

Varieties of Human Rights and Duties

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The papers on human rights published in the current issue of *Psychology & Society* have two important underlying themes, the first being varieties of human rights and duties. In addition to formal rights and duties that are 'on the books' and reflected in national and international law, I discuss primitive rights and duties that evolved as a functional foundation for 21st century rights and duties, and also supererogatory rights and duties. The second underlying theme in these papers concerns varieties of change and violence, in relation to human rights and duties. Three types of change are identified, and their relationship to direct, structural, and cultural violence is examined.

For my friends, everything; for my enemies, the law.

This statement from the Brazilian dictator Getúlio Vargas (1882-1954) seems paradoxical: why did he say "...for my enemies, the law"? (see Moghaddam, 2016, p. 88). According to the idea that 'rule of law' is a solution rather than a problem toward democratic governance, should this dictator not have said, "...for my enemies, **not** the law"? Vargas's puzzling statement serves as a useful point of departure for this exploration of a foundational theme in the set of innovative papers on different aspects of human rights published in the current issue of *Psychology & Society*.

At a low level of abstraction, there are major differences between these papers. Velez (2016) explores the implications of a compartmentalization of human development as dispositional and contextual; McFee (2016) examines how government authorities in Columbia claim that peace has to be achieved first, before progress can be made in other areas, whereas citizens argue for hand-in-hand progress in both peace and broader development; Mazur (2016) assesses how geographical mapping and the locations of crimes against humanity are associated with the assignment of responsibility for those crimes; Offinadi-Bertrand (2016) reveals how the promotion of cultural rights can help alleviate collective trauma; Canguçu-Campinho, Sampaio Oliveira Lima, and Leone De Souza (2016) take on the practical task of developing a booklet for families with intersex children; finally, Rafferty (2016) discusses human rights with respect to child victims of commercial sexual exploitation. Despite the differences that exist at a lower level of abstraction, however, at a higher level of abstraction, there are two foundational themes underlying all these papers. A first theme is varieties of human rights and duties. A second theme is the relationship between varieties of change and violence. I elaborate on these two themes below.

VARIETIES OF RIGHTS AND DUTIES

Traditionally, human rights are conceptualized as the ‘formal’ or ‘black-letter’ rights that are ‘on the books’, either as formal law in the legal systems of nation states or as formalized in international declarations, such as the *United Nations Declaration of Human Rights* (1948), and international institutions, such as the *International Criminal Court* (ICC). I argue that in addition to formal or ‘black letter’ human rights, we must consider at least two other types of human rights. Also, I propose that in addition to considering ‘rights’, which we are owed (if I have the right to free speech, then I am owed the opportunity to speak freely), we must consider ‘duties’, which we owe to others (if you have the right to free speech, we owe you the opportunity to speak freely).

In addition to formal rights and duties, there is what I have termed *primitive rights and duties*, which evolved early in human evolution through *primitive social relations*, functional behaviors that proved to be essential for human survival. Primitive rights and duties functioned as implicit rules of behavior shared by collectives, reflecting collaboratively upheld understandings of ‘correct’ behavior in given contexts. What we know today as formal or ‘black letter’ rights and duties are cultural formulations that came a long time after primitive rights and duties; they are the cultural labeling of functional behaviors that developed early in our evolution.

Another important type of rights and duties I discuss below are *supererogatory rights and duties*, which are above and beyond formal requirements; they are what earn people good citizenship ‘bonus points’ in their communities (see Moghaddam & Kavulich, 2008). The assumption in contemporary debates is that ‘rule of law’, meaning the application of formal law to everyone, including those in authority positions, leads to a fair society. But this assumes that the law is just, and its applications results in fairness (see the discussion on ‘formalist’ versus ‘substantivist’ interpretations of law, in Moghaddam, 2016). However, as implied by the statement “for my enemies, the law” from the Brazilian dictator Vargas, under certain conditions formal law can have exactly the opposite impact, supporting injustice rather than justice. Particularly where formal law is entwined with a lack of accountability, the implementation of ‘rule of law’ can be anti-democratic (Gormley & Balla, 2013). I argue that fairness is not only dependent on formal law, but also on other types of rights and duties, which we need to understand in greater depth.

The papers in this special issue reflect the highly important role of culture in shaping human rights. While I agree that culture has such a central role, my proposal is that there are a small number of rights that are common to all humans. I discuss these as emerging from primitive social relations. A second claim is that rights and duties have a reciprocal relationship: where there is a right, there is a reciprocal duty (e.g., my right to free speech corresponds to the duty of others to provide me with the opportunity to speak freely). However, there are a small number of exceptions to this reciprocity: for example, a duty to the self is possible, but there is no corresponding ‘right to the self’.

Primitive Rights and Duties

Primitive rights and duties can be better understood by exploring the evolutionary roots of fairness. Experimental evidence demonstrates that a sense of fairness is not unique to humans, but is shared by some animals (Brosnan & de Waal, 2012). For example, monkeys react in negative ways that clearly indicate they are unhappy when they receive a less valued reward than another monkey, for carrying out the same task. This 'sense of fairness' probably evolved in animals and later in humans as integral to functional behaviors that enhance group survival. The presence of 'democratic' decision-making in some animals (Conradt & Roper, 2007) is perhaps also explained by functionality: collective input and effort leads to better decisions, at least under some conditions. Thus, animal research points to basic evolutionary roots to our modern conceptions of fairness, and even 'just' decision-making.

The functional behaviors that served as a basis for the later development of a 'sense of fairness', I have termed '*primitive social relations*'. An example of primitive social relations is turn-taking, which is essential for successful social interactions. Turn-taking is present in both humans and animals (for example, in grooming among primates, Ueno, Yamada & Nakamichi, 2014), and is also seen as necessary for advanced machines (see papers in Nehavin & Dautenhahn, 2009). In humans, turn-taking appears very soon after imitation, and is practiced by infants (typically in interactions with parents) certainly by the end of the first year (Nadel & Butterworth, 1999).

Along with the basic behavioral skill of turn-taking, there develops the sense of 'my turn' and 'your turn', and also of what is acceptable as 'correct' turn-taking. Thus, the primitive social relation of turn-taking is a basic building-block for more complex feelings and cognitions associated with fairness. Much later, these basic building blocks, the primitive social behaviors, came to be labeled as 'rights' and 'duties' through cultural interpretations. Although primitive social relations are found in all major human groups, their cultural interpretations often vary across societies. Consider, for example, the rule commonly accepted until recently in most Western societies, 'women first' when men and women are passing through a door (to enter a house, for example). First, some feminists in Western societies are rejecting this rule, arguing that it depicts women as weak. So within Western societies we see a change in the application of the rule over time. Second, in some traditional societies the rule is for women to walk behind men, and to pass through doors after men. Thus, the cultural interpretation giving the 'right to go first' to either women or men can vary across time and across societies.

Formal Rights and Duties

From around 12,000 years ago there emerged stable, agriculture based human settlements, capable of producing a reliable surplus of food and other resources. As the populations of these settlements grew from hundreds to thousands, there was a need for formal legal codes to regulate relationships, cement agreements, and solve disputes. Leaders with titles

such as 'chief' and 'king' set down rules and legal codes, based on (implicit or explicit) ideas about rights and duties. The primitive social behaviors that had served to help groups survive were now formally labeled as 'rights' and 'duties'.

For example, in some parts of Asia and Africa, farmers have access to water through ancient community rules based on turn-taking. I witnessed this in parts of rural Iran, where water is diverted into different farmlands and orchards for specific time periods, based on ancient customs. After a family has had 'a turn' at having water diverted into their farm for a set amount of time, it is then 'the turn' of another family to benefit from the water. When questioned about the basis of this turn-taking, a farmer I spoke with simply referred to 'hagh' (a right) of his family, as well as the 'vazifeh' (duty) to divert water to the next farm in the correct way and according to the correct custom. The fact that this behavior is correct was clear, the farmer said, because 'ajdad ma' (our forefathers) had always behaved in this way.

Primitive social behaviors, later labeled as 'rights' and 'duties' according to local culture, have come to play enormously important roles in 21st century societies. For example, consider the highly varied role turn-taking plays, from turn-taking in traffic (for example, at crossroads where there are stop signs), to turn-taking in courts of law (presentation of evidence, cross-examination of witnesses, and so on), and turn-taking in politics (examples being in political debates, and turn-taking in leadership through term-limits). Underlying the many different types of turn-taking in communications, social relations, law courts, politics, and so on, is the idea that behavior should be regulated by the agreed upon rights and duties of individuals and groups.

Supererogatory Rights and Duties

The practice of primitive social relations, such as turn-taking, has been associated with individual differences and variations within groups. Some individuals engage more often in such behaviors, some less often. For example, in a troop of monkeys, some individuals will take more turns doing 'favors', such as grooming others or looking out for younger members of the troop. Some other individuals will be less 'helpful', in that they seldom give up a turn to enjoy benefits, and seldom do helpful things for the rest of the troop. But if all the members of a troop are low in helpfulness, then the collective will suffer. The group will function better when there are also some individuals who sacrifice more for the group. Actions that are taken above and beyond the regular call of duties are *supererogatory duties*. For example, an individual risks her life to save an infant belonging to another mother when the infant is in mortal danger – going beyond the norm of group behavior with respect to duties. In some instances individuals give up a right they are entitled to, thus practicing a supererogatory right (Moghaddam, & Kavulich, 2008). For example, an individual may give up her or his turn to eat so that an individual in greater need can eat first.

Supererogatory rights and duties are highly important features of social capital. Adherence to formal rights and duties is of course important, as reflected by the practice of rule of law. However, a society where people give priority only to following formal law can become overly legalistic and encumbered by bureaucracy. Studies of how communities that work well actually settle disputes show that formal law is resorted to last, not first (Ellickson, 1991). Formal law is accessed only after the informal cultural practices for dispute resolution have been tried and have failed. In societies rich in social capital, the widespread practice of supererogatory rights and duties ensure smooth social relations and dispute resolution without resort to formal law.

One explanation of the 'legalistic' nature of social relations in the United States is that an absence of ancient culture left a vacuum that came to be filled by formal law. Because the United States is a huge immigrant receiving nation, with a historic tradition of high geographical mobility (particularly in the early period of Western expansion), Americans were continually encountering new people. This meant that there was a weaker framework of mutually accepted informal rights and duties, particularly supererogatory rights and duties, and this void was filled by formal law. The consequence is a 21st century American society that rests on a legacy of using formal law to regulate relationships, which in societies with longer histories tend to be regulated more through 'custom', 'tradition', and other systems involving informal rights and duties.

In summary, the formal rights and duties reflected in national and international legal systems arose out of evolutionary processes, and primitive rights and duties more specifically. An even more important part of social capital is supererogatory rights and duties. These varieties of rights and duties are all reflected in the set of papers in this special issue. A second major theme underlying these papers are varieties of change and violence, which I discuss below particularly through integrating research from multiple disciplines, including psychology, conflict resolution, and national development.

VARIETIES OF CHANGE AND VIOLENCE

The second theme underlying the papers is varieties of change and violence (Galtung, 1969, 1990). The topic of change should be central to all psychological research, but it remains neglected in traditional psychology. This is in large part because the vast majority of psychological studies involve one-hour laboratory experiments, whereas research intended to understand change must also take into consideration much longer time periods and more complex social contexts. Certainly the papers in the current issue of *Psychology & Society* meet this requirement.

A useful distinction can be made between three types of change: first-order, second-order, and third-order (Moghaddam, 2002). First-order change takes place within a society where both formal and informal law justifies group-based injustices. Examples of such societies are South Africa during the time of Apartheid and the United States when slavery was legal. In these societies, the legal system, as well as the informal culture, provided strong

justifications for perpetuating inequalities. For example, in pre-emancipation United States, a slave-owner could legally re-capture escaped slaves. First-order change takes place in such a way as to sustain formal and informal systems enabling group-based inequalities. Second-order change takes place in societies where formal law has been reformed to make group-based injustices illegal, but the informal normative system still perpetuates such injustices. For example, in the United States and many other industrialized societies formal law forbids discrimination against ethnic minorities, but in practice some forms of discrimination continues, sometimes in subtle implicit ways, supported by the informal normative system. There are as yet no major societies where both formal law and the informal normative system are both fair. This is an ideal, as yet unattained. Such an ideal society would allow for third-order change, within a system where group-based injustices are absent.

First-, second-, and third-order change are associated with different kinds of violence. Societies characterized by first-order change are dominated by direct physical violence: brute force is regularly used to maintain minorities in their 'official' sub-ordinate position. This is similar to the use of direct violence in dictatorships (Moghaddam, 2013). These societies are also dominated by *structural violence*, the influence of formal institutions and legal systems to perpetuate group-based inequalities. On the other hand, societies characterized by second-order change are dominated by *cultural violence*, the informal normative system that inflicts harm on particular targets and perpetuates their low status and unequal position. Violence is absent in societies characterized by third-order change; this is an ideal, rather like 'actualized democracy' (Moghaddam, 2016), toward which we should aspire.

There is continuous competition between minority and majority groups, attempting to either maintain the *status quo* or bring about change in power relations to improve their relative positions. This competition is associated with movement backwards and forwards, between first-, second-, and third-order change. An important point to keep in mind is that the direction of change is not fixed: societies can move forward toward greater justice, but they can also move backward to become more unjust (Moghaddam, 2013, 2016). It is invalid to assume that historical change takes place along some pre-determined, inevitable path.

The Cycle of Rights and Duties

Relations between majority and minority groups are continuously changing, particularly in terms of power and resources. A group that is a majority today could become a minority tomorrow, and one that is a minority today could become a majority. In the context of 21st century globalization, widespread and largely unpredictable economic and technological changes are a major source of shifts in relations between majority and minority groups, as well as feelings of insecurity and instability among groups (Moghaddam, 2010). When change and instability becomes more rapid and future conditions less predictable, the majority group increase the priority they give to duties and the necessity for all citizens to

dutifully abide by existing law; on the other hand, minority groups give higher priority to rights, particularly what they argue to be the violation of their own rights.

This relationship between the priority given by majority and minority groups respectively to duties and rights becomes most apparent during major revolutions, when change and instability is extremely high. During revolutions, the ruling majority tries to cling to power by insisting that everyone must dutifully abide by the existing law. On the other hand, minority groups mobilize on the basis of their rights, which they claim to have been violated. The priority given to rights by minorities in times of change and uncertainty is also apparent when we consider women's liberation, Black Power, and other such movements during the turbulent 1960s. These movements marched forward under the banner of 'rights' rather than 'duties' (with demands for 'women's rights', 'Black rights', 'gay rights'; rather than 'women's duties', 'Black duties', 'gay duties').

CONCLUDING COMMENT

The papers in the current issue of *Psychology & Society* are a powerful reminder of the global importance of the ideal of human rights, as reflected by the *United Nations Declaration of Human Rights* and other documents and institutions. But they also remind us of the central role culture plays in shaping understandings and practices relating to human rights. Although we live in an age of 'rights rhetoric', we must keep in mind that in most cases each right has a reciprocal duty. When we neglect duties, we also weaken rights, because rights can only be fulfilled when the reciprocal duties are fulfilled.

Formal rights and duties, as reflected in formal 'black letter' law, are only part of the solution to injustices. Our 21st century formal legal systems evolved from primitive social relations, which serve as the basis for primitive rights and duties, as well as supererogatory rights and duties. These 'non-formal' rights and duties are central to social capital and a foundation for justice; the formal legal system is not enough. As the Brazilian dictator Getúlio Vargas clearly indicated, in certain conditions the law can be a force for injustice rather than justice. Or, to rephrase Charles Dickens in *Oliver Twist*, "the law *can be* an ass".

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