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Abstract. Virtue ethics is not typically invoked by academics today for the evaluation of political systems or political action. We could, however, recognize its potential role in this regard, turning to the history of its use as illustration. Interpreters who have attempted to theorize about political rights apart from moral psychology fail to recognize the support the underlying moral psychology provides to the notion of rights. Contemporary objections to the use of ethical theory in justifying rights may assume political theory is adequate enough when kept in terms that abstract away from any particular aspects of moral psychology. Yet a virtue-based approach to political system recognizes the desires for freedom, the risk of preferences being subsumed into a consequentialist assessment, and more readily enables agents themselves to assess what is necessary to condemn political systems as well as political efforts, such as the Russian invasion of Ukraine.

Key words: Rights, Law, Moral Psychology, Cicero, Virtue, Rawls, Virtue Ethics

INTRODUCTION

Others tire of liberty in the midst of their prosperity; they let it be taken from their hands without resistance, for fear of compromising by any effort the very well-being that they owe to it. What do they lack to make them free? What? The very desire to be so. Do not ask me to analyze this sublime desire, it must be felt.

Alexis De Tocqueville,
The Old Regime and the Revolution

Virtue ethics, as it is being developed today (Snow, Wright, Warren, 2021), is not put to use in the manner it once was: as a means of generating criteria for rights which are themselves the criteria for legitimate political systems. This may be due to concerns about what Martha Nussbaum has termed “platonic” accounts of justice, ones associated with the illiberal project of making citizens virtuous. By looking to Cicero’s arguments we see an update and alternative to “platonism,” as he describes standards for evaluating political systems and actions by how they can be assessed by virtue rather than whether they generate virtue. In other words, a virtue-ethics based approach to rights need not be “platonist” in the sense that concerns Nussbaum. Eudaimonist virtue ethics can function as a way of endorsing systems that are compatible with virtue-based happiness rather than by producing positive proposals to increase virtue. It can be a check on systems rather than an agenda. Furthermore, a virtue-ethics based approach

accesses people's own observations and senses of right and wrong in a way a mediated approach to justice, one that only invokes summative concepts, discourages.⁴

1. WAITING ON THEORIES OF JUSTICE

By the way, the representatives of power invariably come to terms with those who live within the truth by persistently ascribing utilitarian motivations to them—a lust for power or fame or wealth—and thus they try, at least, to implicate them in their own world, the world of general demoralization.

Vaclav Havel, *Living in Truth*

John Rawls argued that liberalism must not be justified as if it is “just another sectarian doctrine.” (Rawls, J., 1985) Ethical theory, if it represents a comprehensive conception of the good, is therefore wholly inappropriate to the justification of liberalism. On this perspective, differences between comprehensive conceptions of the good are irrelevant, they may be more or less inchoate and range from religious faith to an unorganized set of preferences.

Rawls inspires several reasons for thinking ethical theory is inappropriate to the evaluation of political systems. We can look to the example he makes of John Stewart Mill's theory. One objection is that an ethical theory is too comprehensive a view, containing political and unpolitical views that are irrelevant to political justification. Another is that an ethical theory depends, necessarily, on controversial metaphysical theses. The promotion of ethical theory violates what we ought to acknowledge about pluralism in the public sphere. And finally, an ethical theory is not designed to function in the way that a political conception of justice is, so that it will be a poorly functioning device for making political determinations.

The problem, as political theorist John Tomasi has put it, is that ethical approaches to political justification attempt to defend “some suitably general liberal view about true human moral nature against critics by means of philosophical argumentation.” The burden is on critics to defeat this proposal. Should they fail, “philosophers could then use their own true view of moral personality as a shared moral basis for liberal politics.” (Tomasi, J., 2001) This type of debate over ideas is considered untenable by Rawls because there is no plausible stopping point. In conditions of “institutional freedom, convergence on a single conception of human moral nature is unlikely, no matter how long or clearly philosophers argue.” (Tomasi, J., 2001) The only type of widespread agreement secured would be due to a comprehensive doctrine being “imposed” on the public, is the claim. (Rawls, J. 1993) Nussbaum makes the suspicion of this type of “coercion” clear in her description of “platonism.” “Platonists” offer some objective criteria for political outcomes and attempt to determine what justice is apart from the consideration of people's preferences and desires. The association of politics with only one comprehensive account of the good is, Nussbaum writes, “too disdainful of the wisdom embodied in people's actual experience.” (Nussbaum, M., 2001)

⁴Examples from Aristotle and Plato's political theories may be unduly influential here, as they made illiberal assumptions about the “happiness of the polis.” And yet several of Plato's ideas in his *Laws* (the notion of rule of law, division of power, requirements for court proceedings) had an incredible influence on the development of the modern constitutional-republic, in particular through his influence on Cicero.

My rebuttal is this: Cicero maintains a distinction between his approach, which is modeled on Plato's, from Plato's by removing any suggestion that the virtue of the citizens is a goal. Instead, widespread agreement about moral behavior is already assumed as a premise of his approach. Like Vaclav Havel later suggested, we experience the corruption of this confidence through politics and our reliance on political theorizing.

Concerns about the imposition of metaphysical theses in public justification are appropriate to *a certain type* of ethical justification of political arrangements, but do not apply to the example of a virtue-based approach to human rights. Cicero can provide an illustration of this. His example also points to some benefits of approaching justice with an account of moral psychology.

2. THE POTENTIAL AMBIGUITY OF “HEALTH,” “SAFETY,” “QUIET” AND “HAPPINESS”

Cicero in the *De legibus* argues that all law and governmental systems, to be legitimate, must be “for the health of citizens, the safety of cities, and the quiet and happy life of human beings.” (Cicero, 2017) Interpreters may think that such claims stand alone or believe that they can extract these claims from the eudaimonist moral psychology Cicero invokes and still defend rights and the justification of political arrangements. And yet we can recognize “health,” “safety,” “quiet” and “happiness,” when not associated with an account of virtue, can be used to justify the most atrocious violation of rights, such as in the Nazi use of these concepts. This is not a *reductio*, but instead indicates that we ought to take care to disambiguate “health,” “safety,” “quiet” and “happiness” so that they can be firmly associated with only ethical interpretations through references (and test of) the details of eudaimonist moral psychology, as Cicero models.

What benefits would this bring? Looking to virtue when condemning injustice includes the following three.

Advantage one: the coherence of an account that can maintain unethical behavior as an input or an output of a political system or activity is unjustified.

Advantage two: the ability to be committed to both a political system and action and one's personal morality at once.

Advantage three: As Rawls puts it, his own starting point is the idea that all humans are free and equal. And though Rawls himself invokes certain premises he calls psychological (the idea that we have the two moral powers and the list of qualities we are need to make agreement in an overlapping consensus possible), the idea that we are “free and equal” (this normative psychological claim) is better understood in an approach based in virtue-ethics for the following reason: these claims require continued defense and supportive detail, such as can be provided in our ongoing attempt to understand psychology.

Let me next suggest that the necessary understanding of moral psychology is neither fixed nor rigid. It instead requires components that may be understood and established in a variety of manners, as long as it could still explain how we come to recognize ethical behavior (that it has laudable psychological effects). In the next section I give an overview of these requirements.

3. THE MORAL PSYCHOLOGICAL CLAIMS OF CONTEMPORARY VIRTUE ETHICS

Contemporary eudaimonistic approaches take happiness to be a final end and practical rationality to be necessary to virtue. If engaged in to with some success, even imperfectly, practical rationality is expected to have certain effects. So while only a fully virtuous person will have a consistent, integrated set of motivations (the ones we theorists reference when justifying accounts of right and wrong), the person “progressing” towards virtue is merely experiencing progress towards certain goals. This might be emotional progress or intellectual progress, but the goals include the review and ordering of norms. A eudaimonistic virtue ethic will include, in some version, accounts of the following: self-generated reward and self-imposed behavioral norms and an explanation for the transformation of the agent’s pleasures, so that she can experience pleasure (or lessened emotional distress) while acting rightly. Even in the person only progressing towards virtue we should see some capacity for engaging in some ethical acts “for their own sake,” without concern for their rewards

In a eudaimonist virtue ethics, becoming practically rational is what determines that our goals will become ethical. The “practice” being recommended “has cognitive powers, in that it is the way we learn what is noble or just” (Burnyeat, M; 1980). Engaging in this intellectual and emotional process can result in us being less tempted to regrettable behavior that once had appeal. If engaged in perfectly, we would find ourselves being motivated by strong, well-endorsed, ethical norms, and this would, then, be virtue (Becker, L; 2001).

Such accounts of our moral psychology have been vetted and updated by contemporary thinkers (such as Becker) and they bear up remarkably well against the most recent developments in behavioral science (Baker, J; 2020). This is to say that portions of the moral psychology that comprised support for Cicero’s claims about law can still be modified and updated (in particular any claims about emotion or moral development), and yet the idea that becoming practically rational (Kristjánsson, Fowers, Pollard; 2021) leads to more efficacious agency and the experience of happiness has been ruled out by neither science nor philosophy.

4. VIRTUE ETHICS IF APPLIED TO POLITICAL SITUATIONS

But examine the passions and feelings of mankind. Bring the doctrine of reconciliation to the touchstone of nature and then tell me whether you can hereafter love, honor, and faithfully serve the power that hath carried fire and sword into your land? If you cannot do all these, then are you only deceiving yourselves and by your delay bringing ruin upon posterity?

Tom Paine, *Common Sense*

Cicero writes that in order to recognize and design good law, we must determine how we reason and what its limits are and what the connection among humans ought to be. The answers he proposed (though in his skeptical manner) were that humans can reason themselves into a condition of virtue and happiness, and that humans can get along with others harmoniously, in a way as to experience concord. When we learn that humans are experiencing distress and when there is terrible discord between us, we can, Cicero suggests, assume some poor law has led to this. Good law has good effects, bad law has bad effects, and again, with an attached moral psychology the way to measure

these is not left vague (which is not to say, in better times, it is not difficult to compare degrees of positive outcomes, but this does match common sense when it comes to how obvious it is that war and discord ought to count against any system that brought about).

As he puts it:

It is surely settled that laws have been invented and that those who first sanctioned resolutions of this sort showed to their peoples that they would write and provide those things by which, when they were received and adopted, they would live honorably and happily, and that they would of course name “laws” those things that were thus composed and sanctioned. From this it is properly understood that those who have written down orders that were ruinous and unjust to their peoples, since they did the opposite of what they promised and claimed, provided something other than laws, so it can be clear that interpreting the name of law involves the significance and sense of choosing what is just and true. (Cicero, 2017)

With the confidence of a virtue-based approach to rights and political systems, citizens themselves would see as signs of illegitimacy in terms of stability, the freedom to condemn corrupt politicians, the right to free speech, protection of those with good intentions, the honoring of ethical behavior, and the widespread agreement on these matters that would be ignored by any illiberal “platonist” approach. (For a further illustration, see Becker, 2003.)

If we, instead, do not feel invited to invoke notions of virtue in political assessments, we lose these judgements and crucial checks. We also lose the very suggestion that individual agents deserve to bring us this type of assessment, as a virtue-based approach “recognizes in persons what is especially fundamental about them, most worthy of respect and acknowledgement their aspirations to justice and goodness and their capacities for reasoning in this connection.” (Nussbaum, M. 2000) As Cicero put it, “of all the things involved in the debate of educated men, surely nothing is preferable to the plain understanding that we have been born for justice and that right has been established not by opinion but by nature. This will already be evident if you have examined the fellowship and connection of human beings among themselves.” (Cicero, 2017)

CONCLUSION

To the people of Ukraine: “So many and so great are the things that are clearly seen to be present in a human being by those who want to know themselves.” (Cicero, 2017)

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