ETHIC OF RIGHTS AND ETHIC OF DUTIES:

SOCIETAL CHANGE AND STABILITY IN EVERYDAY THINKING

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The philosopher Marcel Gauchet (1989) relates that during the debates leading to the *Declaration of Rights of Man and Citizen* in 1789 an animated controversy enlivened the French Assembly. It opposed members who wanted to give priority to the definition of rights to those in favour of a more extensive declaration including also a definition of duties. The debate addressed in fact a question already disputed several years before at the issuance of the *Declaration of Independence* of the United States of America: does an individual hold rights before being entrusted with the duties of a citizen? The French Assembly finally gave priority to the definition of rights with 570 votes cast against 433, whereupon the principle was adopted that a declaration of rights had to precede the elaboration of a constitution (Gauchet, 1989, p.63).

Since then, the debate on the links between rights and duties has never stopped and has attracted the attention of legal and moral philosophers for many years. When do the needs of the community take precedence over the rights of the individual? How should the claims of the individual (on the basis of inherent human rights) be reconciled with the claims of the State, of the community and of other individuals (on the basis of shared community values and interests)? In 1795, the Constitution of the French Republic included a *Declaration of the Rights and Duties of Man and Citizen*. The *Universal Declaration of Human Rights* adopted by the Assembly of the United Nations in 1948, as well as the *European Convention* of 1950, became almost exclusively declarations of rights, upholding, more than hundred fifty years later, the vote of the members of the Assembly of 1789. It would be wrong, however, to draw the conclusion from these facts that such anteriority of rights does not involve a reference to duties, even if the historical documents presented ascribe these duties principally to those in power.

In this chapter, we revisit the issue of this relationship between rights and duties from the viewpoint of societal psychology. Our approach relies on principles of social

representations theory (Doise, 1990; Doise, Clémence, & Lorenzi-Cioldi, 1992; Moscovici, 1976), which aims to describe links between societal regulations and cognitive organisations of widespread beliefs (Doise & Staerklé, 2002). Rights and duties are studied as normative principles of societal regulation. We use the terms of "ethic of rights" and "ethic of duties" to refer to contrasting modes of everyday reasoning, the term "ethic" being understood here in the very general sense of a set of principles or rules of conduct. Relying on an idea that has received scant attention in the literature on social representations, the ethic of rights and the ethic of duties are understood as part of a normative "metasystem" (Moscovici, 1976; see also Doise, 1990; Helkama, 2004) steering and guiding individual cognitive processes in situations of social change and stability. Our theorizing is inspired by Klaus Helkama's work on moral development and social values (Helkama, Uutela, Pohjanheimo, Salminen, Koponen & Rantanen-Vantsi, 2003; Helkama, 2004), and we assume that the ethic of rights and the ethic duties are also organising principles of moral reasoning. Yet, we highlight the role of rights and duties essentially from the perspective of group processes, that is, as normative principles promoting internal stability of groups and change of relations between groups. It is argued that the ethic of rights and the ethic of duties reflect contrasting conceptions of social order and of social justice. As such, they are invoked to promote political projects which seek to change the balance of priorities given to rights and to duties in a society. .

In the first part of the chapter, we define the ethic of rights and the ethic of duties and provide an overlook of their role as regulators of social cognitive processes. We then describe processes related to rights, namely how rights-based thinking promotes societal change and how the perceived legitimacy of social rights depends on particular conceptions of the social order. In a third section, we discuss the ethic of duties, and show how duties are linked to the promotion of social stability. A fourth section brings rights and duties together. It will be made clear that rights and duties are interdependent constructs, that social groups may simultaneously invoke rights and duties, and that rights may become duties, and duties become rights. A final section analyses the limits of rights in lay thinking, and investigates how rights are embedded in democratic procedures and institutions.

Ethic of rights and ethic of duties as opposed forces in a metasystem

Rights and duties entail a logical relationship: a right is an entitlement that imposes a duty on a person or an institution. If a right is a demand placed on others by the

person who possesses it (Moghaddam, 2000), a duty is a demand placed by others on a person who owes it (Moghaddam, Slocum, Finkel & Harré, 2000). As legal and institutional codes, rights have to be formally established through a deliberate decision from an authority invested with the power to define and enforce rights (e.g., parliaments, international institutions). For any right, the entitlement (e.g., treatment, benefits) implied by the right must be specified, the institution delivering the right defined (e.g., state institutions, authorities), and the group that holds the right delineated (e.g., national citizens, migrants). In this respect it is interesting to note that in many European languages, the expression "right" denoting the demand placed on others is similar or identical to the term referring to the institution or the legal system that is supposed to uphold the right (e.g., *Oikeus* in Finnish, *Recht* in German, *Droit* in French).

Duties, on the other hand, have their origins in community life where their role is to balance individual and collective interests. They are based on norms that prescribe responsible and desirable conduct within communities (Dubois, 2003), and are derived from commonly accepted values that underlie the social order of the community. Duties refer to expectations set up by the community in order to uphold its social organisation and to foster group cohesion (Hogg, 1993). Although some duties are formally codified (e.g., duty to serve in the army, to pay taxes), they refer first of all to conduct expected by other group members; as such, they predate formal and institutionalised duties.

As a metasystem, the ethic of rights and the ethic of duties contain rules (e.g., 'you have the right to vote'), norms ('it's good to vote'), and expectations ('it is your duty to vote') which guide thinking about a particular domain of social life. For the rights-duties metasystem, this domain is membership in political communities and the political struggles to change or maintain arrangements within these communities. Lay thinking as well as social practices which are derived from membership in political communities are thus preferably understood and interpreted in terms of rights and duties of group members. Like any metasystem, the rights-duties system has prescriptive power and is historically contingent. In any given context, particular meanings associated with the founding theme of rights and duties have developed, and exert a normative pressure to understand political life in terms of rights and duties. Thus, whether certain social phenomena are perceived as involving principles of rights or principles of duties can alter, often considerably, their meaning and change the course of action taken to intervene on them. Judging homelessness, for example, in terms of a failed *duty* to work and to be self-reliant on the one hand, or as a violated *right* to housing on the other, shapes the reactions

towards homeless persons. Similarly, the perception of delinquency and crime can either trigger reasoning based on the rights of the convict (e.g., the presumption of innocence) or misdeeds can be interpreted as a personal failing to respect an important duty (e.g., honesty) (Staerklé & Clémence, 2004).

If the normative metasystem were the only one social regulator of individual thought and action, individuals would all follow the same rules and norms. In complex societies, however, social actors define themselves in relation to each other on the basis of general principles organising social relations. That is, they construct their "identity" through positioning on "organising principles" (Doise, 1990; Doise, Clémence, & Lorenzi-Cioldi, 1992). Thus, while the rights-duties metasystem provides the normative content and the rules through which political membership and social change and stability is judged, organising principles have a more general and context-independent character. Often, they are derived from abstract dichotomous principles which can be referred to as basic "themata" (Moscovici & Vignaux, 1994). Examples of such principles are male-female, nature-culture, freedom-security, change-stability, agency-structure, equality-inequality, or individual-group. These principles organise individual differences to the extent that individuals adopt different interpretations and attribute different weights to the respective sides of such basic antagonistic themes. Because these principles involve negotiation between opposing social forces, their particular meanings and respective importance is always object of political debate (Mouffe, 1993). In this chapter we will exemplify how various organising principles shape attitudes towards rights and duties, and thus towards processes of social change and stability. In this respect, one of the most important principles relates to perceptions of the social structure, its legitimacy, stability and permeability (Tajfel, 1981). Similarly, perceptions of antagonisms between social groups (between "good and bad" people, "us and them", "winners and losers") are central principles intervening in social dynamics of change and stability.

In its conception, the distinction between an ethic of rights and an ethic of duties is neither new nor original, since related pairs of concepts have been described many times, for example in sociological accounts of social relations. Tönnies' classical distinction between Gemeinschaft and Gesellschaft is maybe the most obvious example, along with Durkheim's mechanical and organic solidarity. The distinction also resonates in the field of cultural psychology. Shweder and colleagues (1997) described a threefold structure of supposedly universal moral domains: *autonomy codes* based on rights violations, *community codes* based on communal values and hierarchy violations, and

divinity codes, based on ideas of sanctity and purity. While the divinity domain is somewhat disconnected from our current concern, an ethic of right is akin to the moral domain of autonomy (because rights provide protection against oppression and protect individual autonomy). The ethic of duties, in turn, is analogous to the moral domain of community (because membership in a community entails duties defined by communal values). Helkama (2004) links these moral domains to lay conceptions of the social order underlying moral development and justice reasoning: *"If, following Doise (1990), we need the normative metasystem of democratic citizenship to make sense of the Kohlbergian justice development within what Shweder terms Ethic of Autonomy, then, analogously, we need another metasystem to make sense of Shweder's Ethic of Community. Obviously, this metasystem is a hierarchical social order with fixed role-obligations, and the operative system is not role-taking but something else, perhaps will – moral duty is a given, not a problem."* (p. 104-105). Yet, a social-psychological outlook on the contrast between rights and duties is less common, with the notable exception of Fathali Moghaddam's work (e.g., Moghaddam et al., 2000). It is nevertheless possible to relate various fields in social psychology to an ethic of rights and an ethic of duties, in particular research on social justice and intergroup relations. A general assumption underlying our account of rights-based and duty-based thinking is that their activation and everyday use varies as a function of the social context and situational demands on the one hand, and on the social position and membership in dominant and subordinate social groups on the other.

Rights, rights claims and societal change

Democratic politics is a continuous struggle to define a balance between priorities of opposing principles (Mouffe, 1993), in particular between rights and to duties and between societal change and stability. Both extreme change (e.g., revolutions) and extreme stability (e.g., totalitarianism) threaten the democratic order. A look at the historical development of human rights (Lauren, 1998) teaches us that revolutionary ideas about universal human rights were initially formulated as reactions against the arbitrariness of established powers and were thereafter progressively invested with new meanings. These meanings were elaborated by diverse and sometimes antagonistic militant movements in the realms of anti-slavery, anti-serfdom, anti-racism and anti-colonialism causes, by movements defending rights of workers, women, cultural minorities, aboriginal peoples, captured or wounded soldiers, displaced persons and of

many other social categories. Institutionalised definitions of human rights initially were often rights claimed by militants of social movements challenging existing social arrangements and established belief systems. Thereby, minorities were fighting for societal change.

The granting of rights is never unproblematic, as new rights necessarily involve political deliberation and negotiation. This inevitability of political debate preceding rights granting is also illustrated by the discussions prior to the 1789 bill or the 1948 Universal declaration. Thus, a crucial aspect of rights is that they are the *outcome of collective rights claims* (Isin & Wood, 1999). Often, rights are claimed in the name of normative principles such as equality and freedom on behalf of social groups which aspire to change a situation deemed to violate these principles (Mouffe, 1993). As a result, claims easily clash with established norms and values underlying an existing social order.

This active and process-oriented aspect of rights has been at the centre of a large body of recent research on citizenship (e.g., Isin & Wood, 1999; Isin & Turner, 2002; Delanty, 2000). Emancipatory rights claims are expressed, because a minority group feels entitled to the same rights as a majority group (e.g., claims concerning civil rights, such as marriage for homosexuals, or autonomy of decision-making for disabled persons). In other circumstances, groups claim particularistic rights protecting for example their cultural specificity (e.g., collective rights of native populations; Herrera, 2004). It is in such a setting of rights claims that minorities seek to influence majorities, trying to bring about societal change through the request of formal recognition of their specific needs or of their identity that sets them apart from a reference group (Sanchez-Mazas, 2004).

Thus, rights promote societal change, because rights must be claimed. Societal change relates here to transformations of widespread belief systems and shifts in patterns of public endorsement of beliefs, for example concerning general attitudes towards social groups and their perceived entitlements and duties. Such beliefs have for example to do with a wider public legitimacy of group rights (e.g., women's rights, gay rights) or with shifting norms concerning perceived violation of duties (e.g., moral discrimination of smokers and welfare beneficiaries). Societal change is also expressed in the antiglobalisation movement which stands for a widespread backlash against a competing form of change, namely economic globalisation and the social and political consequences of a competitive world economy (Delanty, 2000; Mertes, 2004).

The legitimacy of social rights

If rights claiming is an active attempt by minority groups to bring about change in the larger society, there is also a more passive aspect to change on the "recipient" side of the claims: in democratic societies, rights claims must be perceived as legitimate by a majority or a significant proportion of citizens in order to gain social validity and become implemented. Since the legitimacy of rights is at the centre of a political struggle, some people support rights claims, whereas others judge them as invalid or illegitimate. What are the organising principles accounting for perceived legitimacy of rights and rights claims?

We illustrate this question with a particular category of rights, namely social rights. Social rights aim to protect citizens against negative consequences of life course risks such as severe illness, invalidity, old age or unemployment, and to provide equal access to basic services, especially healthcare and education (Roche, 2002). Research on solidarity and the perceived legitimacy of social rights has shown that perceptions of conflict of interest between social groups lead to supporting attitudes towards rights claims. Thus, awareness of the existence of social conflicts is positively related to claim support for the rights of marginal groups (Clémence et al., 1994). More recently, we have described the construction of attitudes towards maternity policies (a particularly contested rights claim in Switzerland) as a function of conflict-based and consensus-based conceptions of citizenship (Staerklé et al., 2003). Our findings show that support for maternity policies granting unconditional rights on mothers (i.e., publicly financed maternity leave and free-of-charge day nurseries) is based on perceptions of illegitimate inequality and social conflicts. Because such policies bestow on all mothers a certain degree of autonomy towards men, these policies can be seen as threatening the traditional family order in which men are the main breadwinners and women care for other family members while ensuring an upright education of children. Support for means-tested policies (i.e., maternity insurance only for needy women), on the other hand, was most strongly related to duty-based arguments involving deservingness and the fear of loss of common values ("good education"). Here, social rights become conditional privileges, granted only if the individual deserves it and "really needs it." They are not based upon the recognition of socially determined and structural hardship that calls for collective solutions, but on a hierarchy between deserving and undeserving persons (Wacquant, 1999). Outright opposition to any type of maternity policy, finally, was predominantly predicted by the denial of structural inequality and complete rejection of the principle of

collective responsibility.

The perception of structural interdependence between subgroups of a society seems to be a major organising principle of attitudes towards social rights. Such a conception puts emphasis on conflicts of real interests between sub-groups in a wider society (Bobo & Hutchings, 1996; Jost & Banaji, 1994), by focusing on the socio-economic position of groups in relation to other groups. In this conception, there is a "below" and an "above" in a society which cannot entirely be seen as the outcome of individual motives (Ridgeway, 2001). Through the recognition of collective disadvantage and need, this conflict-based conception of social order (Zelditch, 2001) grants legitimacy to group-based feelings of entitlement (Major, 1994).

The importance of perceptions of conflicting group interests for the social construction of rights legitimacy reaches beyond the realm of welfare rights. In this context it is important to remind that Article 2 of the Universal declaration of human rights mentions explicitly sources of discrimination and conflict: *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."* Concerns about these differences as actual or potential sources of discrimination, injustice and conflict were certainly at the origin of the formulation of this article. It is assumed that still today respondents who perceive numerous conflicting relations between these social categories will also be more favourable toward the human rights cause, and rights claims in general. Doise, Spini and Clémence (1999) asked respondents in 34 countries from all over the world about perceived social tensions, and also about discrimination that they had personally experienced as a function of their belonging to different groups and categories mentioned in article 2 of the Declaration. The hypothesis was verified that those respondents who perceived more tensions and reported more instances of discrimination held also more positive attitudes to human rights enforcement.

Duties and the need for a stable and predictable social order

We now turn the discussion to within-group regulation in which the ethic of duties plays a central part. Social groups require some degree of unity around shared norms and values in order to uphold their internal order and to secure group stability over time. How can stability be achieved through an ethic of duties? In general, the more social relations are predictable, the more they tend to be stable, because social actors refer to familiar forms

of social regulation. Since duties are expectations, they play an important role in making relations predictable. Different types of relations call for different regulatory norms, and therefore imply different kinds of duties. Alan Page Fiske (1991) describes four basic relational models with universal validity *(communal sharing, authority ranking, market pricing, equality matching),* which are helpful in illustrating how the content of duties varies as a function of the demands inherent in certain types of social relations. Let us take as an example different procedures to distribute resources. In a relationship of *communal sharing*, for example, group members are expected to share resources with all fellow group members "without counting" and to care for their well-being as a function of their needs (e.g., in close-knit communities). In a relationship of *authority ranking*, subordinates have a duty to accept a distribution of resources as a function of rank and status (e.g., superiors get more, independently of their individual contributions). In *market pricing*, there is a duty to distribute resources proportionately as a function of individual contributions (e.g., merit-based wages), and in *equality matching* all group members accept equal shares (e.g., brothers and sisters). In these examples, the permanence of social relations is fostered to the extent that individuals share a common understanding of the particular type of social relation and its corresponding duties. If, however, there is disagreement on the type of relationship individuals are involved in (e.g., one individual sees it as communal sharing, whereas another one claims authority ranking), conflict and redefinition of duties are likely to follow. Thus, only conduct in line with what is expected in particular relations promotes stability of these relations.

Attitudes supporting stability of the social system are also achieved with perceptions that the hierarchical structure of the group is legitimate, justified as the "natural" outcome of individual strivings of group members (Tajfel, 1978). Such beliefs function as organising principles of attitudes towards stability and change. They imply that rights are considered as an expression of high status in a social hierarchy whereas duties are associated with the social role a person occupies; it is generally taken for granted that a higher status involves more rights, whereas a lower role position involves more duties. A consensus among group members about the values on which the social order is based therefore ensures the stability of the system. In particular, members of dominated groups are expected to accept the duties that come with their subordinate status (e.g., to work hard for a small salary), even if they would benefit from some other societal structure (Jost & Banaji, 1994). By doing so, they are more likely to perceive their social position as just without calling into question the hierarchy within the group. Group

hierarchy is legitimate because it is supposed to reflect compliance with ingroup norms and duties: those at the top of the society are rewarded for having fulfilled their duties, they best represent ingroup norms (Deschamps, 1982; Lorenzi-Cioldi, 1998) and are seen as "useful" role models for the group (Beauvois, 1994; Dubois, 1994).

Besides making social relations predictable and providing legitimacy to the social structure, duty-based thinking gives rise to negative judgements of duty failing group members (Hogg, 1993; Marques, Páez & Abrams, 1998). Members who endorse ingroup values are likely to perceive antagonisms within their group through the lens of dominant ingroup norms. This is the case, for example when perceived "value differences" define intergroup perceptions (Biernat, Theno, Vescio & Crandall, 1996), or when a national majority group is concerned whether cultural minority groups "share their values". Similarly, research on symbolic racism (Sears, van Laar, Carrillo, & Kosterman, 1997) illustrates how ingroup values can become devices of intolerance and exclusion, for example when low-status minority groups (such as Blacks in the U.S. context) are perceived by majority members (e.g., Whites) as violating important values such as the Protestant Work Ethic. Since group members are perceived as failing their duties, this negative judgement can also be described as duty-based prejudice.

A system of social control, both formal and informal, enforces value conformity and respect of ingroup duties such that transgressions are reprimanded by other group members (Foucault, 1975). In this reasoning, those whose conduct is in line with duties are "good" group members, whereas those who do not follow duties are "bad" group members. Moreover, research on the black sheep effect (Marques & Páez, 1994) and on subjective group dynamics (Marques, Abrams & Serodio, 2001) has shown that when ingroup norms are threatened, rejection of deviant ingroup members is stronger than rejection of deviant outgroup members. In this view, rights claims and demands for societal change are easily associated with social disorder and attributed to "bad" group members who fail to respect group duties. Duty-failing groups such as "protesters", "criminals" and other "losers" are portrayed as undeserving and sometimes threatening, they disrupt a well-balanced social order and deserve sanction.

Since duties prescribe individual conduct, whether or not a group member complies with duties is largely considered by other group members as the outcome of an intentional, individual decision. This belief in individual volition and responsibility is related to a feeling of justice that consists in a strong concern that disruptions of the social order and crime are motivated by evil intentions (Lerner, 1980). Wrongdoings should

therefore be punished automatically and independently of the legality of procedures, with a sanction proportionate to the magnitude of the wrong the offender has committed (Darley, 2002). Such lay reasoning has been described by Piaget (1932) as moral realism. An ethic of duties therefore reflects elements of a belief in a just world (or, more accurately for our concern, a belief in a just group) that promotes a sense of a predictable everyday environment (Lerner, 2002). Through a belief in a just world people interpret problematic everyday situations and social dilemmas in ways that make them look fair and justified, for example through innocent victim blame and derogation (Hafer, 2002). Such judgements express the belief that character and fate are interwoven so that good things happen to good people, and bad things happen to bad people, and that good people deserve good treatment (e.g., rights), and bad people deserve bad treatment (e.g., punishments) (Crandall & Beasley, 2001).

Contrasting the ethic of rights and the ethic of duties

On the basis of this discussion, it can be suggested that duty-based thinking regulates relations occurring *within* groups, whereas rights-based thinking can be said to regulate relations *between* groups. For rights, this is most obvious when one considers that many rights are the outcome of an intergroup struggle in which minority or subordinate groups have claimed rights against a majority or a dominant group. Duties, in turn, are derived from community norms, and can therefore be viewed as within-group phenomena. In this view, the only group membership that counts is the membership in the community itself to which the duties apply, and all group members are expected to assimilate and endorse its values.

A related contrast has been proposed in field of social justice: an ethic of rights relies on judgements of entitlement, whereas an ethic of duties relies on judgements of deservingness (see Feather, 2003). Deservingness judgements relate to outcomes that are earned or achieved as products of a person's actions. Entitlement, on the other hand, is embedded in an ethic of rights to the extent that it relates to an external and agreed-upon framework of legal and quasi-legal rules and principles. Questions of entitlement are linked to issues concerning the socially recognised rights of groups and individuals, without evaluative judgements of actions. In an ethic of rights, therefore, entitlements are not conditional (upon individual conduct), but categorical (as an aim in themselves). Hence, individual conduct should not be relevant in the granting of rights. Instead, what counts is only membership in the social group that is the rights bearer (Feather, 2003).

Being a national citizen holding a passport of a given country, for example, is generally (albeit with many exceptions) sufficient to be granted the right to vote in this particular country.

The contrasts can be taken a step further, and be linked to distinct lay conceptions of social order and implicit theories of social legitimacy. An ethic of duties relies on a consensus-based conception of the group order in which the expectation of conformity with core group values promotes stability and permanence of the group (Zelditch, 2001). As a result, antagonistic social relations within the community are not perceived as legitimately representing conflicting interests and point of views between groups, but as illegitimate departures from consensus and collective interest (Mouffe, 1993). In this view, actions and rights claims are evaluated against a single standard of judgment (the core group values), and dissenting point of views are likely to be perceived as threats to core values. The result is a moral evaluation of dissent opposing "good" and "bad" political positions. An ethic of rights, on the other hand, can be said to involve political argument and debate (as opposed to a moral evaluation of dissent) about conflicting interests. Rights are aimed at regulating such conflicts, for example through institutional protection and formal definition of entitlements. In short, rights-based thinking promotes attitudes favourable towards change and transformation of intergroup relations, and duty-based thinking promotes favourable attitudes towards stability and permanence of social relations within social groups.

Connecting the ethic of rights and the ethic of duties: Context and rhetorics

Up to now, our account has focussed on contrasting features of the ethic of rights and the ethic of duties. Such an approach is incomplete, because it neglects their interdependence and obscures their contextual and discursive aspects. Rights and duties are connected to each other in various ways. Social groups, in order to promote their political projects, may for example simultaneously invoke rights and duties. Respect of ingroup duties leads to cohesion within the ranks of the claiming group (e.g., homosexuals) and enhances the chances of getting heard in the political debate about rights (Reicher, 2001; Simon et al., 1998). Thus, the participation in collective protest stands for the right for freedom of opinion, but also represents a duty for members of militant associations.

Another factor connecting rights and duties is their development over time. Moghaddam (2004) suggests that in the course of power struggles between groups,

minority groups give priority to rights and majority groups give priority to duties. *"If the minority group manages to gain power and becomes the new majority group, then it will switch priorities from rights to duties. Conversely, a majority that loses power […] will switch priorities from duties to rights."* (p.125). This cyclical pattern of support for rights and duties implies that the status of a given right evolves over time to become a duty once it is assimilated as a defining feature by the community. Thus, in the beginning, a right claim is advanced by a social group which is widely seen as illegitimate. Subsequently, a continuing increase in public legitimacy leads to the institutionalisation of the right and to its gradual takeover by the majority. Once the right is established and formalised, its innovating role is so to speak over. The right to private ownership or the right to vote, for example, have certainly represented a remarkable societal change during their first periods of implementation. But little by little, these privileges have become taken-for-granted, at least in Western societies. As a result, the line between rights and duties can often not be drawn without ambiguity, the right to vote, for example, can also be interpreted as a duty to vote (Moghaddam et al., 2000).

The connections between rights and duties can also be made apparent with an analysis of their discursive features. By linking rights claims to societal change, we have conceived of change and rights mainly as leading to greater empowerment and autonomy of disadvantaged minority groups and to corrective measures of structural inequality. However, right claims are not necessarily part of a progressive political agenda. Claims are discursive tools which construct social categories in order to promote a variety of political projects (Reicher & Hopkins, 2001). As strategic and rhetorical devices, claims are aimed at influencing others in a political struggle. Therefore, claims may express exclusionary political goals, for example when right-wing movements turn the minority-majority relation within a nation on its head, by claiming that the national majority is, in fact, in danger of turning into a minority in its own country, and that it is disadvantaged in comparison to minority groups who are granted excessive privileges (e.g., immigrant workers). In this example, a majority group has construed itself as the social category that needs to be protected by specific rights. This group seeks societal change through the denial of rights to groups portrayed as unduly advantaged. Hence, due to their discursive nature, rights are regulatory principles invoked by social groups which construct themselves as minorities or subordinate groups in order to reach a political goal and social change. Duties, in turn, are regulatory principles invoked by social groups considering

themselves as the legitimate bearer of prescriptive norms and values with which all group members are expected to comply.

Another example of a reversal of meaning is found in studies showing that policies destined to promote racial equality in the United States (e.g., affirmative action) are opposed by Whites in the name of egalitarianism, a belief system in the name of which many rights are claimed and which should support the granting of rights (Leach, 2002). Anti-egalitarian sentiments are made to appear principled by a reinterpretation of racial equality as concern for "reverse discrimination" against Whites. Thus, the value system of egalitarianism has a double direction. On the one hand, egalitarianism opposes and suppresses beliefs in the legitimacy of inequality between social groups. On the other hand, it also contributes to justify and even enhance the very inequality it is supposed to reject. Leach (2002) suggests that Gunnar Myrdal's classic analysis of racial inequality in America (1944) in fact already contained this idea of ironic effects of egalitarianism. Myrdal proposed that a strong endorsement of egalitarian beliefs prevents the perception of discrimination, limits the equality to those considered to deserve equal treatment (i.e., the majority group of a society like the Whites in the U.S.), and is subordinated to economic and political interests.

The contextual and discursive nature of rights and their link to societal change is also described in a recent book by Amsterdam and Bruner (2000), *Minding the law*, which explores psychological processes involved in the work of the experts of the law, lawyers and judges: deciding whether particular cases fit within a legal rule ("categorizing"), telling stories to justify one's claims ("narrative"), and tailoring one's language to be persuasive without appearing partisan ("rhetorics"). The authors examine a series of decisions by the American Supreme Court related to racial discrimination and the Equal Protection Clause of the Fourteenth Amendment. The cases they comment more extensively deal with the rendition of a runaway slave (Prigg v. Pennsylvania, 1842), racial segregation in railroad transports (Plessy v. Ferguson, 1896), racial desegregation in public schools (Brown v. Board of Education, 1954), death sentence of an African-American (McCleskey v. Kemp, 1987) and restrictions on desegregation in public schools (Freeman v. Pitts, 1992 and Missouri v. Jenkins, 1995). Their analysis is focused on historical transformations of the meaning of the American creed in equality and democracy, thereby reflecting mutual interdependence between societal value changes and institutional practice. The authors show how important variations occur over time in the interplay between progressive and egalitarian motivations to strengthen the rights of

minority groups and Blacks in particular ("American creed"), and conservative beliefs aimed at maintaining the system based on racial and ethnic inequality ("American caution"). The main conclusion of the study on historical variations reflected in the decisions by the Supreme Court is framed by the authors in the following terms: *"This trail can be seen as marking the fall, the rise, and the fall again of a brightly egalitarian and progressive American Creed – or as marking the rise, the fall, and the rise again of an equally potent, darkly suspicious American Caution."* (Amsterdam & Bruner, 2000, p. 16). And the following quote sheds some light on today's events: *"America's optimistic idealism and egalitarianism and faith in progress do not simply wax and wane. They are coupled at some deep level with a wary, selfish, sometimes pitiless Caution that may be the price to pay for our sanguine, optimistic Creed. We fight a "war to save democracy" and then refuse to enter the League of Nations with those we helped save. Our Supreme Court gives us Brown and then backs off."* (p. 280).

Amsterdam and Bruner also invoke the idea that at some deep level democratic ideals and egalitarian beliefs should not always be understood at face value, for they require the construction of a moral boundary defining the limits of application of democratic principles: justice for "us" is different from justice from "them". Moral exclusion justifies the *de facto* existence of profound inequalities in a seemingly egalitarian society (Opotow, 1990). Thus, in order to explain how objective social differences are diverted into prejudices and stereotypes, they observe: *"But We (sic) cannot accept everybody. For even in times of the most abundant prosperity, there are commodities like esteem and superiority that need to be rationed ... So the preservation of the American Creed requires that We create a category of people who are essentially and immutably different and inadmissible. They are the inferior races, virtually non-people. We construct them and maintain them as inferior by rituals of racialisation and renewal designed to keep them in their place."* (p. 264). The specific tragedy of the judicial rituals described by Amsterdam and Bruner is that their function is (was?) to inferiorise categories of inhabitants of the U.S., established there for centuries: Native Americans and African Americans.

The limits of rights and the democratic system

Our discussion of rights has up to now focused on the process of rights claiming, that is, on "rights in the making". We now turn to the description of some psychological processes involved in the implementation of rights, once the claims are accepted and

institutionalised. For rights to be effective, they must be tied to democratic procedures which regulate conflicting claims and interests of two parties. In this section, we approach the ethic of rights and the ethic of duties from the perspective of the democratic system and its institutions, and examine the decisive question of the definition of the limits of rights. Examples of differing interests occurring between social groups abound, for example concerning the ongoing debate about abortion rights (right of the unborn child vs. right of the mother), societal changes in the handling of smoking (the right to a smoke-free environment vs. the individual right to smoke), or the dispute about gay marriage rights (civil rights for homosexuals vs. rights to a traditional social order). Clashing interests arise also between institutions and citizens, for example between disciplinary state authorities and citizens. In all these cases, the limits of the rights of conflicting parties need to be assessed by democratic procedures.

Human rights are a particularly interesting case in point, as it might be argued that because of their universality, they should be applied without restriction. Nevertheless, the *Universal Declaration* includes explicit references to duties which restrict their application; Article 29(1) says *"Everyone has duties to the community in which alone the free and full development of his personality is possible"*. Therefore, human rights agreements place some limits on the rights they protect. Article 29(2) of the Declaration says: *"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."* Clauses such as this show the circumstances in which States may legitimately restrict rights; but they also provide guidance concerning the limits of individual freedom – and these limits deal with issues such as the needs of other individuals and the community. In other words, international human rights law does not promote an "unrestricted freedom" nor does it promote rights without responsibility (Hammarberg, 1999).

Definitions of conditionality of rights are therefore an important aspect of the ethic of rights. In two experimental studies, Staerklé and Clémence (2004) found that while respondents revealed an almost consensual agreement with different human rights principles, their support for concrete implementation of these same principles was much more controversial. Participants were presented a scenario involving a common human right violation (e.g., arbitrary arrest of a person, expulsion of an asylum seeker), along with a justification of the violation related to the actions or other characteristics of the

victim of the violations (e.g., the person arbitrarily arrested was dealing with drugs, the life of the asylum seeker was not in danger). Results showed two categories of reactions towards these violations: in context-based reactions, participants focussed on the conduct of the violation victims, and thereby judged the human right violation as a function of deservingness of the victim, viewing the violation as a just sanction of a reprehensible act or at least as a legitimate institutional intervention. In rights-based reactions, in contrast, the interpretation of the violation was guided by the idea of inalienability of human rights in which case respondents were induced to condemn the violation independently of its context and of the conduct and personal characteristics of the victim. Both principles are used in everyday life and can be related to an ethic of rights (independent of evaluation of conduct) and to an ethic of duties (good treatment must be deserved).

The often-dilemmatic definition of the limits of rights has also been studied with other methods. Following the Universal declaration of 1948, one of the most important institutionalisations is the *European Convention of the Protection of Human Rights and Fundamental Freedoms*. Among the markers of human rights, the European Convention occupies a significant place because it permitted the creation of an institution "to say the right", the *European Court of Human Rights*. Its rulings precisely interested an interdisciplinary group that was formed in Paris two years before the Bicentennial of the *Declaration of the Rights of Man and Citizen* in 1989 (Bechlivanou et al., 1990). The goal of the group was to launch a study on current lay conceptions in the field of human rights. The basic idea of this process was to confront various people with a summary of rulings taken by the European Court. The law experts of the group chose four rulings on the basis of characteristic legal problems that they raised (see Doise, 2002, chapter 2). Political scientists, a social psychologist and a sociologist collaborated in the drafting of brief accounts of the cases decided upon in these rulings. These accounts would allow people without legal training in Paris, Geneva and the Italian-speaking part of Switzerland to express their opinions on the cases and to come to a conclusion about the cogency of the rulings of the Court. Forty interviews were thus obtained, including 12 group interviews of 2 to 5 persons.

The rulings of the European Court concerned (1) a mentally ill patient (case of Winterwerp vs. The Netherlands, October 24, 1979), complaining that he was arbitrarily deprived from his freedom; (2) two prisoners (Campbell and Fell vs. United Kingdom, June 28, 1984), severely sentenced by a disciplinary commission without due process; (3) degrading treatment and torture (case of Eire vs. United Kingdom, January 18, 1978) in

Northern Ireland denounced by the government; and (4) a case of disguised extradition (Bozano vs. France, December 18, 1986) of a foreigner sentenced to life imprisonment in absentia for manslaughter in his country of origin and who could not defend himself against the extradition. At the end of each interview, a summary of the Court's decision regarding the case was given to the interviewees and they were asked to react to these judgements, without being informed about the precise national context.

Let us summarise the main conclusions of the study. There seems to be a consensus amongst interviewees that in the frame of institutional functioning, human rights must be respected. That should even be the very reason for institutions of our democratic societies to exist. However, as soon as concrete examples are given, the functioning of institutions is supposed to impose boundary conditions and everything becomes a matter of measure and degree.

Hence, institutions are considered to be the sources and the limits of human rights. And when rights are being threatened, yet another institution is often invoked in order to guarantee respect of rights through procedure of appeal against decisions of an institution. Anyone should be able to benefit from it, at least under certain conditions: foreigners, terrorists, mentally ill individuals and prisoners. Using this right, considered obvious, nonetheless has its own limits. Minor sanctions inflicted to prisoners should not necessarily offer an opportunity to start an appeal to court, mentally ill people should not have the right to request a new neutral expertise each week, one should beware of collusion between lawyers and prisoners, and when the number of foreigners in a country is growing, often, individual appeals no longer appear acceptable. The institution is thus provided with quite a broad range of power within individual liberties. However, if authorities seem to depart at times from the respect of fundamental rights, it remains true that a possibility should exist for the matter to be brought before a neutral, and eventually international, instance.

The role played by such instances is sometimes described as deterrent and symbolic. In last resort, their principal effect may well be the corroboration of an ideal adhered to by the participants: *"This has been judged by the European Court of Human Rights, hence by men considered to be quite democratic, therefore the result must coincide more or less with ideas that we share"*. In this sense, lay theories reflect the opinion of experts who see in democratic functioning the ultimate referent of the human rights conception. We must then recall that the European Convention only acknowledges very few rights that should benefit from utmost protection without any restrictions. The

Convention and the additional protocols are clear. Most rights granted, like the right to life, do not enjoy absolute protection; for example, when national unity is at stake. In her edited book on controlling abuses of reason of State, Delmas-Marty (1989, p. 12) lists the rights that have to be considered absolute. *"When all is said and done, fully protected rights are only the interdiction of torture and inhuman or degrading treatment (art. 3) as well as the interdiction of collective expulsions (art. 4 additional Protocol n° 4) or the multiplication of prosecutions or penal sanctions for the same violation (art. 4 additional Protocol n° 7). As for other rights, they may sometimes benefit from a quasi absolute protection, more than often only from a relative protection."* To these rights to be protected in all circumstances one should probably add the right defined in article 4 of the Convention *"No one shall be held in slavery or in servitude"*.

Demand for universality is not altogether missing in the interviews: either when interviewees forcibly proclaim inviolability of some rights, or when they consider that human rights are a matter of an ideal never entirely realized, but an ideal that must be relentlessly pursued. And a majority agrees on one of the means to reach that ideal: a possibility for any individual to appeal to a neutral arbitration authority.

Hence, the importance of embedding the ethic of rights discourse in an institutional context for defining the status of various rights. The ethic of rights appears to be severely constrained by the necessity of maintaining the democratic system. For sure, the Preamble of the European Convention makes it explicit that fundamental freedoms are best maintained *"by an effective political democracy"*. However, many limitations of rights are envisaged, not to protect the State per se (which is often the interpretation advanced by the notorious "reason of state" argument), but to safeguard a democratic system. It is the duty of state authorities to submit to the approval of European Council agencies measures that infringe upon rights of their subjects. These agencies are invested with the tricky assignment of matching two margins of appreciation, one held by citizens and the other one held by state authorities. They have to evaluate in given historical situations the gravity of threats to the effective political functioning of a democracy as well as the anticipated degree of efficacy for thwarting these threats with restrictions to the exercise of liberties and rights. Otherwise said, the ethic of rights, also in the case of human rights, is firmly entangled in an equally forceful ethic of institutional duties aiming at perpetuating democratic functioning.

Nevertheless, in many instances human rights promote societal change to the extent that their enforcement is based on procedures which often challenge the established

order and the ideologies that justify that order. Such a change can for example be observed in the context of social rights granted to immigrant workers who have continued to migrate in the more prosperous and industrialized European countries after the Second World War. Soysal (1994) analyses their status in different European countries and concludes that a new "post-national" legal model was progressively put in place, partly as a result of the impact of the Universal Declaration and of additional Protocols. This process exemplifies that human rights can function as guidelines for institutional intervention aimed at strengthening protection and enforcement of the rights of groups and individuals. Ideas become enacted through institutional practices which in turn reflect societal change.

Summary

This chapter showed how individual thought and action concerning societal change and stability could be described as a function of a metasystem opposing two sets of normative principles and morals, defined as an ethic of rights and an ethic of duties. In the first part of the chapter, we outlined the ethic of rights as promoting, or supporting, societal change. An ethic of rights promotes societal change, because minorities claim rights and introduce innovative ideas in democratic debates. Majorities, on the other hand, acknowledge the legitimacy of rights claims on the basis of a conflict-based conception of the social order. Rights, and social rights in particular, are intended to ensure equal treatment of dominated groups and minorities in contexts where structural and institutional discrimination is widespread.

The ethic of duties, in contrast, is based on group norms; it promotes social stability and bolsters social cohesion of the community. It is related to a motivation to uphold social relations in order to maintain a stable and predictable group order in which members are rewarded for fulfilling and punished for failing their duties, formally and informally. Stability is also achieved with a group hierarchy perceived as the legitimate outcome of individual conformity with group duties. Perceptions of social relations in terms of duties have a rationalising function to the extent that social problems and disruptions of the social order are accounted for with the failing of one's duties; the designation of "black sheep" reinforces status quo. Perceptions of the social structure are important organising principles of attitudes towards both rights and duties .

These processes elicited by the ethic of rights and the ethic of duties were then contextualised, by describing the inherent ambiguity between rights and duties, their

cyclical pattern, and their temporal development. In political debate, rights claims are rhetoric devices that are strategically used to influence others and take on positions. We cautioned against some ironic effects of the egalitarian belief system supposed to underlie the granting of rights.

We concluded the journey by sketching out how rights, and human rights in particular, are embedded in an ongoing debate about the definition of their limits and their universality, thereby revealing a constant tension about the scope of their applicability. Only in a few exceptional cases rights are absolute. Representations of human rights are characterised with their anchoring in a democratic conception of the state, its institutions and its procedures.

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