

LAW AND MORALITY ACCORDING TO JOHN RAWLS

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Abstract

This paper aims to address the moral and legal values according to John Rawls' views, more specifically on the level of influence morality has on justice, as well as the influence a group of people may have on the values of an individual. Common moral values, having a group tradition to form a common understanding of justice, or the formation of a concept of justice is not only influenced by a small group, but also from other institutions outside the group such as the state, various organizations or religion. According to Rawls, justice is not merely a moral value but something above morality, as it also belongs to law. In general, laws are based on certain moral values, but in any case, today, the law takes precedence over what might be considered 'good.' The concept of moral merit is the totality of various individual virtues. This moral perception also determines a considerable part of personal actions and choices.

Keywords: moral value, law, good, justice as fairness, Archimedes point

1. Introduction

As a concept, law has undergone major changes, not only in the legal definitions given today but also from different philosophies from early on. Basically, this concept changes even from one individual to another. It is often associated with the concept of impartiality and equality in granting the right from antiquity to the present day. Likewise, if we ask different people what their understanding of justice is, we may get different answers.

Today's developments give justice an edge over the good when values are ranked based on importance to the community. But morality is an integral part of the community. Individuals have different moral judgments and tend to believe that all beliefs and moral principles are relative, in the sense that one's judgment seems to apply to an individual in a certain situation and time.

Therefore, there is no such thing as an absolute moral standard that is universally accepted and everything depends on context.

2. Law and morality

According to Rawls (1988), in this society there is an inseparable complementary relationship between justice and the basic notion of morality, of good, and "We can say that the justice defines the boundaries while good explains the meaning" (pp. 251-276). In other words, the

acceptable meanings of the moral good must undergo a test of justice as impartiality, maintaining a balance between good and evil. For example, a thief stealing for the benefit of his family is still an unlawful action, no matter the moral reasoning, and it's why Rawls writes that justice takes precedence over the good.

Justice as fairness is not a moral concept, but rather a notion based on political values which have the ability to be more comprehensive than moral, or religious values, etc. With this, Rawls (2007) explains:

The political concept does not deny the existence of moral values, finding implementation within associations, family or person. Nor does it say that political values are completely detached from them, or without any connection to them (pp. 304-305).

The moral concept of the good in a private property-style democracy must comply with two conditions: first, the aim is for a moral good to be considered as such for the majority of citizens of a country. Second, this concept of good should not be religious, narrow, or philosophical, as Rawls calls the different meanings for the good that citizens have.

Rawls mentions some ideas of good in this system: good can be expressed as rationalism, meaning that citizens plan their lives, even intuitively, according to which they act, as they consider this a good plan for their lives. As a result, the preservation and continuity of human life are considered a good that must be universally accepted. The other understanding of good in society is that it contains the basic individual needs and not their subjective desires.

Another concept is related to moral goods generated by religion, and other ideologies, which even if they're different for different individuals, are all accepted under the umbrella of reasonable pluralism, as long as they do not conflict with the two principles of justice. Within these ideas are some prerequisites for political virtues similar to the ones considered morally good by citizens.

For example, if the majority of citizens consider family and marital fidelity as a special family value, it is expected that even politicians must respect these values due to votes and credibility. The question that arises here is how to organize justice so that it does not infringe or impose the moral choices of people, but also not to allow a conflict of different moral values. Conflict, and even more so violence, based on different moral values coming from different religions, are damaging for the society and, according to Rawls, must be avoided.

The association of moral values becomes difficult because, in addition to the differences that exist between public and private morality, different people may have completely different values

based on their province, traditions, or religion, so it makes it difficult to accept values that are too different from their own.

Achieving a contract between people who possibly hate each other may be impossible. An example of that can be homosexual and heterosexual values. Rawls solves this problem by emphasizing common values for people restating the importance of an inclusive consensus. Thus, in his theory, Rawls avoids those moral values that divide people, even if he knows that they exist among people.

So, Rawls calculates those reasonable parties who want to live in peace with each other and who have no interest in fighting with other parties just because they have different moral values. This way, conceptual differences remain in the private field having no influence in the public field.

3. Moral Authority and Group Authority

The rights and the merits in distributive justice also follow the moral logic of reasoning, which affects justice as fairness in some of its elements. Therefore, even though Rawls has called his readers to find the Archimedes point³ for any pluralistic idea not related to religious, philosophical, and moral, requires support from the moral part of society. Rawls explains this reference to morality with the fact that moral education is an important part of youth social learning, which begins earlier in the family. Family can provide children with models that can have an impact in shaping them as future citizens. If this family education praises authority over child motivation and teaches lies rather than respect and honest work, it is very possible that the school may not be able to repair personality malformation. School and society can certainly play a role in a child's moral development, but in some cases, consequences of this authoritarian influence may accompany individuals for the rest of their lives.

Here is how Rawls (1971) describes the rooting of authoritarian values in the process of education:

There is typically an authoritative person who is loved and trusted, or at least who is accepted as worthy of his position, and whose precepts it is one's duty to follow implicitly. It is not for us to consider the consequences; this being left for those in authority. The prized virtues are obedience, humility, and fidelity to authoritative persons; the leading vices are disobedience, self-will, and temerity. We are to do what is expected without questioning, for not so to act (p.408).

The second stage of moral development, according to Rawls, is group-oriented morality. Conditioning group influence over individual values varies from one group to another, like school, university, sports club, even the party orientation, or nationality. All of these groups have in common the morally good standing student, or athlete regulating group values like friendship, credibility, moral values, etc. These common values are expected to be adopted by group members, building relationships and feeling connected. The question Rawls poses here is whether the meaning of merit always corresponds to an individual or group. This is also a moral concept with the rules set by the institutions of a country. According to Rawls (2007), the answer is no. He acknowledges at least three concept ideas of merit as part of morale:

First, the idea of moral merit *stricto sensu* means the moral value of the individual's character as a whole, determining a good part of a person's actions and choices, for example, the desire to work, ability to take risky business ventures respecting the rules, etc. These are considered not only personal values but also social values because they have a direct effect on social wellbeing (p. 133).

Second, Rawls distinguishes this moral influence on the idea of legitimate claims for important goods, to the rights given by the society to the individual. For example, even in

³ Archimedes point means that the basic principles of justice serve as a fulcrum of Rawls' theory to evaluate democratic society in an ideal, abstract form.

normal democratic elections, the majority of people are likely to demand from their representatives the same personal moral values, such as honesty, respect and love for the family, wisdom, etc. Moral values are not, however, the only criteria for political support, but an important part of electoral campaigns.

Third, from the set of social rules expressing moral values. In fact, this applies more to countries like England with a common law system where community moral values have played an initial role. In Albania, common law is rarely applied to conflict resolutions most likely when government measures do not function.

Rawls (2007) acknowledges some influence of moral on justice as fairness, however as explained in this paper, he places moral under his concept. He specifically writes:

The concept of moral merit is not in doubt. Meanwhile, the concept of moral merit, as a value of the human character or his actions, cannot be included in the political concept of justice, if we consider the existence of reasonable pluralism. Given that citizens can have a different concept for the moral good, they may disagree on a doctrine worldview that would specify an idea of the moral good for political purposes (p. 133).

It seems that morality and its values are not completely excluded from justice as fairness, but as many other thinkers, Rawls rules out to support his theory on morals.

Thus, justice as fairness does not undermine the moral meaning of merit as seen by society, but only emphasizes that having multiple meanings on it cannot be part of justice as a whole. Here, Rawls (1971) believes we can discuss the position achieved by some individuals:

The difference principle not only promotes the reciprocity of values and creates a redistribution even for those who do not have skills but should encourage individuals with the right skills for the right positions. The role of common principles should draw people to positions where they are most useful for the society, to promote and bear education expenses for talented people, encouraging them to take on certain responsibilities, making them choose their profession and being equal to everyone else (p. 270).

At the moment, when parties make an agreement, Rawls anticipates circumstances to be governed by honesty. Honesty here implies precisely morality serving as the basis of justice as fairness. Morality is required as an inner value as a request to be fulfilled entirely, meanwhile having a reasonable belief that this social contract will be implemented based on principles of justice.

4. Morality guided by basic principles

Political liberalism, which Rawls describes as a model, leads us to realize that laws not only have superiority over other values, but also political values are superior over other judgment values, including moral values. The development of common sense in justice in a group of citizens is also intended as a desirable goal to achieve in a society with the right order. The question arising here is why choose the political values of justice, because we have examined them, are so reasonable that the government can use them even to impose a conformity of the moral values of individuals with them? Rawls (2007) responds that “values of political nature

are very important and, consequently, cannot be easily avoided. These values define the framework of our social life, the foundation of our existence” (p.315).

Rawls adds to these values the importance of an impartial justice, demanded by him, also values such as the principles of justice based on which the main institutions operate, equal freedoms and rights, fairness, equality of opportunity, human dignity, etc. Another reason that Rawls wants to convince us that political values are more general, and consequently more important than moral values, is the notion of public reason. Even the values related to this reason, such as the fair use of judgment, persuasion, and the promotion of the value of impartiality in community-related judgments, are seen as values constructed indirectly or directly from the principles of justice.

By these, Rawls (2007) does not mean that the state should interfere in the morality of the people, nor to support some moral values against others, but by principles, it encourages and educates certain moral values that shape the citizenship of individuals. As for the harmonization method of special human values (of the individual, family and community) with justice values as a political notion, it is left to the citizens how they can coordinate them. He writes that “it is up to the citizens to determine and think in the context of their conscience, how they establish the connection between important values in the political field and other values accepted by them” (p. 316).

Rawls (2007) does not call all worldview doctrines unreasonable, but only those that encourage division among the population, such as racism, etc. For Rawls, even when a political notion of law has an obvious affinity with a worldview doctrine for him, it can be used to create a wider spirit of loyalty to the citizen and to transcend what his religion teaches, such as in the political notion of justice:

In case, his judgment contradicts that of justice as a political notion, then citizens may adapt or revise their judgment, rather than reject the political meaning of justice. It can be assumed that these adaptations or revisions of narrow judgment meanings are made slowly over time, by means of persuasive institutions and not by force (p. 321).

Rawls' approach to these changes of moral values has to do with the fact that the moral judgment of a community cannot be changed immediately.⁴ In order to create a reasonable moral compass, the principles of justice promote mutual honesty between rulers and citizens, says Rawls (1971):

When the authorities, fulfill their role in the framework of fair and impartial institutions, the citizens tend to cultivate confidence and security towards them (p. 411).

Trust and security in relations with each other grow when we have successful relationships between citizens. Division ideas with short-term goals serve the interests of a narrow group of politicians who destroy supporting elements of democracy according to Rawls, but also other authors, social interaction and the formation of various social groups such as the associations in the US mentioned by Tocqueville. A society with proper order that applies the principles of justice can be considered good because it guarantees its citizens the social basis of mutual respect and dignity for themselves.

⁴ Rachels, J. & Rachels, S. Philosophy moral elements. Dita 2000, Tiranë 2010.

5. Conclusions

Justice should be organized by creating a balance between moral choices of different individuals with a restriction of not accepting a conflict of different moral values. The association of moral values between people can be achieved by avoiding those moral values that divide people.

Justice as fairness does not undermine the moral meaning of merit, as seen by society, but only emphasizes that having multiple meanings and that it cannot be part of justice as a whole. Therefore, we must avoid the idea of moral meaning of merit (moral is required as an inner value) and substitute it with something that enters a reasonable political concept.

6. Bibliography

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