998) Ethnic, Religious, and Cultural Setting. In: Curtis, G. E., ed. *Russia: A Country Study*. Federal Research Division, Library of Congress.
- Dhammakaya. *Dmc.tv* [online], Available from: <https://dmc.tv/a8477>. [Accessed 21 September 2020]
- Dombrowski, D. A. (2001) *Rawls and Religion: The Case for Political Liberalism*. New York: State University of New York Press.
- Dworkin, R. (1973) The Original Position. *The University of Chicago Law Review*, 40,

500-533.

Dworkin, R. (1993) *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom*. New York: Alfred A. Knopf.

Dworkin, R. (2006) *Justice In Robes*. Cambridge, MA.: The Belknap Press of Harvard University Press.

Feinberg, J. (1988) Liberalism, Community, and Tradition. *Tikkun*, 3 (3), 38-41, 116-120.

Finlayson, J. G. (2018) No Proviso: Habermas on Rawls, Religion and Public Reason. *European Journal of Political Theory* [online], 14 October. Available from: <https://journals.sagepub.com/doi/pdf/10.1177/1474885118804797> [Accessed 18 September 2020].

Fish, S. (1999) Mutual Respect as a Device of Exclusion. In: Macedo, S., ed. *Deliberative Politics: Essays on Democracy and Disagreement*. Oxford: Oxford University Press.

Fitzpatrick, S. (1996) *Stalin's Peasants: Resistance and Survival in the Russian Village After Collectivism*. Oxford: Oxford University Press.

Forst, R. (2002) *Contexts of Justice: Political Philosophy beyond Liberalism and Communitarianism*. Translated by Farrell, J. M. M. Berkeley: University of California Press.

Freeman, M. (1998) Universalism, Communitarianism and Human Rights: A Reply to Chris Brown. *The International Journal of Human Rights*, 2 (1), 79-92.

Freeman, M. (2004) The Problem of Secularism in Human Rights Theory. *Human Rights Quarterly*, 26, 375-400.

Freeman, M. (2012) *Human Rights: An Interdisciplinary Approach*. 2<sup>nd</sup> ed. Malden: Polity Press.

- Freeman, S. (2004) Public Reason and Political Justifications. *Fordham Law Review*, 72 (5), 2021-2072.
- Freeman, S. (2007) *Rawls*. London: Routledge.
- Friedman, J. (1994) The Politics of Communitarianism. *Critical Review*, 8 (2), 297-340.
- Friedman, M. (2002) *Capitalism and Freedom*. 40<sup>th</sup> Anniversary Edition. Chicago: The University of Chicago Press.
- Fry, G. W. (2018) Religion and Education Development in Thailand. In: Fry, G. W., ed. *Education in Thailand: An Old Elephant in Search of a New Mahout*. Singapore: Springer.
- Gaus, G. F. (1996) *Justificatory Liberalism: An Essay on Epistemology and Political Theory*. Oxford: Oxford University Press.
- Gaus, G. F. and Vallier, K. (2009) The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions. *Philosophy & Social Criticism*, 35 (1-2), 51-76.
- Glaston, W. (1995) Two Concepts of Liberalism. *Ethics*, 105 (3), 516-534.
- Goodin, R. E. (1988) What Is So Special about Fellow Countrymen? *Ethics*, 98 (4), 663-686.
- Greene, J. (2013) *Moral Tribes: Emotion, Reason, and the Gap Between Us and Them*. New York: Penguin Books.
- Gutmann, A. (1985) Communitarian Critics of Liberalism. *Philosophy & Public Affairs*, 14 (3), 308-322.
- Habermas, J. (2006) Religion in the Public Sphere. *European Journal of Philosophy*, 14 (1), 1-25.

Habermas, J. (2011) "The Political": The Rational Meaning of a Questionable Inheritance of Political Theology. *In*: Mendieta, E. and Vanantwerpen, J., eds. *The Power of Religion in the Public Sphere*. New York: Columbia University Press.

Habermas, J. and Taylor, C. (2011) Dialogue: Jürgen Habermas and Charles Taylor. *In*: Mendieta, E. and Vanantwerpen, J., eds. *The Power of Religion in the Public Sphere*. New York: Columbia University Press.

Haksar, V. (1979) *Equality, Liberty, and Perfectionism*. Oxford: Oxford University Press.

Hampton, J. (1980) Contracts and Choices: Does Rawls Have a Social Contract Theory? *The Journal of Philosophy*, 77 (6), 315-338.

Hartley, C. and Watson, L. (2018) *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford: Oxford University Press.

Hayek, F. A. (2001) *The Road to Serfdom*. New York: Routledge.

Hayek, F. A. (2006) *The Constitution of Liberty*. London: Routledge.

Hayek, F. A. (2013). *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*. London: Routledge.

Hedrick, T. (2010) *Rawls and Habermas: Reason, Pluralism, and the Claims of Political Philosophy*. Stanford: Stanford University Press.

Hewison, K. (1997) The Monarchy and Democratization. *In*: Hewison, k., ed. *Political Change in Thailand: Democracy and Participation*. London: Routledge.

Holloway, R. (1999) *Godless Morality: Keeping Religion Out of Ethics*. Edinburgh: Canongate.

Isager, L. and Ivarsson, S. (2010) Strengthening the Fibre of the Nation: The King's Sufficiency Economy as Etho-Politics. *In*: Ivarsson, S. and Isager, L., eds. *Saying the*

*Unsayable: Monarchy and Democracy in Thailand*. Copenhagen: NIAS Press.

Jakobsen, J. and Fjortoft, K. (2018) In Defense of Moderate Inclusivism: Revisiting Rawls and Habermas on Religion in the Public Sphere. *Etikk i praksis. Nord J Appl Ethics*, 12 (2), 143-157.

Jones, W. T. (2015) *Masters of Political Thought Vol. Two: Machiavelli to Bentham*. Boston: Houghton Mifflin.

Kant, I. (2019) *Groundwork for the Metaphysics of Morals*. Translated by C. Bennett, J. Saunders, and R. Stern. Oxford: Oxford University Press.

Kautz, S. (1995) *Liberalism and Community*. Ithaca: Cornell University Press.

Keown, D. (2013) *Buddhism: A Very Short Introduction*. Oxford: Oxford University Press.

Keyes, C. (2016) Theravada Buddhism and Buddhist Nationalism: Sri Lanka, Myanmar, Cambodia, and Thailand. *The Review of Faith & International Affairs*, 14 (4), 41-52.

Klosko, G. (2003) Reasonable Rejection and Neutrality of Justification. In: Wall, S. and Klosko, G., eds. *Perfectionism and Neutrality: Essays in Liberal Theory*. New York: Rowman & Littlefield Publishers.

Kowalewski, D. (1980) Protest for Religious Rights in the USSR: Characteristics and Consequences. *The Russian Review*, 39 (4), 426-441.

Kugle, S. A. (2014) *Living Out Islam: Voices of Gay, Lesbian, and Transgender Muslims*. New York: New York University Press.

Kukathas, C. and Pettit, P. (1990) *Rawls: A Theory of Justice and its Critics*. California: Stanford University Press.

Kymlicka, W. (1988) Liberalism and Communitarianism. *Canadian Journal of*



*Philosophy*, 18 (2), 181-203.

Kymlicka, W. (1989a) Liberal Individualism and Liberal Neutrality. *Ethics*, 99 (4), 883-905.

Kymlicka, W. (1989b). *Liberalism, Community and Culture*. Oxford: Clarendon Press.

Kymlicka, W. (2002). *Contemporary Political Philosophy: An Introduction*. 2<sup>nd</sup> ed. Oxford: Oxford University Press.

Laborde, C. (2017) *Liberalism's Religion*. Cambridge, MA.: Harvard University Press.

Laborde, C. (2021) Reply to Quong, Patten, Miller and Waldron. *Criminal Law and Philosophy*, 15, 105-118.

Larmore, C. E. (1987) *Patterns of Moral Complexity*. Cambridge: Cambridge University Press.

Larsson, T. (2020) Secularisation, secularism, and the Thai state. In: Chachavalpongpan, P., ed. *Routledge Handbook of Contemporary Thailand*. London: Routledge.

Li, C. (2018) Community without Harmony? A Confucian Critique of Michael Sandel. In: Sandel, M. J. and D'ambrosio, P. J., eds. *Encountering China: Michael Sandel and Chinese Philosophy*. Cambridge, MA.: Harvard University Press.

Locke, J. (1955) *A Letter Concerning Toleration*. Indiana: The Bobbs-Merrill Company.

Locke, J. (1980) *Second Treatise of Government*. Cambridge: Hackett.

Lovett, F. and Whitfield, G. (2016) Republicanism, Perfectionism, and Neutrality. *The Journal of Political Philosophy*, 24 (1), 120-134.

MacIntyre, A. (1984) *Is Patriotism a Virtue?* Lindley Lecture, University of Kansas.

MacLure, J. and Taylor, C. (2011) *Secularism and Freedom of Conscience*. Translated by J. M. Todd. Cambridge, MA.: Harvard University Press.

March, A. F. (2013) Rethinking Religious Reasons in Public Justification. *American Political Science Association*, 107 (3), 523-539.

March, A. F. and Steinmetz, A. (2018) Religious Reasons in Public Deliberation. In: Bächtiger, A., Dryzek, J. S., Mansbridge, J., and Warren, M., eds. *The Oxford Handbook of Deliberative Democracy*. Oxford: Oxford University Press.

Marx, K. (2000) On the Jewish Question. In: McLellan, D., ed. *Karl Marx: Selected Writings*. 2<sup>nd</sup> ed. Oxford: Oxford University Press.

Matsumoto, A. (2010) Happiness and Religion: Joseph Priestley's "Theological Utilitarianism." *The Kyoto Economic Review*, 79 (2), 144-155.

Mawdudi, S. A. (1980) *Towards Understanding Islam*. Translated by A. Khurshid, ed. Birmingham: U.K.I.M. Dawah Centre.

Miller, D. (2007) *National Responsibility and Global Justice*. Oxford: Oxford University Press.

Miller, D. (2021) What's Wrong With Religious Establishment? *Criminal Law and Philosophy*, 15, 75-89.

Mulhall, S. and Swift, A. (1996) *Liberals and Communitarians*. 2<sup>nd</sup> ed. Oxford: Blackwell Publishing.

Murashima, E. (1988) The Origin of Modern Official State Ideology in Thailand. *Journal of Southeast Asian Studies*, XIX (1), 80-96.

Nagel, T. (1973) Rawls on Justice. *The Philosophical Review*, 82 (2), 220-234.

National Office of Buddhism. [online], Available from: <http://www.onab.go.th> [Accessed

18 September 2020].

National Statistical Office. (2010) The 2010 Population and Housing Census (Whole Kingdom). *National Statistical Office* [online], Available from: [http://web.nso.go.th/en/census/poph/data/090913\\_ExecutiveSummary\\_10.pdf](http://web.nso.go.th/en/census/poph/data/090913_ExecutiveSummary_10.pdf) [Accessed 18 September 2020].

Patten, A. (2012) Liberal Neutrality: A Reinterpretation and Defense. *The Journal of Political Philosophy*, 20 (3), 249-272.

Patten, A. (2014) *Equal Recognition: The Moral Foundations of Minority Rights*. Princeton: Princeton University Press.

Phillips, D. L. (1993) *Looking Backward: A Critical Appraisal of Communitarian Thought*. Princeton: Princeton University Press.

Pogge, T. (2007) *John Rawls: His Life and Theory of Justice*. Translated by M. Kosch. Oxford: Oxford University Press.

Quong, J. (2005) Disagreement, Asymmetry, and Liberal Legitimacy. *Politics, Philosophy & Economics*, 4 (3), 301-330.

Quong, J. (2006) Cultural Exemptions, Expensive Tastes, and Equal Opportunities. *Journal of Applied Philosophy*, 23 (1), 53-71.

Quong, J. (2011) *Liberalism Without Perfection*. Oxford: Oxford University Press.

Quong, J. (2021) On Laborde's Liberalism. *Criminal Law and Philosophy*, 15, 47-59.

Rawls, J. (1968) Distributive Justice: Some Addenda. *Natural Law Forum*, 138, 51-71.

Rawls, J. (1971) *A Theory of Justice*. Original Edition. Cambridge, MA.: Harvard University Press.

- Rawls, J. (1975) Fairness to Goodness. *The Philosophical Review*, 84 (4), 536-554.
- Rawls, J. (1980) Kantian Constructivism in Moral Theory. *The Journal of Philosophy*, 77 (9), 515-572.
- Rawls, J. (1988) The Priority of Right and Ideas of the Good. *Philosophy and Public Affairs*, 17 (4), 251-276.
- Rawls, J. (1993) *Political Liberalism*. Expanded Edition. New York: Columbia University Press.
- Rawls, J. (1997) The Idea of Public Reason Revisited. *The University of Chicago Law Review*, 64 (3), 765-807.
- Rawls, J. (1999) *The Law of Peoples*. Cambridge, MA.: Harvard University Press.
- Rawls, J. (2001) *Justice As Fairness: A Restatement*. Kelly, E., ed. Cambridge, MA.: The Belknap Press of Harvard University Press.
- Rawls, J. (2007) *Lectures on the History of Political Philosophy*. Freeman, S., ed. Cambridge, MA.: The Belknap Press of Harvard University Press.
- Raz, J. (1986) *The Morality of Freedom*. Oxford: Clarendon Press.
- Sandel, M. J. (1982) *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.
- Sandel, M. J. (1984) The Procedural Republic and the Unencumbered Self. *Political Theory*, 12 (1), 81-96.
- Sandel, M. J. (1989a) Religious Liberty – Freedom of Conscience or Freedom of Choice? *Utah Law Review*, 3, 597-615.
- Sandel, M. J. (1989b) Moral Argument and Liberal Toleration: Abortion and

Homosexuality. *California Law Review*, 77 (3), 521-538.

Sandel, M. J. (1994) Political Liberalism. *Harvard Law Review*, 107, 1765-1794.

Sandel, M. J. (2009) *Justice: What's The Right Thing To Do?* London: Penguin.

Sandel, M. J. (2018) Learning from Chinese Philosophy. In: Sandel, M. J. and D'ambrosio, P. J., eds. *Encountering China: Michael Sandel and Chinese Philosophy*. Cambridge, MA.: Harvard University Press.

Scheffler, S. (1977) Liberalism, Nationalism, and Egalitarianism. In: McKim, R. and McMahan, J., eds. *The Morality of Nationalism*. Oxford: Oxford University Press.

Schwartz, A. (1973) Moral Neutrality and Primary Goods. *Ethics*, 83 (4), 294-307.

Sikka, S. (2016) On Translating Religious Reasons: Rawls, Habermas, and the Quest for a Neutral Public Sphere. *The Review of Politics*, 78, 91-116.

Simmons, A. (2012) Do Embryos Have Interests? Why Embryos Are Identical to Future Persons but Not Harmed by Death. *Bioethical Inquiry*, 9, 57-66.

Sizemore, R. F. and Swearer, D. K. (1990) Introduction. In: Sizemore, R. F. and Swearer, D. K., eds. *Ethics, Wealth, and Salvation: A Study in Buddhist Social Ethics*. South Carolina: University of South Carolina Press.

Steinbock, B. (2011) *Life Before Birth: The Moral and Legal Status of Embryos and Fetuses*. 2<sup>nd</sup> ed. Oxford: Oxford University Press.

Taylor, C. (1998) Modes of Secularism. In: Bhargava, R. ed. *Secularism and Its Critics*. New Delhi: Oxford University Press.

Taylor, C. (2011) Why We Need a Radical Redefinition of Secularism. In: Eduardo Mendieta, E. and Vanantwerpen, J., eds. *The Power of Religion in the Public Sphere*. New York: Columbia University Press.

Taylor, R. S. (2011) *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness*. Pennsylvania: The Pennsylvania State University Press.

Thaler, M. (2009) From Public Reason to Reasonable Accommodation: Negotiating the Place of Religion in the Public Sphere. *Diacritica, Filosofia E Cultura*, 23 (2), 249-270.

Thigpen, R. B. and Downing, L. A. (1987) Liberalism and the Communitarian Critique. *American Journal of Political Science*, 31 (3), 637-655.

Thomson, J. J. (1971) A Defense of Abortion. *Philosophy and Public Affairs*, 1 (1), 47-66.

Thunder, D. (2006) A Rawlsian Argument against the Duty of Civility. *American Journal of Political Science*, 50 (3), 676-690.

Tsz Wan Hung, A. (2017) Habermas and Taylor on Religious Reasoning in a Liberal Democracy. *The European Legacy*, 22 (5), 549-565.

United States Department of State. (2016a) China (Including Tibet, Hong Kong, and Macau) 2016 International Religious Freedom Report. *United States Department of State* [online], Available from: [Accessed 18 September 2020]

United States Department of State. (2016b) Democratic People's Republic of Korea (DPRK) 2016 International Religious Freedom Report. *United States Department of State* [online], Available from: <https://www.state.gov/wp-content/uploads/2019/01/Korea-Democratic-Peoples-Republic-of-1.pdf> [Accessed 18 September 2020]

United States Department of State. (2016c) Saudi Arabia 2016 International Religious Freedom Report. *United States Department of State* [online], Available from: <https://www.state.gov/wp-content/uploads/2019/01/Saudi-Arabia-3.pdf> [Accessed 18 September 2020]

United States Department of State. (2016d) Thailand 2016 International Religious Freedom Report. *United States Department of State* [online], Available from: <https://www.state.gov/wp-content/uploads/2019/01/Thailand-3.pdf> [Accessed 18 September 2020]

September 2020]

Vermeulen, M. (2017) The Rise of Rainbow Dharma: Buddhism on Sexual Diversity and Same-Sex Marriage. *In: The UN Special Rapporteur on freedom of religion or belief, ed. Special Rapporteur's Compilation of Articles on freedom of religion or belief and sexuality.*

Waldron, J. (1988) When Justice Replaces Affection: The Need for Rights. *Harvard Journal of Law & Public Policy*, 11 (3), 625-647.

Wall, S. and Klosko, G. (2003) Introduction. *In: Wall, S. and Klosko, G., eds. Perfectionism and Neutrality: Essays in Liberal Theory.* New York: Rowman & Littlefield Publishers.

Wallach, J. R. (1987) Liberals, Communitarians, and the Tasks of Political Theory. *Political Theory*, 15 (4), 581–611.

Walzer, M. (1983) *Spheres of Justice: A Defense of Pluralism and Equality.* Oxford: Blackwell.

Weithman, P. J. (2002) *Religion and the Obligations of Citizenship.* Cambridge: Cambridge University Press.

Williams, J. (2015) Public Reason and Prenatal Moral Status. *The Journal of Ethics*, 19, 23-52.

Winichakul, T. (2014) The Monarchy and ANTI-MONARCHY: Two Elephants in the Room of Thai Politics and the State of Denial. *In: Chachavalpongpun, P., ed. "Good Coup" Gone Bad: Thailand's Political Developments since Thaksin's Downfall.* Singapore: ISEAS Publishing.

Winichakul, T. (2016) Thailand's Hyper-Royalism: Its Past Success and Present Predicament. *Trends in Southeast Asia*, 7, 1-36.

Wood, G. (2017) *The Way of the Strangers: Encounter with the Islamic State*. New York: Random House.

Zuo, J. (1991) Political Religion: The Case of the Cultural Revolution in China. *Sociological Analysis*, 52 (1), 99-110.