
WHEN THE SCALES TILT: RETHINKING THE LAW— JUSTICE EQUATION

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ABSTRACT

The issue of justice and its connection to law is as old as mankind. This is a classic of the perennial genre of philosophy and theoretical jurisprudence. There are countless of opinions about how justice in general, and law's relation to it, is misunderstood. But here again the overall characteristic is very clear: justice is a something due and correct, and one that law must accommodate itself to optimally regulate social relations. This is a rudimentary field of law, but by no means a comprehensive one. There is also a contrary view that justice has. Therefore, legal norms are not always fair, and this does not always lead to worse consequences. In this context, this review paper aims to explore the relationship between law and justice. This review draws some suppositions regarding the relationship between law and justice. Justice has been understood differently throughout history. Now justice is perceived as a concept of what is due and right. However, the definition of justice and its internal content has not become clearer. In order to achieve a fair result, law shows a need to focus on the requirements of justice, and not only on the requirement of legality. Having distanced itself fairly significantly from justice over the course of the past few centuries, law now is in a process of moving back toward its dependence on justice. This direction can only be supported, why is it impossible no to play the ideal system of law, but indispensable remain construction building law aimed at winning over as much as possible evil?

Keywords: law, justice, legality, principles

1. The concept of justice in history

The problem of justice has not been ignored in any era. At the same time, at each historical stage this category has its own understanding, which is accustomed by the living conditions of people and their ideas about the world around them, the existing structure of society and the place of man in this society (Johnston, 2011). The concept of justice is associated with historically changing ideas about the inalienable rights of man. Law is inseparable from justice: it is the core of law. Justice, as the main principle of natural law, is inherent in law, which is not so much an external coercive force as an order to act fairly. It is no coincidence that the words "correct", "truth", "justice" and "law" have the same root; hence the identity of the ancient Roman concepts of "jus" (law) and "*justitia*" (fairness) (Raphael, 2001). According to Aristotle, "In politics, the concept of justice is associated with ideas about the state, since law, which serves as a measure of justice, is the regulating norm of political communication" (Hamedi, 2014).

Socrates, for example, assumed justice as "following wisdom, true knowledge, the order of things, laws", Plato - as an idea in the feeling about the highest good, Aristotle - as "spiritual virtue, consisting in giving everyone what they deserve". He deliberated law "the criterion of justice", and Ulpian - "the art of goodness, equality and justice" (Hamedi, 2014). Cicero gives his concept, closely linking justice with law, therefore, according to him, the ruler must possess the foundations of law, without knowledge of which no one can be just (van Zyl, 1987). Furthermore, justice is assumed by Cicero as an eternal, immutable and integral property of both environments in general and human nature. That is why, if the law is unjust and contradicts the natural law, then it is a law no more than the choices made by robbers. At the same time, Cicero, in accordance with the views of his era, believed that slavery is fair, since it grants "the best people" dominion over the weak, for their own benefit (Amartya & Amartya, 2009). The idea of justice has been a part of theological worldviews for many centuries. For centuries, the concept of justice has been included in the framework of theological worldview. Justice was associated in the public consciousness as a fixation of "divine order", an expression of the will of God and was intended to punish for wicked acts (Watkins, 2013).

Bacon debated that "justice is that which unites men and creates the foundations of law." Hobbes writes: "Justice, that is, the observance of agreements, is a rule of reason, forbidding us to do anything that is harmful to our life, from which it follows that justice is a natural law"

(Sen, 2008).

According to Kant, justice is a good and a categorical imperative, which is a rule of conduct resulting from man's rational nature. According to Kant, justice is a categorical imperative (a rule of behavior that exists due to the rational nature of man) and is considered by him as a good. Therefore, punishing a criminal is fair, since, by expressing a desire to treat other people badly, the criminal, as a rational person, thereby proclaims how he should be treated (Cohen, 1986). Hegel argued that justice and injustice are relative concepts and justice can turn into injustice at any moment (Raphael, 2001). According to Marx, justice is an expression of existing economic relations. Its content and state depend on the existing mode of production, therefore, everything that does not correspond to this mode of production is unfair (Cohen, 2014).

From the point of view of the theory of utilitarianism, what brings the maximum amount of benefit is fair. This approach seems quite justified and rational, but not always, since it takes into account only the quantitative criterion of benefit or happiness, therefore even the lives of several people can be sacrificed to the whim of many people for their pleasure, if the degree of their pleasure outweighs the suffering of a few (Kelsen, 1973).

The concept of justice in modern times was most fully developed by D. Rawls in his work "The Theory of Justice", where justice is understood by him as honesty. Justice itself is based on two principles: the initial state of equality of people and the inadmissibility of receiving benefits at the expense of others (Scanlon Jr, 1972).

Russian philosopher Solovyov (2005) defined justice as morality or altruism, i.e. the requirement to offend no one, to help everyone and to ensure equality of people. As a result, the idea of law has evolved significantly over time, moving from being a natural or divine act of justice to being an unfair restriction on natural freedom.

2. The relationship between law and justice

There are two opposing points of view regarding the relationship between law and justice. Pound (1914) argues that justice is a non-legal category, moreover, it has nothing to do with law and legal theory, but, on the contrary, "leads to a confusion of the categories of law and morality". Another view is that; justice is an evaluative category. Sometimes what is fair to

some is unfair to others. In addition, each side is sincerely convinced that its position alone is true, fair, and self-evident. When it comes to justice, it is wrong to judge what is happening based on feelings. Generally, assessing phenomena without being involved in them is the most accurate approach. An outside observer is the most objective in this matter, since his own interests are not affected (Ross, 2019).

It is indispensable to understand that justice initially contains features of injustice, the quantity of which depends on the level of development of society. It is not only difficult, but simply impossible to formulate principles of universal justice that would be universal and suit absolutely everyone (D'Amato, 1992). Consequently, the theory of justice is always associated with a certain historical and cultural context. This position is absolutely not new. In particular, it has always been characteristic of legal positivism (Nadler, 2009). This theory does not ignore justice, but only believes that it is beyond the law. Justice is a requirement of morality, not law. The categories of justice, due, good and bad, precisely because they are quite arbitrary, subjective and changeable, of course, have a right to exist, but not within the framework of legal theory. Hans Kelsen, the creator of the "pure doctrine of law", never tired of repeating on this subject that moral values, including justice, are relative and, for all their necessity, represent an unattainable ideal (Kelsen, 1947). This is a certain ideal of the life of society, and, consequently, the state and law as its constituent parts. The more the principle of justice is reflected in law, the more "healthy" society and the state can be called. But it is impossible to achieve complete agreement on the issue of justice, as well as absolute justice in law (Tapp & Kohlberg, 1971). Therefore, the task of the state should be reduced to the minimum, so that laws are not only not obviously unfair, but their adoption would eliminate the maximum number of injustices.

Another theory states: the law must be fair, i.e., in any case it goes back to justice, denotes the presence of a legal principle in the social world and expresses its correctness, imperativeness and necessity (Perelman, 2012). The goddess of justice, Themis, clearly illustrates this point. The symbolic elements of her image—such as the blindfold representing impartiality, the scales symbolizing fairness, and the sword signifying authority—directly reflect the concept of justice. There are only two possibilities: either the law is kept in line with the growing use of the internet, or the law is considered a manifestation of justice itself. As internet usage expanded rapidly in the late 1990s, cyberstalking emerged as a new and complex issue for law enforcement and legal systems. Justice is regarded as the highest value within the law.

According to Pound & DeRosa (2017) in their paper titled "Philosophy of Law" writes: "...justice is a legal category and characteristic, not extra-legal (not moral, ethical, religious, etc.). Moreover, only law is fair." Although law should be fair, it is impossible to agree that there is no justice without it. Such a declaration is only appropriate for ancient systems, where law has not yet developed as a special, distinct form of regulating human behavior. Justice can be identified with the Vedic concept of "rita", interpreted as a universal world law, to which both gods, nature, and man are subject, and the similar ancient Chinese idea of "dao" (path), and even a narrower Indian concept of "dharma", which applies only to man, since they cover all existing forms of human behavior (Mirakhor & Askari, 2019). But when different social regulators are distinguished: religion, morality, law, custom, etc., then it is impossible to completely identify law with justice (although the coincidence of these two concepts is a fairly common phenomenon in life). If law is formal and soulless, then justice, on the contrary, is always spiritual and humane. Therefore, the following definition of law, proposed by the English lawyer Blackstone: "Law is a norm of civil behavior prescribed by the supreme authority in the state, indicating what is true and fair, and prohibiting what is wrong and unfair", cannot but be criticized. Law cannot be defined only by the content of justice (Lobban, 1987). This is precisely why a legal act cannot always be called moral and it is quite possible, without violating the law, not to take justice into account. After all, law is not always based on morality. Justice is an internal property and quality of law, a legal category and characteristic. Law is essentially fair. Therefore, the question of the fairness or unfairness of a law can be safely interpreted as a question of the legal or non-legal nature of a law, its compliance or non-compliance with the law (Lanni, 2006).

Law is fair because it represents general correctness, in other words, universal legality. Law functions as a regulatory measure that is equally fair for all legal subjects. Everything that expresses law corresponds to law and follows it fairly. On the other hand, acting fairly means acting lawfully. With the rapid expansion of internet usage in the late 1990s, cyberstalking emerged as a new and complex challenge for law enforcement agencies and legal systems. Therefore, justice should not have any other form of expression except legal, or the regulation of social relations through law will acquire a subjective character.

Denial of the legal nature of justice inevitably leads to the situation where some non-legal actions are passed off as justice. Thus, the general meaning of justice is replaced by arbitrary content, individual claims, and separate and partial interests (individual, group, party, class,

etc.). But this does not mean that law should ignore various special interests and claims; on the contrary, they should find their proper recognition, satisfaction, and protection in law (Kelsen, 2022).

Legal justice is often seen as different from moral, ethical, political, religious, and other types of justice. People usually think of legal justice as just a way to set rules and protect people, while leaving the idea of justice itself up to other areas. But this isn't possible. First, morality and religion can sometimes go beyond what legal justice covers. Second, legal justice is the main standard that decides whether other actions are legal or not. Justice is an essential property of law, and not of morality, ethics, religion, etc. (Perelman, 2012). In areas regulated by law, i.e. in the legal (juridical) space, law is the key instrument regulating human life, and it is precisely this that must ensure the achievement of a fair result in the legal space (Pritchard, 1998).

3. The principle of justice in law

No other principle of law has been so frequently interpreted, discussed, explained and at the same time distorted as the principle of justice. This is due to the fact that it is important not only in itself, but is necessarily expressed in the sphere of law in equality and legality, i.e. it is intertwined with other principles of law. It has already been mentioned that any law is the application of an equal standard to the subjects of social relations (Fletcher, Lööf & Gilmore, 2008). And if the equality of all citizens before the law, established only after the liquidation of slave and feudal relations, turns out to be formal, then the recognition of equal opportunities for each person with all other people was a huge achievement of mankind (Kelsen, 2022). In the legal context, it signified the transformation of legality into a universal principle of political systems. Justice in law also holds an independent social value. In justice, they seek justification of the law and punishment for its violation (Vago & Barkan, 2021). Even when the content of the law corresponds to high ideals, one must be sure that in this case the means chosen by the legislator to achieve the goal are permissible (Pearson, Giddens & Tranter, 2018). The discrepancy between the goals and the means of achieving them is also an injustice. The principle of justice is of exceptional importance for the prestige of the law and the court, for the voluntary execution of legal regulations by the population, and the convinced service of law and legality (Copenhaver & Tewksbury, 2019). But is there a reason to look for justice in law? Perhaps law is not fair by its nature, as Leo Tolstoy believed? Should we not, having

abandoned vain hopes, agree that law itself does not contain elements of justice and can only be assessed from the point of view of how fair is the system protected by the legislation and justice of a given country? On the other hand, can we consider it correct to assert that justice is the most abstract and unchangeable expression of the organic properties of law itself, that real law is always fair? Is justice an indispensable objective quality of the legal form of social relations, outside of which law turns into unlaw, into arbitrariness? To answer these questions, it turns out that an understanding of the material determinacy and class-historical orientation of such a moral category as justice is insufficient. The well-known position of Engels that "justice always represents only an ideologically-motivated, exalted expression of existing economic relations, either from their conservative or their revolutionary side (Cain, 1974)", as well as the fundamental statement of Lenin that "justice is subordinated to the interests of the overthrow of capital (Schedler, 1978)", serve as a methodological starting point for any research of an ethical nature, but do not yet provide an answer to the special question of the content of the category of justice and the degree of its connection with the essence of law. The problem of law and justice should, apparently, be solved in two aspects. First of all, we are talking about the assessment of law from the point of view of the economic, political and other factual relations it protects (Kelsen, 2022). And here it is important not only what is being assessed, but also by whom, from whose position this assessment is carried out. The free population of Rome considered the law that secured the slave system to be fair. The bourgeoisie refuted the fairness of feudalism and considered the law of the feudal lords to be arbitrary and unfair (Tibebu, 1990). The working class and its ideologists proved the injustice of capitalism and the law that approves private property and the exploitation of workers. Socialism ensures the highest degree of fairness possible in a class society, and so does its law. But law can never be higher than the economic and cultural level of development of society, and therefore the socialist legal system cannot yet ensure that very high degree of social fairness that is achieved only at the highest stage of communism and presupposes actual (material) equality between people, the disappearance of essential differences between mental and physical labor, city and village, the complete erasure of class boundaries, the withering away of the state and its replacement by public self-government (Pound & DeRosa, 2017). All the said above does not pertain to the explicit principles of legal form and is straight determined by the nature of the associations mediated by it. In the second aspect, the problem of law and justice is of a more specific nature, it presupposes the interpretation of justice not as a factor external to legal reality, but as a special legal principle of law, expressing certain properties, aspects of the legal form itself (Perelman, 2012). Justice, as a matter of morality, becomes both an ethical and legal

issue. This idea is especially important for understanding the social value of law. It can be assumed that justice does not become a part of law, and even less so should be seen as the main meaning of law. It is precisely the principle of the legal system, without which the law not only loses its moral basis, but also turns out to be disharmonious, unbalanced, cannot be an effective distributor of life's goods - in accordance with the objective needs of a given socio-economic formation - and express the interests of individuals, social groups, classes, dominating in these relations (Kelsen, 1947). In this case, we are talking, of course, not about some kind of mythical, never-ending justice, but about social justice. This kind of justice has its own specific needs and is shaped by history, just like the legal system. Justice isn't just something made up by people who think about moral things all the time. It's a really important value that helps guide people in keeping society alive and making it better. It helps measure what Karl Marx called the way people and society interact, both in terms of material and spiritual things. Without this kind of justice, there wouldn't be true social life. Justice is like an idea that helps us see if things are fair, if there's a balance, and if people's efforts and achievements are matched by the way society responds to them, whether through rewards, support, or criticism. According to Mikula, Petri & Tanzer (1990), "Everything is perceived as fair or unfair, from whom and from what this or that reaction to the behavior of people comes." Justice requires impartiality, truth, correctness, and the validity of legal responses to various activities, as well as the resolution of disputes and conflicts related to the law.

It presupposes equality before the law and the court, proportionality between crime and punishment, and a correspondence between the intent of the legislator and the means used to achieve it. With the rapid growth of internet usage in the late 1990s, cyberstalking emerged as a new and complex challenge for law enforcement and legal systems. From the perspective of justice or injustice, the alignment between objective law and the rights derived from it, as well as the relationship between what is declared as law and the actual outcomes of its application in real life, can be evaluated. It should not be thought that such assessments are outside of history, but they can also be given from the point of view of everyday ideas about justice, often quite sufficient and generally accepted among the population of the country, when it comes to relatively simple relations and conflicts that do not directly affect class interests (Brosnan & De Waal, 2014). A gross violation and complete disregard for impartiality will not only always be perceived as injustice, but also significantly disrupts the normal functioning of the legal form, contradicts its properties (Geyh, 2013). The link between law and justice comes from the idea that a legal situation is really a form of sharing out rights and duties. In this case, what is

being shared are the rights and responsibilities of people who are interacting with each other in society. And this distribution, in turn, turns out to be a special way of consolidating the distribution of life's goods that prevails in a given society among people in accordance with the place they occupy in social-class relations and the nature of the activities they carry out (Allan, 2016). So, justice ends up being a rule that is special to the law, connected to its qualities and the role it plays in managing how people interact with each other.

4. Justice and the Law

Are laws always fair? It's clear that the way laws are enforced and their legal nature aren't always obvious. Also, it's often strange to think about whether many laws, especially those that are about rules and regulations like traffic laws, are fair. People naturally expect that if a law is fair, it will lead to a fair result. But even when a law is fair, the result might not be fair because the law might be misunderstood, misused, or applied wrongly (Dickson, 2016). It's even harder to expect a fair outcome if the law itself doesn't reflect fairness in the first place. Laws come from the will of certain groups in specific times and places, so they can't be seen as completely fair in every situation, but only in relation to the society they are part of. Justifying the existence of a law by some compelling reason cannot yet prove its just basis (Crews, 2001).

Much consideration has always been paid to the question of the opportunity of the presence of an unfair law and the responsibility to comply with it. It is a fairly entrenched point of view that even a very operative law should not exist if it is unfair. In this case, it does not matter that this law brings benefits to many, at the expense of infringing on the freedoms of others (Rawls, 1993).

Ideally, the legal order should be based on the moral order. Then the law will be fair until morality changes. When the law deviates from morality, a conflict between these two institutions is inevitable, which leads to ignoring the law, disobeying it, or the moral principles themselves begin to deform (Spohn & Horney, 1991).

In such a case, the implementation of justice becomes very uncertain. In such a situation, where there is a confrontation between morality and unfair law, most countries tend to favor fair natural law. That is why the idea of placing morality above law has recently gained attention. With the rapid expansion of internet usage in the late 1990s, the possibility of establishing

universal fairness through cyber law became a controversial issue. After all, although the understanding of justice itself is constantly evolving, there are some fundamental principles of justice that remain unchanged: "do not do to others what you would not want done to yourself" (Ross, 2019). At the same time, it is clear that when making decisions, justice can come into conflict with law. For example, from the perspective of justice, every criminal should be punished for what they have done. But criminal law knows such institutions as the statute of limitations for committing a crime, amnesty and pardon, which allow the guilty party to be released from punishment in whole or in part (Fletcher, Löff & Gilmore, 2008). In this case, the responsibility of punishment giving to the principle of justice stretches way to mercy. Although, from Nietzsche's point of view, in this case it is not mercy that takes place, but ordinary "herd cowardice", caused by the fact that the rules of conduct themselves are determined by a worthless crowd (Glendinning, 2019). But even so, recently they have started to look more closely at the purpose of a law when deciding whether to pass it, including whether it is fair. This is clearly visible in the work of the Supreme Courts. This is because the cases they deal with, which are usually appeals, are directly connected to fixing human rights that have been broken by the law.

If we talk about the people involved in the trial, like lawyers, they are usually not focused on the ideals of justice and instead concentrate on getting a fair result. Among lawyers, there is nothing bad or immoral in acquitting the guilty. Such behavior is explained by the fact that the lawyer here acts only as a professional who is obliged to forget about his moral principles (Simon, 2009). The implementation of a legal decision does not rest on on the independent image of the event, but on which lawyer turns out to be more procedurally experienced and more skilful.

Some consider it a very good option to administer justice by the people themselves, or at least by a significantly larger representation of them than one professional judge (Frankel, 2017). But this option is immediately rejected at the slightest consideration. Let's take the same jury trials, which were supposed to become the watchful eye of the people and an obstacle to an unfair trial. In reality, it turned out that law has indeed retreated into the background, but morality has not taken its place. Decisions are made not on the basis of reason or moral principles or the demands of justice, but on the basis of emotions and manipulation of human consciousness (Auerbach, 1984). Therefore, a people's or jury court cannot be called a place where justice reigns. Being guided by the law allows one to avoid much greater evil, since the

requirements of the law are much clearer and allow one to avoid chaos with a greater degree of probability.

5. Conclusion

Based on the above, we can summarize some key points about how law and justice relate to each other. Justice has been seen in different ways over time. Today, justice is generally thought of as what is fair and deserved. However, even though we have a general idea of what justice means, its exact meaning and what it truly includes are still not fully clear.

Law is based on justice, but justice isn't just about law. Some people believe that justice is only found in law, but I don't think that's entirely true. While law's main purpose is to create fair rules for society, it's not the same as justice. So, we can't say that law is just about justice or that justice is only about law. They share some common ground, but they aren't the same thing. In the legal world, justice is something that law should aim for and is used to judge how good or bad a law is.

With the rapid growth of internet usage in the late 1990s, cyberstalking emerged as a new and complex challenge for law enforcement and legal systems. Due to the complexity of social relations, regulating them solely through natural laws and morality became inadequate, leading to the significant development of positive law, which now serves as the primary regulatory framework in the legal space. As legal norms evolved, morality and religion began to play a more substantial role. However, achieving fair outcomes remained inconsistent. To ensure fairness, law must focus not only on legal requirements but also on the principles of justice. Over the past centuries, law has gradually moved away from the ideals of justice, but there is now a trend of returning to a reliance on justice. This shift should be supported, as while creating an ideal legal system is unrealistic, it is essential to build a legal framework that minimizes injustice as much as possible.

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