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THE FEASIBILITY OF GLOBAL JUSTICE: A DISCUSSION ON JOHN RAWLS' IDEAS*

Ahmet Emre ATEŞ**

ABSTRACT

This paper aims at examining the probability of justice in global context. It can be argued that the Rawlsian argument on global justice might be so optimistic with regard to both internal and external dynamics of liberal societies. Yet it is a well-known fact that Rawlsian categorization in his book called *The Law of Peoples* merits to be mentioned in order to improve the global justice.

Key Words: *Global justice, International relations, Liberalism, Dictatorships.*

KÜRESEL ADALETİN UYGULANMASI: JOHN RAWLS' UN DÜŞÜNCELERİ ÜZERİNE BİR YORUM

ÖZET

Bu makalenin amacı küresel adalet kavramının uluslararası ilişkiler açısından olasılığını incelemektir. Dolayısıyla, John Rawls'un küresel adalet kavramı üzerine geliştirdiği iddialarının, liberal olan ve olmayan toplumlar için uygulanabilirliği tartışılacaktır. Öte yandan, *Halkların Yasası* adlı kitabıyla John Rawls'un uluslararası ilişkiler teorisine katkısı yorumlanmış olacaktır.

Anahtar Kelimeler: *Küresel adalet, Uluslararası ilişkiler, Liberalizm, Diktatörlükler.*

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** Research Assistant, Istanbul University, Faculty of Economics, Political Science and International Relations Department

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1. INTRODUCTION

It can be argued that John Rawls constitutes an important figure among the political philosophers of the 20th century. His ideas and works have transformed the conflictual aspect of the globalization into a cooperational one. For instance, his emphasis on the concepts of a worldwide toleration and distributive justice encourages him to write academically classical books like *A Theory of Justice* (1971), *The Political Liberalism* (1993), and *The Law of Peoples* (1999).

Each of these above-mentioned books deals particularly with the political norms of law and justice while considering the domestic and foreign affairs of modern states. His most famous book *A Theory of Justice* and *The Political Liberalism* define a new framework of justice like "justice as fairness" -this is to say a liberal approach of toleration which ignores differences in favor of an equal and distributive justice. Besides, *The Law of Peoples* adopts such approach to the principles and practices of international law and relations among the modern states. In this article, the main discussion is about the arguments of *The Law of Peoples*.

Influenced by both David Hume's empiricism and Immanuel Kant's idealism (Ricoeur, 2001: 916-917), Rawls imagines "a reasonable society of peoples" which refers to the question of how uniting liberal and non-liberal societies. Accordingly, such unification of two distinguishable societies serves the cooperation of a global context. At this stage, Rawls imposes common norms and duties for societies vis-à-vis the globalization. While categorizing –however, the global societies and requiring to them a sense of justice and toleration, Rawls' argumentation is subjected to be criticized by three reasons which will be delivered throughout this article.

So far as the globalization is concerned with the conflict and the cooperation, the aim of this essay is to discuss whether Rawls is right by saying that a liberal theory of international justice must require toleration of non-liberal societies. By saying so, Rawls underestimates the problems of identity and that of institutional conditions that are still incompatible with the worldwide cooperative system between liberal and non-liberal societies. Consequently, this article will illuminate the issue of Rawlsian argumentation together with the experiences of different societies in order to answer how a common good for the globalization is probable instead of making the international framework conflictual.

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2. JOHN RAWLS AND HIS CREDOS

As a masterpiece of Rawls, *A Theory of Justice* is concerning with the features of fundamental rights and liberties in plural societies. According to him, a legally competent or a fair society has to determine a set of rules initiating a certain notion of equality among free and rational persons, which is referred to as "justice as fairness" (Rawls, 1999: 10). Only once individuals agree on abandoning their social, cultural and class differences, they have a chance to begin neutrally a codification of just rules as a process. Rawls calls this stage as "original position" in which every member of society ignores his or her differences (ibid: 11) in order to achieve a "social primary goods". However, if such economic and/or cultural distinctions promote the social development, people should maintain them according to the difference principle (ibid: 11). By doing so, Rawls plans to codify a consensus among individuals.

In his other books, *Political Liberalism*, he presents a model of justice that is appropriate with democratic societies. This is to say; he demonstrates how "comprehensive doctrines" might be incompatible within democracies. Therefore, he concludes that only if the decision-making process is exercised by a "fact of reasonable pluralism", the inequalities and differences become a constructive asset for the "public political culture". In other words, a contemporary democratic society starts to be a fair one while creating a sense of consensus in its policies, which is called the "overlapping consensus" (ibid: 15).

Until his work *Law of Peoples* that will constitute our main focus on his ideas, Rawls deals on the one hand with the improvement of justice among individuals throughout *A Theory of Justice*, on the other hand with the development of this notion within a democratic society throughout *Political Liberalism*. In *Law of Peoples*, he stresses on both definition and implementation of justice among societies and/or states. He tries to elaborate an "original position" to codify the principles of a global justice.

In order to configure the participation of international actors, Rawls makes two categories. The first category consists of "well-ordered" and "decent peoples". Well-ordered peoples are regulated by liberal values of individual rights and liberties. However, decent peoples are neither democratic nor liberal in this field. Besides, they share a "common good idea of justice", in other words a legally competent political stability in favor of the majority. Whether these two kinds of societies are liberal-democratic or

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not, both of them share a "common good of justice". This is why; they form a "Society of Peoples".

The second category consists of "outlaw states", "burdened states" and "benevolent absolutisms". The "outlaw states" disregard the human rights through domestic and/or international violent activities. The "burdened states" are socio-economically so disadvantageous to perform liberal and democratic norms that they are disable to consolidate their regimes. The "benevolent absolutisms" respect the human rights but they are underestimating the public participation. Over all, the second categorical states stay outside of such codification for global rules although the first categorical societies involves in the original position.

While contributing to the establishment of a justifiable world, Rawls' arguments suscitate some interrogations. For instance, is the notion of difference principle inevitable for the convenience of plural and reasonable international justice? Besides, why the idea of common good could not be the case for societies that are excluded from the "Society of Peoples"? Otherwise, is it probable to achieve an overlapping consensus? Moreover, such global justice may become politically democratic one without fulfilling –as José Saramago points out, an economic democracy?

3. THE LAW OF PEOPLES: PROS OR CONS?

In "The law of peoples", the American political scientist John Rawls' argumentation is thus subjected to three critics, which are about categorical, procedural and distributive aspects of his own paradigm. The categorization of different regimes and societies (1), the procedure of making a consensus among those regimes and societies(2), and the distribution of a global justice(3) constitute three points that will be discussed in this part.

Concerning the categorical aspect, the author argues the importance of codifying the law of peoples, a "political conception of right and justice" (Rawls, 1999: 529) consensually decided by a "reasonable society of peoples" (ibid: 530) and its application to the principles and norms of international law and practice (ibid: 529). By doing this, Rawls states that "the reasonable society of peoples" should be composed of "two kinds of well-ordered domestic societies, liberal and hierarchical societies" (Rawls, 1999: 537). At this stage, Rawls argues that:

> (...) not all regimes can reasonably
> be required to be liberal, otherwise
> the law of peoples itself would not

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> express liberalism's own principle of toleration for other reasonable ways of ordering society (...) A liberal society must respect other societies organized by comprehensive doctrines (ibid: 530).

According to Rawls, liberal theory of international justice must require toleration of non-liberal (hierarchical) societies to the extent that these non-liberal societies are peaceful, non-expansionist and honor basic human rights while imposing some "duties and obligations" including a common conception of justice and of society.

Concerning the categorical aspect of Law of Peoples is concerned, the critics on Rawls could be held in two points. On the one hand, Rawls confuses the regimes and societies, on the other hand he stereotypes liberal and hierarchical –in other word non-liberal societies.

First of all, Rawls does not differentiate the regimes and societies. In his argumentation, he starts saying that "not all regimes can be reasonably required to be liberal". In other words, Rawls combines the notion of regime and society together whereas the society may refuse the regime by which it is ruled. For instance, the Iranian people have protested against Sharia regime especially since the youth movements in the universities. Therefore, the distinction between a society and regime is indispensable; a society and its regime in favour of different polities and so may be conflicting with one another, from time to time. At this part, Rawls makes confusion by judging the societies according to their regimes in order to group whether they are "liberal or non-liberal societies".

Secondly, the essay deals with the framework of hierarchical (non-liberal) societies, which must be tolerated –according to Rawls, by liberal societies to perform the law of peoples. However, Rawls ignores an aspect of hierarchical societies, which is challenging basic human rights: the good faith of officials and judges. Is this kind of faith is satisfactory to fulfill basic human rights?

Even if Rawls argues that:

> Human rights, understood as resulting from these requirements -a common good conception of justice, and a good faith official justification of law, (...) are politically neutral (ibid: 530).

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There is no doubt that the term of good faith is so abstract that officials in hierarchical societies may abuse it for their personal interests regardless of the fact that this is not compatible with "the rule of law principle of basic human rights". For instance, since the collapse of USSR, Russia that may be considered as a hierarchical society has been facing the oligarchic problem of nomenclature and mafia. The good faith of officials in hierarchical societies may be conflicting with basic human rights in the sense that each official may become a dictator by abusing his or her "good faith" and thus a hierarchical society may become a dictatorship of the officials, which Rawls refuses to accept as "members in good standing of reasonable society of peoples."

By the same token, is a well-ordered liberal society fulfilling all of the fundamental requirements to involve in the reasonable society of peoples? Even today, in France and in Italy –considered as a liberal society, there is a debate that those societies do not respect "the impartiality of the justice" (Etchegoin, 2002: 1939) which is one of "the fundamental requirements for hierarchical societies" (Rawls, 1999: 545). For instance, both "Nice" and "Elf" Affairs have demonstrated the clientalistic politization of the judiciary.

Moreover, does a liberal society gain its legitimate aims through diplomacy and trade as hierarchical societies are subjected to do so? Since 9/11, US and the coalition forces engage war against Afghanistan which has nothing to do with the attacks on twin towers and against Iraq which also has nothing to do with nuclear bombs. Ironically, it can be argued that this is the liberal societies rather than non-liberal ones that underestimate peaceful and toleration means such as diplomacy and trade.

As a whole, Rawls is erroneous that a liberal theory of international justice must require toleration of non-liberal societies seeing that he ignores firstly the distinction between a society and its regime, secondly the challenging aspect of hierarchical societies with basic human rights that even leads them to be dictatorial, and thirdly the domestic failure of liberal societies on basic requirements and their non-toleration attitude towards non-liberal (hierarchical) ones.

Rawls' arguments about international actors are problematic not only because he confuses regimes and societies but also because he stays within a communitarian perspective by excluding regimes like outlaw states, burdened societies and benevolent absolutisms, as international actors. By doing so, he restricts the improvement of global justice. Therefore, his liberalism is more like communitarian than the communitarians (Hünler,

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1997: 364) like Alasdair MacIntyre to whom he is critical.

Concerning the procedural aspect of Rawls' ideas, *Law of Peoples* differs from the claims of the most recent book *A Theory of Justice* in the sense that Rawls makes contradictory arguments on the "original position". Although the participation is required for all within *A Theory of Justice*, in *Law of Peoples* the original position forms separate procedures for the liberal societies and non-liberal societies (Borovalı, 2003: 236).

On the one hand, it can be argued that the "original position" is the attempt to perform a social contract within a global framework. Like self-interested people, states intend to codify rules, which are essential for the idea of global justice. However, Rawls' perception of such contract resides non-interactive (Chandran & Pettitt, 1990: 34) because it does not include all possible participants. This situation makes the procedure difficult to cooperate global differences.

On the other hand, the principles of justice[*] that will be illustrated through the "original position" are only interesting with the principles of independence and that of non-intervention as a whole. Therefore, Rawls' liberal perspective of principles stays naively on Wilsonian principles and needs to be upgraded. The end of Cold War and the fundamentalism are the major concerns within the global age that a contemporary codification of international law is supposed to interpret. In fact, Rawls underestimates the importance of institutional modifications for the development of global justice. As Iris Marion Young criticized, justice should also refer not only to distribution but also to the institutional conditions (Stevens, 1999: 4), together with the historical circumstances.

Concerning the distributive aspect of *Law of Peoples*, Rawls makes an assumption that the difference among societies and regimes should not be regarded as an impasse; otherwise it will corrupt the fairness of justice in liberal peoples (Borovalı, op. cit., 244). In other words, the "difference principle" is abused in *Law of Peoples*, as it is not the case for *A Theory of*

[*] "1. Peoples are free and independent
2. Peoples are equal and parties to their own agreements.
3. Peoples have the right of self-defense but no right to war.
4. Peoples are to observe a duty of nonintervention.
5. Peoples are to observe treaties and undertakings.
6. Peoples are to observe certain specified restrictions on the conduct of war.
7. Peoples are to honor human rights."
(John Rawls, op. cit., p. 540)

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Justice. However, the development or the underdevelopment of societies should be analyzed in a historical perspective through which it can be argued the innocence of societies with regard to their level of democracy. Therefore, the "justice as fairness" must require the aid not only for burdened societies but also for all underdeveloped societies like the outlaw states, benevolent absolutisms.

In order to achieve a global justice, the cosmopolitan rights should also provide an all-encompassing view of financial and humanitarian aids as a "duty of justice" (Tan, 2004: 67) (like James Tobin's taxation model). If only the burdened societies profit the aid of well-ordered and decent peoples, a centrifugal movement of outlaw and benevolent states would be grown up. Thus, it can be argued that the modus vivendi of *Law of Peoples* is supposed to be revisited (Pogge, 1989: 234-237). Instead of optimizing or bargaining the norms, Rawls suscitates the hegemony of institutionally westernized norms (Lacroix, 2002: 55,142).

Finally, the *Law of Peoples* provokes three critical remarks, which are categorical, procedural and distributive. As discussed one another, the categorical critic renders Rawlsian classification of international actors much more communitarian. The procedural critic considers the "original position" as non-interactive. The distributive critic makes a centrifugal assumption with regard of the non-application of difference principle among different regimes. Such kind of social contract could contribute to the conception of global justice by restauring these terms. However, one may implement also analytical preventions in the global system in order to create stability among differences.

4. CONCLUSION

In order to answer the feasibility of global justice, it can be claimed that economic democracy -as José Saramago argues, is inevitable to sustain such distributive justice among states. In fact, Rawls supposes the sufficiency of institutional remedy. Yet, the fact of "reasonable pluralism" fails to improve the "overlapping consensus" of different states in international relations seeing that Rawls' ideas on "public political culture" are derived from the uniqueness of liberalism which corrupts the notion of fairness between "well-ordered" and "decent peoples" on the one hand, and "burdened" and "outlaw states" together with "benevolent absolutisms" on the other hand.

The *Law of Peoples* might face three kinds of failure as illustrated

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throughout this article. The categorization of global actors (states), the procedure of making global justice (the participation of states) and the distribution of such justice (the creation of fairness) need to be modified. In order to avoid the risk of ideological containment of liberal doctrines, a global justice may become possible only if it focuses primarily on economic equality. The taxation system proposed by James Tobin is a way to achieve this attempt. Otherwise, the institutional modifications would be limited to sustain justice among states.

In addition to these points, it is a well-known fact that John Rawls contributes to the liberal assumption of international relations theory. This is why; Rawlsian optimization deserves the merits besides those of idealist thinkers like Immanuel Kant and Hans Kelsen. The aim of this article is not to diminish the importance of idealist attempts, but to demonstrate their normative structure always lacks the materialism, which is also necessary for maintaining global justice.

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