

THE ROLE OF RATIONALITY IN THE FORMULATION AND THE COMPLIANCE WITH THE PRINCIPLES OF JUSTICE

Peter Cholakov

Institute for the Study of Societies and Knowledge
Bulgarian Academy of Sciences, Sofia, Bulgaria
e-mail: p_cholakov@yahoo.com

Abstract:

The function of rationality in *A Theory of Justice* (1971), which is of paramount importance for John Rawls' (1921–2002) project, is often criticised as ambiguous. David Gauthier, for example, claims that Rawls develops principles for recipients who essentially share his intuitions of morality, without managing to prove their validity. In *Political Liberalism* (1993), *Justice as Fairness* (2001) and other writings Rawls himself embarks upon the task to throw more light on this issue, making the Kantian distinction between 'rational' and 'reasonable'. I intend to demonstrate that in *A Theory of Justice* the formulation and the compliance with the principles of justice are based on the interaction between the rationality, represented in the idea of the good, and the sense of justice of individuals.

Key words: Rawls, principles of justice, veil of ignorance, rationality, reasonability, congruence.

In the modern world it often seems that the moral values resemble monuments with lost and forgotten histories. The vanishing spell of religion, substituted by the miracles of modern science, deprives moral norms and notions of their roots and puts in doubt their self-evidence. This bitter conclusion represents philosophers as archaeologists seeking to explain and legitimate the existence of some remains from the past. It makes no exception for major philosophical categories such as justice. Thus, if rationality is the leading principle through which we organise our present secularised knowledge, it is natural to attempt to use it as a means of reconstructing and reformulating our understanding of the concepts of morality.

The object of analysis of this paper consists of an exploration and discussion of the role of rational-

ity in the formulation and the compliance with the principles of justice, suggested in the liberal political philosophy of John Rawls (1921 – 2002). Rawls' *A Theory of Justice* (1971), as well as the works of other prominent social and political thinkers (Weber, Harsanyi, MacIntyre, Gauthier), illustrates the significance of rationality as an intellectual tool used in the formulation of moral notions and political theories¹. Despite this similarity, the aforementioned theories use rationality in a remarkably different way.

John Rawls writes *A Theory of Justice* with the conviction that rationality itself is not a sufficient basis for the development of a moral theory. In order to construct such a theory, we also need to implement our moral intuitions. Thus the main goal of Rawls is to *rationalise our intuitions of justice*. Although *A Theory of Justice* has an army of enthusiastic proponents, the function of rationality in it is *perceived by some scholars as ambiguous*. Most of Rawls' critics, such as David Gauthier for example, claim that in *A Theory of Justice* rationality plays only a supplementary role, and Rawls develops principles for recipients who essentially share his intuitions of morality without managing to prove the validity of these intuitions. The problem is illustrated by the fact that in *Political Liberalism* (1993),

¹ Max Weber famously claims that Modern rationality, as the main factor for *Die Entzauberung* – “the removing of the world” – was an artefact of religion (Weber 1996). According to Alasdair MacIntyre the notions of morality are contextually determined. Thus, their recovery from the crisis, caused by their being spread by rationality doubts in their universal validity, is an extremely strenuous task because we often lack the very fundament of these notions. In *Morals by Agreement* (1986) David Gauthier states that he developed a moral theory for self-interested individuals, based entirely on rationality.

Justice as Fairness (2001) and other writings Rawls himself tried to throw more light on this issue, making the Kantian distinction between ‘rational’ and ‘reasonable’².

The main thesis of this paper consists in the claim that in *A Theory of Justice* the formulation and the compliance with the principles of justice are both based on the interaction between rationality, represented in the idea of the good, and the sense of justice of the individuals. In his subsequent works Rawls has described the concepts of rationality and reasonability as complementary ideas for the solution of the above problems (Rawls 1993: 52/ 2001a: 6). We will focus mainly on *A Theory of Justice* and discuss the part that rationality plays in its interaction with the sense of justice and reasonability.

The main thesis is explored in the three parts of the present work. *Part one* analyses rationality and the sense of justice in Rawls’ original position, as it is defined in *A Theory of Justice*. We claim that the distinction between reasonability and rationality in Rawls’ subsequent writings could help understand better the meaning of the original position presented in *A Theory of Justice*. *The second and the third parts* discuss the role of rationality for *the stability* of the well-ordered society. This significant problem is underexplored in the scientific literature. We aim to examine it thoroughly while dividing it into two separate questions. *The second part of the paper* is devoted to rationality and the question of how a person develops a sense of justice. *The third part* explores how this sense is supported in the well-ordered society. In order to clarify the second problem we start our analysis with Rawls’ view of goodness as rationality.

1. Choosing the principles of justice

Rawls defines his understanding of *rationality* in Chapter III of *A Theory of Justice*, where he examines the rationality of the parties involved in the original position. Rationality is perceived as: “a.) taking effective means to ends with unified expectations and objective interpretation of probability; b.) as above but without unified expectations and using the principle of insufficient reason” (Rawls 1999: 126)³.

The sense of justice is “an effective desire to apply and to act from the principles of justice and so from the point of view of justice” (p. 497). Rawls

focuses his attention on distributive justice. Its subject is “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (p. 6). Rational parties decide about *the principles of justice* behind the veil of ignorance and these principles are adopted as a result of rational choice. That is why Rawls perceived the theory of justice as the most significant part of the theory of rational choice⁴. The choice under the veil of ignorance should be fair *ex deffinitio* from which follows the famous interpretation of “justice as fairness”.

In *Political Liberalism* Rawls revises this relation between rational choice and the theory of justice. He claims that the quoted above dictum from *A Theory of Justice*, regarding rational choice, must not be interpreted in such a way that the way that in this treatise the principles of justice *are merely an artefact of the rationality of the parties* (an example of moral theory that claims to be entirely based on rationality, in which Rawls is criticised, is that of David Gauthier⁵). Rawls states that within the idea of fair cooperation reasonable and rational are “complementary ideas”. Each is “an element of this fundamental idea and each connects with its distinctive moral power, respectively with the capacity for a sense of justice and the capacity for the conception of the good” (1993: 52). While the conception of the good provides agents with their own goals, which they pursue in cooperation, the sense of justice guarantees compliance with the principles of cooperation. The latter idea is common for *A Theory of Justice*, *Political Liberalism* and *Justice as Fairness*. It supports our thesis that the formulation and the compliance with the principles of justice are an artefact of the interaction between rationality, represented in the idea of the good, and the sense of justice as a moral power of reasonable individuals. Note that contrary to Rawls’ statements, we claim that the two moral powers *are not only complementary but also interdependent*. There are at least three cases in *A Theory of Justice* supporting such a view:

4In *Morals by Agreement*, Gauthier claims that in fact Rawls is inconsistent with this definition of the theory of justice, and instead, *petitio principii*, is supporting arguments for the principles of justice on intuitions. Hence Rawls fails to substantiate the rational compliance with these principles (Gauthier 1986: 4).

5 To “choose rationally, one must choose morally. [...] Morality, we shall argue, can be generated as a rational constraint from the non-moral premises of rational choice. Neither Rawls nor Harsanyi make such a claim” (Gauthier 1986: 4).

²On this distinction see the first part of the article.

³All citations from the *Theory of Justice* are from 1999 edition.

the morality of authority, the arguments for congruence and the construction of the original position. We discuss them below.

Adjusting the Kantian definition for the purposes of a political concept of justice, Rawls associates reasonability⁶ with: “first, the willingness to propose and honour fair terms of cooperation, and second, with the willingness to recognise the burdens of judgement and to accept their consequences” (1993: 49). To say that one is rational means that he is following his intellectual powers while pursuing a certain goal. Reasonable persons desire “for its own sake a social world in which they, as free and equal, can cooperate with others on terms that all can accept” (p. 50) – this statement represents the core of the idea of reciprocity.

In *Political Liberalism* and other works the distinction between rationality and reasonability is used by Rawls in the explanation of the stability of a political concept of justice in a pluralist society. In order to understand better the role of rationality in the original position, we may use the principle of elimination; we could start from the intuitive fundamentals of the principles of justice, and see what remains for rationality. There are several different levels/stages on which the parties use their moral intuitions in the original position:

- Because of the reasonable restriction of the “veil of ignorance” each person (party) possesses only a rough idea of his plans for life: “he does not know how to tailor principles to his advantage. The parties are effectively forced to stick to general principles, understanding the notion here in an intuitive fashion” (Rawls 1999: 113). For example, the principles naturally are unconditional, universal in application, public and etc. (pp. 114-18).
- The parties have the desire to choose fair principles for society because they *ex initio* do not have the moral vice of envy (p. 124).
- The capacity for the sense of justice of the parties “insures that the principles chosen will be respected” (p. 125).
- In accordance with these levels, there are certain levels of the implementation of rationality:

- The parties formulate the draft-principles using not only their intuitions but also a sketch of their rational plans of life (p. 124).
- The parties decide on the principles using rational choice as a method. The agents are rational because they will not enter into an agreement they cannot keep, or can do so only with great difficulty. Therefore “in assessing conceptions of justice, the persons in the original position are to assume that the one they adopt will be strictly complied with” (p. 126)⁷.
- Rationality is a means of persuasion of the recipients of Rawls’ theory to follow its principles (see below).

It is obvious from the above analysis that neither the construction of the original position, nor the formulation of the principles of justice is possible without *the interaction* between the rationality and reasonability of the parties.

The remarks on rationality lead us to *its ‘comprehensive’ level* – the whole theory is an attempt to rationalise our intuitions of justice as recipients of Rawls’ treatise. If we put ourselves in the thought experiment⁸ of the “veil of ignorance”, in the following interaction between the chosen principles of justice and our intuitive moral premises *under the reflective equilibrium*, we will not simply rationalise our considered judgements – we could be convinced as *rational agents* to act morally. In Rawls’ interpretation, in the reflective equilibrium “one is to be presented with all possible descriptions to which one might plausibly conform one’s judgements together with all relevant philosophical arguments for them. [...] A person’s sense of justice may or may not undergo a radical shift” (1999: 43). Hence on *the basis of reasonable restrictions the rational agents, who follow their good, could uphold their sense of justice*. That is why we perceive that it is more plausible to *interpret the two moral powers as interdependent* rather than treating them as autonomous complementary units.

The contract between the parties is indeed imaginary, but it could be used as a criterion for our empirically existing institutions and relations – it “moves us closer to the philosophical ideal, it does

6 In his article ‘Kantian Constructivism and Moral Theory’, Rawls defines ‘reasonable’ as “a morally substantive matter beyond the bounds of rational choice”; see Rawls 1980 for further details.

7 This of course does not mean that Rawls automatically solves the problem of compliance.

8 For the role of the veil of ignorance as a device of ‘making vivid’ our intuitions, I am indebted to Dr. Matt Matravers, professor at the Department of Politics, the University of York, UK.

not, of course achieve it” (p. 43). The chosen principles of justice will be impartial and will reflect the interests of everybody. These are as follows:

First principle. Each person is to have an equal right to the most extensive total system of basic liberties compatible with a similar system of liberty for all.

Second principle. Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and

(b) attached to offices and positions open to all under the conditions of fair equality of opportunity. (p. 266)

The original position also defines the principles requiring compliance with the concept of justice. Rawls states (p. 95) that in order to establish a complete conception of right, the parties in the original position are to choose in “a definite order not only a conception of justice but also principles to go with each major concept falling under the concept of right” (e.g. ‘fairness’, ‘fidelity’ and etc.). The concept of right regulates social systems and institutions, individuals and the law of nations. One of the principles for the individuals is fairness. It is of crucial importance for the problem of compliance because all “requirements that are obligations” derive from it (p. 96). This principle holds that a person is required to do her part as required in the rules of an institution when two conditions are met: “first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one’s interests” (p. 96).

2. Stability: acquiring a sense of justice

The distinction which we established between rationality and the sense of justice in the original position sheds light on the fact that the principle of fairness is based on the rationality of the parties⁹. They prefer concepts of justice which are easier to comply with because the observation of the duty of

compliance is an absolute premise for stability. The very idea of stability is connected with that of the well-ordered society designed to

advance the good of its members and [be] effectively regulated by a public sense of justice. [...] Since a well-ordered society endures over time its conception of justice is presumably stable: that is when institutions are just (as defined by this conception), those taking part in these arrangements acquire the corresponding sense of justice and desire to do their part in maintaining them (Rawls 1999: 398).

The problem of stability could be divided *into two important questions*: ‘how we acquire a sense of justice’ and ‘how we uphold this sense in a well-ordered society’. Rationality plays a substantial role in the answers provided to both issues. It follows from the above definition of stability that in a well-ordered society we will acquire a sense of justice in the process of socialization. Rawls perceives this process as the main stimulus for the person’s moral development. He distinguishes between three stages of this development leading to a sense of justice: *the morality of authority*, *the morality of association*, and *the morality of principles* (pp. 405-20). Three corresponding psychological laws regulate these stages. We will discuss only the first stage, because it is marked by the transformation of the rational egoism of the child into moral feelings. The first stage is a *condicio sine qua non* since the development achieved in it makes the following two stages possible.

A sense of justice is acquired gradually by the younger members of society as they grow up (p. 405). In this first stage, according to Rawls, the family has a leading role in socialization and the precepts formulated by the parents are based on principles of justice. Rawls, following Rousseau, formulates the psychological principle that the “child comes to love the parents only if they manifestly love him” (p. 406). Although the child has – as a potential – the ability to love, her actions are motivated at the beginning only by a rational self-interest (the loving parents fulfil all her desires and uphold her ego). On the basis of the parents’ love, the child develops strong affection towards them. From this moment her love does not have a rational instrumental explanation, because the child no longer perceives her parents as means to fulfil egoistic ends. Then the child starts to internalise the parents’ pre-

⁹ This does not mean that the citizens have the duty to comply with the demands of the legal and political order under all circumstances. For example, in order to eliminate the malfunctions of the institutional system the citizens have – under certain precise conditions – the right of civil disobedience (1999: 326).

cepts (based on the principles of justice), which she felt as burdens before. And, most importantly, the child develops the sense of guilt when she fails to comply with them.

The analysis of the morality of authority *demonstrates a lack of coherence* in Rawls' concept of rationality and reasonability. While Rawls, as we have already seen, claims that these two notions are complementary but independent – it is apparent that there is a certain *interdependence between the ability to pursue our good and the sense of justice*. In the case of the morality of authority, the basis for the sense of justice is only possible on the grounds of the interaction between the child's rational self-interest, on the one hand, and her instincts and desires, on the other hand.

In his response to the second question, regarding stability, Rawls claims that it is rational (as defined by the "thin" theory of the good) for those in a well-ordered society to affirm their sense of justice as regulative of their plan of life. He attempts to show that the disposition to take up and to be guided by the standpoint of justice accords with the individual's good (p. 497). This accord is expressed by the term "congruence". In order to understand its meaning we need first to present briefly the main points in Rawls's theory of the good.

3. Stability: congruence

Rawls distinguishes between *two theories of the good*. We need a "thin" theory "to explain the rational preference for primary goods and to explicate the notion of rationality underlying the choice of principles in the original position" (1999: 349). This theory also examines whether having and maintaining a sense of justice is a good (in the thin sense) for the members of the well-ordered society¹⁰. If within theory "it turns out that having a sense of justice is indeed a good, than a stable society is as stable as one can hope for" (p. 350). Hence, the thin theory regards both the formulation of principles of justice and the compliance with them. The "full" theory of the good comes after the "thin" one, because it is based on the established notion of justice and the concept of right.

Rawls starts the thin theory by arguing that that once we establish that

an object has the properties that it is rational for someone with a rational plan of life to

want, then we have shown that it is good for him. And if certain sorts of things satisfy this condition for persons generally, then these things are human goods (p. 351).

In order to understand the role that rationality plays in the formulation of the concepts of good (in the thin theory) and right, we have to emphasise the fact that the definition of good is morally neutral. One may say of a man "that he is a good spy, or a good assassin, without approving of his skills" (p. 354). Consequently, we use the concept of rationality to clarify the idea of good that the parties in the original position have; *rationality on its own – without interaction with the sense of justice – cannot lead us to the concept of right*. We perceive the good as moral value in the full theory, because it is defined there by the principles of right. Therefore, for example, in the full theory the good judge is the one who follows the principles of justice (p. 355).

The term "rational plan of life" plays an important part in Rawls's view of the relationship between rationality and justice. We already postulated that in the original position the parties have *an idea* of their good, represented in the sketches of their rational life plans. Rawls gives two definitions of the rationality of an individual's plan of life. First, it is rational if, and only if

(1) it is one of the plans that is consistent with the principles of rational choice when these are applied to all the relevant features of the situation, and (2) it is that plan among those meeting this condition which would be chosen by him with full deliberative rationality, that is with full awareness of the relevant facts and after the careful consideration of the consequences. Secondly, a person's interests and aims are rational if and only if, they are to be encouraged and provided for by the plan that is rational for him (p. 359).

From this definition it follows that the rational plans of life of various individuals will be quite different, because they depend on the person's specific endowments and circumstances.

Rawls mentions two types of principles of rational choice. These represent the content of the notion of rationality. *The counting principles* (effective means, greater likelihood and inclusiveness) are relevant only for short-time questions. Therefore in order to represent how our choice depends on the circumstances on the basis of which we choose, Rawls adds the principle of postponement and two

¹⁰ This is the society regulated by the principles of justice.

principles regarding time (principles of continuity and of rising/declining expectations). We could name this group of principles ‘*dynamic principles*’.

Following the idea of Sidgwick (Sidgwick 1907, cited in Rawls 1999: 366) Rawls also introduces the rational plan of life chosen with deliberative rationality. This is the plan that would be decided upon as the outcome of thorough reflection in which “the agent reviewed, in the light of all relevant facts, what it would be like to carry out these plans and thereby ascertained the course of action that would best realise his most fundamental desires” (Rawls 1999: 366). This type of rational plan supposes that the individual makes a choice judging the different types of facts that would allow him to make a decision for which he ‘would not be sorry’ in the future.

On the grounds of the above premises, Rawls concludes that a person’s good is determined by “the rational plan that he would choose with deliberative rationality from the maximal class of plans” (p. 372). He claims that it is rational for the parties in the original position to want different types of primal goods (friendship, personal affection, social cooperation, etc.) because they are absolutely necessary for the formulation of any rational plan of life. Rawls concludes that the list of primary goods can be accounted for by “the conception of goodness as rationality in conjunction with the general facts about human wants and abilities, their characteristic phases and requirements of nature, the Aristotelian Principle, and the necessities of social independence”¹¹ (p. 381). Of course this conclusion, which proves the validity of the thin theory, gives us a *carte blanche* to use the full theory of the good and to imply all constraints of right to our rational plans of life. It follows that in the well-ordered society (according to the full theory) an individual’s concept of the good is guided by the principles of justice.

In Chapter IX, at the end of *A Theory of Justice*, Rawls presents *three main arguments for the congruence* between the concepts of right and good. According to the first of them, the citizens of the well-ordered society will have the desire to act

fairly, if they possess an effective sense of justice (p. 498). Once they fully accept the principles of justice as regulative for their personal constitution, it is safe to assume that they will hardly change their ends and start to act unjustly. Hence their rational plans of life will be subjected to the sense of justice. The ‘real problem’ of congruence is to provide arguments for a person who only accepts the thin theory of the good and does not implement the restrictions of right. In order to solve this, Rawls develops the second and the third arguments. They both illustrate the role of rationality in the matter of congruence.

According to the second argument, it follows from the Aristotelian Principle and its companion effect that participating in the life of the well-ordered society is a great good (p. 500). The companion effect states that the well-ordered society is the perfect base for the development of human abilities (this development is desirable according to the Aristotelian principle). But because this society is a social union of social unions and given the fact that “our potentials and inclinations far surpass what can be expressed in any one life, we depend upon the cooperative endeavours of others not only for the means of well-being but to bring to fruition our latent powers” (p. 500). It follows that as rational beings we will want to participate in the life of the well-ordered society and, hence, we have to accept the principles of justice on which this society is regulated. This argument supports our claim that the two moral powers – the ability to formulate and pursue a concept of the good and the sense of justice, are not only complementary, but also interdependent. *As rational beings we are willing to uphold our sense of justice.*

This idea is expressed in the third argument for congruence. According to it acting justly is something that people will want to do as free and equal rational beings. The desire to act justly and the desire to express our nature as free moral persons turn out to specify what is, in essence, the same desire. When “someone has the true beliefs and a correct understanding of the theory of justice, these two desires move him in the same way” – to uphold the two principles of justice (p. 501). I will name the latter argument for congruence ‘the argument of understanding’. It supports our idea of the ‘comprehensive level of rationality’, outlined above, according to which the original position and the whole theory of justice could serve as a source of persuasion for a certain shift in the views of a given rational recipient. Once we understand the theory we

¹¹ It is beyond the limits of the present work to discuss these arguments. I will only mention Rawls’s definition of the Aristotelian Principle, because it is relevant to congruence. According to this principle: “other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more this capacity is realised, or the greater its complexity” (1999: 374).

will be persuaded as rational persons to uphold (or to develop) a sense of justice. The argument of understanding further upholds the existence of interdependence between the two moral powers.

The third argument for congruence brings up two new questions. *First* of all, is it a contradiction to this argument that sometimes our sense of justice could act against our good as rational beings? Rawls' astute and witty response is that "the loves that may hurt the least are not the best" (p. 502). In other words, as true friendship and affection could sometimes be connected with self-imposed emotional burdens and even sacrifice, so could be the bidding of the sense of justice, because its origin is a social origin (we should remind ourselves here of the morality of authority and the other stages of moral development). We should further remember that the sense of justice is a "desire to conduct oneself above all else" (p. 503).

The second issue concerns the case in which a person does not perceive it as valuable to uphold her sense of justice (and therefore it is against her good). Now, should the others oppress and make this person follow the principles of justice? Rawls' unsatisfactory answer is that the principles adopted in the original position are binding for everybody and hence for such individuals "their nature is their misfortune" (p. 504). This issue is connected with the question of pluralism, which is underdeveloped in *A Theory of Justice*.

The thesis established in this paper, according to which there is both interaction and interdependence between the two moral powers, is not equivalent to a presumption that our sense of justice stems from rationality. It is obvious, for example, from the morality of authority that the fundamentals of the sense of justice are derived not only from the rational selfishness of the child, but also from her (potential) ability to love. Rationality is the soil on which, with the help of love and friendship, the sense of justice is acquired. What we claim is that *the two moral powers support each other in the choice and compliance with the principles of justice*.

On the basis of the analysis of role of rationality in *A Theory of Justice* we could distinguish between three different levels on which it is implemented:

- 1.) It is an integral part of theory of good and as such it is significant for the formulation of the principles of justice.
- 2.) It is a necessary, but not a sufficient, basis on which we develop our sense of justice.

- 3.) It is implemented in the arguments, which prove that a concept of justice could be stable in the well-ordered society.

On each of these levels rationality and its corresponding moral power interact with reasonability and the sense of justice.

The student of rationality in *A Theory of Justice* must take into consideration the elaboration of this notion in Rawls' other works. The development of the concept of rationality is based on the gaps in *A Theory of Justice*. One of the prominent issues overlooked in this famous project is that if the two principles have a strong regulative role in the well-ordered society this will effectively undermine any opportunities for pluralism and diversity of views. And the last two follow from the principles of justice (1993: Introduction, p. xvii). In order to resolve this internal conflict Rawls restates his theory in *Political Liberalism* and *Justice as Fairness*. His main task there is to show how political liberalism is possible among the variety of reasonable comprehensive doctrines. The notions of rationality and reasonability are significant at all levels of the reformulated theory (for example the idea of the burdens of judgement, that follows from reasonability is in the core of the concept of pluralism) and, especially, for the problem of stability. The latter is upheld on the basis of the sense of justice and the overlapping consensus (1993: 163-68; 2001a: 180-98). The complexity of the analysis of the development of Rawls' views on rationality in his subsequent works raises further impediments to the attempts to achieve a thorough understanding of his project in order to establish an objective evaluation of it. This intriguing issue justifies a separate exploration.

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