

THE GRAMMAR OF RIGHTS AND THE GRAMMAR OF NEEDS

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Abstract: The paper is structured into four parts. Firstly I discuss the connection between the concept of injustice and the idea of human or individual rights. The claim is quite trivial: the language of rights has been and is still used as a strategy to demand correctives against injustice. Since this strategy has negative effects, of which concrete examples are given, I suggest a different grammar be adopted, the grammar of needs, which is what societies adopt in their justificatory discourses anyway. This leads into a consideration of how social criticism could start precisely from such discourses and why, under specific circumstances, the grammar of needs could represent a better strategy for this criticism than the language of rights does.

Key words: individual rights; human rights; human needs; society; justificatory discourses.

Introduction

There are two possible narratives for explaining and criticizing what is “wrong” with society: one adopts the grammar of rights and recurs to the concept of injustice; the other uses the grammar of needs and is led by a certain ideal of a decent, or even a good, life. These narratives proceed from different perspectives, which could be defined by recurring to a traditional distinction made, among others, by Habermas (e.g. in Habermas, 1996) as the distinction between moral and ethical issues. The former pertains to questions of justice, i.e. of what we owe to each other; the latter concerns the kind of life that “we” (as an ethical community) judge valuable and desirable; in other words, they concern what we consider to be a good life. Although this distinction can be criticized (one can question whether it does not establish a too sharp division between moral and ethical questions; one can reject Habermas’s apparent assumption that moral arguments have universal validity, while ethical arguments are locally and culturally determined), I will adopt it as a heuristic instrument because it helps to construct my argument better. Accordingly, one could claim that, while the grammar of rights has a moral character, the grammar of needs has an ethical one. To put it differently, rights allow for a moral criticism of society, for they represent claims that individuals or groups may raise *against* society and its institutions (e.g. the state), while the definition of needs is connected to a certain view of what constitutes a normal, decent

or good life *within* society. To use a familiar distinction, guaranteeing rights is an issue of justice (as is, e.g., guaranteeing dignity and autonomy), while the satisfaction of needs is an essential element of a successful life.

This paper defends the thesis that, in certain cases, using the grammar of needs can prove a better strategy for social criticism than the dominant rights-centered one. To this end, one must first distinguish between grammar and language. Using the language of rights means referring explicitly to the concept of an individual right, even if the corresponding claim is not necessarily justified: one can, for example, defend one's illegitimate privileges by falsely presenting them as legitimate rights. The grammar of rights implies, on the contrary, that the claim concerning an alleged right is advanced within a justificatory context that allows it to be legitimized. It implies, in other words, recurring to an argumentative and normative structure that goes beyond the mere use of the language of rights. Similarly, one can claim that the satisfaction of one's desires or preferences corresponds to the satisfaction of one's needs; however, as we shall see, the grammar of needs does not adopt this 1st person singular perspective, but can be used only from the point of view of society as a whole. Individual needs can be defined independently from individual preferences, although the latter can have the satisfaction of the former as their objects.¹

The paper adopts the point of view of Critical Theory and evaluates different ways of exercising social criticism, which represent forms of an immanent critique, i.e. attempts at explaining a specific social state of affairs by using normative criteria that are already accepted within that society and that allow demanding social change (cf. Hrubec, 2012). In doing so, it offers some arguments against the use of the grammar of rights as an instrument of an immanent critique under certain circumstances; it then suggests that the adoption of the grammar of needs allows for a more poignant form of social criticism. Finally, the paper hints at how social criticism on the basis of the grammar of needs could be advanced for the specific case of Brazilian society.

Connection between the concept of injustice and the idea of human rights

Judith Shklar distinguishes between misfortune and injustice. If, for example, a disaster “is caused by the external forces of nature, it is a misfortune and we must resign ourselves to our suffering.” If, however, the disaster is brought about by “some ill-intentioned agent”, then we can say that “it is an injustice and we may express indignation and outrage” (Shklar, 1990, p. 1). Shklar (1990, p. 2), offers the imaginary example of an earthquake, in which “many buildings do collapse because contractors have violated construction codes and bribed inspectors” but one could also mention real-life cases such as the damage caused by the hurricane Katrina in 2005 and the poor response from local and federal authorities in the aftermath of the catastrophe (Klein, 2007, p. 406ff.). Often it is not easy to distinguish misfortune from injustice, particularly in cases in which it is difficult to precisely ascertain the man-made causes of the disaster or situation in which people suffer. One cannot rely completely on the victims’ claims, since these might be influenced by a desire to blame

¹ It is important to keep in mind that stating the needs of an individual is not tantamount to imposing their satisfaction on this individual, if she or he does not wish it.

others for their own misfortune or by a distorted view of facts. Injustice cannot be defined solely on the basis of the presumed victims' subjective experience and needs objective criteria. The grammar of individual rights can be seen precisely as an attempt to define such objective criteria.

In modernity, Western societies have since long adopted this grammar. It has been a long, non-linear process, characterized by violent struggles and terrible retrogressions that culminated in the horrors of WWII, leading to the Universal Declaration of 1948 (Johnson & Symonides, 1998). In a sense, the appeal to the idea of universal human rights can be seen as a way of approaching the question of why injustice should be avoided or eliminated. The currently dominant, standard answer to this question, which I shall call the "individual rights argument" (IRA), claims precisely that *individuals* have a *right* to be spared injustice.² Many important struggles have been and still are fought in the name of individual rights. They are still a fundamental instrument to advance justice and to allow for the flourishing of persons. On the other hand, the recurrences to the grammar of rights have also produced negative effects that cannot be considered mere externalities. I am not referring to the use of the *language* of rights by unscrupulous governments aiming to justify military expeditions in the guise of humanitarian intervention: this is clearly an ideological abuse of this language. I am referring instead to two aspects of the *grammar* of rights that have had and still have relevant theoretical and practical consequences.

The first one is the tendency to crystallize normative demands. The establishment of a canon of rights can be seen as the result of a specific vision of what humans need so they can be free and flourish. It is not by chance that in recent years in many national constitutions the bill of rights has been extended or has incorporated, for instance, environmental and ecological rights. When the conditions under which humans live change, human needs also change, and this must be mirrored in a modification in the canon of rights. However, once the satisfaction of a new need has been enshrined as the object of a corresponding right, its satisfaction is considered an absolute, unquestionable demand that individuals advance to society. This leads to the second consequence, namely, the tendency to see rights as tools through which individuals define and defend a private sphere that is not merely separate from, but also opposed to, the social sphere.³ The grammar of rights tends to individualize issues of social justice and to judicialize them, that is, to transform them into individual problems that can be solved through the courts even at a cost for society as a whole. A paradigmatic case is the tendency in Brazil for patients to obtain access to extremely expensive drugs by filing a case against the public healthcare system, the SUS, even though this might result in the depletion of the overall budget of the system and lead to an inability to pay for other people's drugs (Marchetto, Falavinha, & Veiga, 2016; Silva & Terrazas, 2011). This is a good example of how individual rights can be used as a weapon against

² This means exploring the question further since one could still ask about the justification or normative basis of this right. This second question has historically been answered using different kinds of arguments, but we shall not discuss this issue here.

³ This phenomenon has been described by Honneth (2011) as a form of social pathology: in what he calls the "juridical" view of freedom, individuals tend to use their rights as a weapon to keep society at bay.

society. The solution to the problem of access to expensive drugs should not be a juridical one, but a political one: either an increase in the budget of the health care system (although this would not stop judicialization and could lead to spiraling legal actions), or breaking the patents of expensive drugs to ensure adequate public healthcare. In both cases, the decision would be taken in the name not of *individual* rights (following the IRA), but for the satisfaction of the *general* need for health care. In order to avoid the negative consequences of the adoption of the grammar of rights, I suggest therefore that we replace it with the grammar of needs.

The grammar of needs

Society exists to satisfy human needs—from the most basic and material ones to the most “sophisticated” and immaterial ones. *Nota bene*: it is not hereby claimed that individuals have a *right* to the satisfaction of their needs through society (this would be tantamount to defending the IRA); rather, we are adopting a concept of society according to which every human society has a duty *towards itself* to develop a form of life which allows for the greatest possible satisfaction of the needs of its members, both as individuals and as a collective. Thanks to this strategy, it should be possible to build a model of social criticism that could be applied both to liberal and non-liberal decent societies, to use Rawls’ categories (Rawls, 1999), thus avoiding the usual accusations of cultural or Eurocentric imperialism that liberal theories have to face. This strategy must now be presented in more detail, starting with two crucial points.

First: justice, or decency, is *not* an essential feature of society, and its absence would not necessarily lead to society’s failure or to its end. There have been many historical examples of societies that survived for a long time even though they were extremely unjust according to our present standards (they were based on aggressive military expansionism and slavery, genocidal policies, grounded on a social hierarchy that damned the vast majority of their members to serve a tiny minority, etc.). Things are different when it comes to the satisfaction of needs, regardless of whether that society justly distributes the corresponding satisfiers or not. Even in a society based on slavery, certain needs have to be met, at least to the extent that guarantees the functioning of the system (slaves have to be fed, for instance). So, the fact that a given society satisfies certain “basic” needs does not say anything about whether it is a decent, fair or just society. We are dealing here with an assessment of functional matters, not with an evaluative claim of normative aspects.

Second, one does not have to recur to a list of objective needs, like most need-centered theories tend to do (e.g., Maslow, 1954; Nussbaum, 2011; Reader, 2005). Needs do not have to be considered something that has to be defined objectively once and for all, although some needs are indeed common to all humans or even to all living creatures, such as the need for adequate nutrition. Every human society defines needs differently, establishes which needs must be satisfied by social institutions, takes responsibility for providing the corresponding satisfiers and ensures they can be satisfied in different ways and at different levels. For instance, some needs are deemed to be more basic than others (eating tends to be privileged over immaterial needs) and certain satisfiers are considered to be unacceptable (most human cultures do not allow human flesh to be used for nutrition, some do not

allow pork or shrimps to be consumed). Needs are, therefore, socially defined and have an intrinsically intersubjective, social character (in this they differ from preferences, which are merely subjective). As such they are from the very beginning a possible object of social conflict, even struggle, with regard to their definition and social satisfaction (this is an aspect they share with rights). This in particular leads to the conclusion that defining needs and establishing legitimate ways of satisfying them constitutes a primary task for every human culture and any given society. They range from societies in which the only needs social life tries to guarantee satisfaction of are bare survival and safety from external enemies, to the Scandinavian model of the welfare state, in which the range of needs the state provides for may be very broad. This whole process of definition is based on the grammar of needs and is an essential condition for social reproduction. Although many societies in history were based on the exploitation of a majority by a minority (warriors, priests, scholars, aristocrats, slave owners, owners of the means of production or a mixture of some or all these categories), brute force has rarely justified the primacy of the dominant minority. What allows for the reproduction and functioning of society is rather the interplay of a material structure; that is, the network of concrete relations of force and power, on the one side, and a conceptual structure that explains and justifies such relations on the other (Warren, 2000). This means that the members of a society not only submit to the way power is distributed and exerted within it (its material structure), but they also *accept* society's conceptual structure and act accordingly (this results in the social integration of individuals and the social reproduction of society). To guarantee their stability, therefore, societies have to recur to a legitimacy discourse that justifies their inner organization. They create an ideal which they pretend to, try to, or are firmly convinced they should adhere to. They are stable when the majority of their members accepts that ideal and acts accordingly; when this common belief becomes too weak, when a critical number of members do not share it anymore, society is forced to change and may even collapse.

In that same society, there may be legitimacy discourses that deviate from or contradict the official one. The aim may be to substitute the present elite with another one or to subvert the status quo in favor of the dominated.⁴ It is always possible to disrupt both the official legitimacy discourse and the status quo that it tries to justify (social criticism is normally aimed at the first goal, often in order to promote the second one). Mostly this happens through claims for new needs or advocacy for a redefinition of socially accepted needs. In other words: there is always a normative dimension ingrained in social structures and practices, since these are considered legitimate because they (allegedly or actually) satisfy certain needs that are considered to be essential according to dominant social and ethical values. It is, therefore, society itself that establishes the ideal it wants to be measured against. Social criticism profits from this circumstance, for this implicit normative dimension allows for an immanent form of critique.

⁴ Good examples of the first kind of alternative discourses are Boulainvilliers' writings on the history of French aristocracy examined by Michel Foucault (2003), or Sieyès' *What is the Third Estate?*, while Marx and Engels' *Communist Manifesto* and the texts of social revolutionaries are representative of the second kind.

An immanent critique can shift in a merely functional sense: society is then criticized for not being effective enough in realizing its ideal or for neglecting “new” needs. Or it can shift morally (as in Shklar’s concept of social injustice): society is accused of intentionally neglecting its duties or discriminating against the needs of specific members, which can also be seen as the objects of individual rights (hence the abovementioned connection between using the grammar of rights and advancing moral criticism). Or it can shift in an ethical sense: the very ideal that society claims to pursue is criticized for leading to a form of life deemed unacceptable or “wrong” (this is the perspective of social philosophers such as Honneth). Accordingly, society’s failure to fulfill its task of helping its members to satisfy their needs can be perceived as being: 1) the result of society’s incapacity to fulfill its tasks; 2) a form of deliberate inaction or active discrimination (a form of injustice); 3) the unavoidable consequence of following an inadequate ideal. Normative demands emerge in the two latter cases, since they do not concern some practical ineptitude on the part of society. However, while moral criticism focuses on the injustice done to members of society, ethical criticism focuses on the very way in which society understands itself and defines its ideals. Moral criticism can be fully accepting of the dominant justificatory discourse and this can be used to attack illegitimate discrimination, such as when the principle of merit is invoked against the distribution of social positions based on wealth, family ties or other non-meritocratic criteria. To continue with this example, in ethical criticism the very principle of merit, the worldview it is based on, and its practical consequences would be questioned. While in moral criticism the dominant definition of a society’s tasks and duties is accepted and used as a criterion for critique, in ethical criticism doubt is cast on this definition and suggestions are made as to how society’s priorities should be redefined and its task understood. However, in the context of both moral and ethical criticism, it could be claimed that society has a duty towards itself to increasingly rise up to the task of satisfying its members’ needs as socially defined.

The matter of discourse

The idea that society can have duties implies that it can be considered an individual actor, and this needs justification. It should be noted first that it is quite common to attribute moral qualities to collective bodies, such as when we talk of a retrograde institution or of a decent society (Margalit, 1996). What do we mean when we say that, for example, Norway is a decent society or Brazil a racist society? Since we are talking about *societies* and not about *states*, what we mean is not just that the Norwegian state is decent because it does not humiliate its citizens (according to Margalit’s criteria for decency), but that Norwegian society at large treats its members decently; nor we do mean that the Brazilian state is racist (on the contrary, it has laws against racial discrimination and promote racial integration); we mean rather that Brazilian society is pervaded by racist stereotypes and prejudices and by more or less subtle forms of racial discrimination that are not challenged under anti-discrimination laws. One could respond that both the positive, decent attitude and the negative, racist attitude are actually held by individuals, not by society as a whole. But when we say that society X is racist, we do not mean that the majority of its members are racist, as if it were a mere matter of numbers. Rather, we mean that its institutions are

pervaded by racism, and this may well be the case even after the majority of people have ceased to be racist. Trivially, society is not simply the sum of its members. It is individuals who develop their personal values and worldviews according to the social conditions, that is, to the possibilities that social institutions make available to them: a woman living in a strictly paternalistic society will have very few chances of developing a feminist worldview; a child raised in a fanatically racist environment will have difficulty as an adult ridding himself of the racial prejudices he was exposed to, and so on. Individuals may develop a racist worldview because they are born and educated in a racist society, and it would not be fair to consider them exclusively responsible for their racism, since the primary responsibility should be attributed to the social institutions and practices in place when they were growing up. This allows for the introduction of a significant element neglected by authors like Shklar: social injustice can be (and often is) the result not of the individual unjust behavior of representatives of public institutions, but of the way society is organized. From this point of view, social injustice is the result of structural domination (Azmanova, 2011).

On the other hand, precisely because of these structural roots of injustice, one could respond that society—unlike individuals—cannot be seen as a conscious moral subject that can be held responsible for its actions or omissions. Furthermore, one could object that social institutions are man-made and are maintained by individuals, who ultimately should be blamed for their malfunctioning. I partly concede this latter point. In speaking of society's duties, I am aware that they are first fulfilled by its members: *they* have to modify the social institutions in order to create a “better” society. However, they cannot do this *as individuals*, only as a group, and therefore following a different logic of action. There is a dialectic involving individuals and society or social institutions and practices that allows for a better understanding of how social change from within becomes possible. While individuals develop their identity and personality (including their beliefs, creeds, opinions, worldviews, values, etc.) within society only, and are therefore basically passive with regard to the influence of the latter on this process, it is also true that institutions exist and maintain themselves only through the actions and practices of individuals, so becoming susceptible to their criticism and transformative action. The mentioned dialectic does not condemn individuals to the passive acceptance of the worldviews, values, social norms and practices of their society, but allows for the normative evaluation and possible rejection or transformation of these worldviews, values, norms and practices. At the same time, the members of a certain society are not capable of making changes to its institutions *as individuals*, but only as a collective or as a group. In order to make these changes possible, it is necessary for a certain number of individuals (a “critical mass”) to become aware that this is desirable and to resolve to act accordingly: this is precisely the goal of social criticism. In this context, we focus on the first step, namely on the process through which social critics try to convince the members of a specific society that something must change in their social institutions and practices. In doing this they can adopt the grammar of rights or the grammar of needs. Usually, they recur to the former. In the final section of this paper, I shall discuss the case of Brazil in order to show that sometimes recurring to the latter can be more useful.

Better strategy

In the justificatory discourse that is dominant within Brazilian society, the status quo is legitimated by recurring to the language of rights; however, the use of this language does not imply the adoption of the corresponding grammar. In the eyes of the dominant classes, the systematic violation and neglect of the rights of the vast majority of the population is justified (if not legally, at least factually) by the need to protect the only rights that really count, namely the rights (actually the privileges) of the so-called “good citizens” (*cidadãos de bem*). The dominant classes have considered themselves to be the only rights-bearers since 1500 A.D., that is, since the establishment of the colony, which was from the very beginning based on the establishment of a two-tier society in which the white settlers were protected by the law, while the indigenous population was not deemed worthy of this protection and was brutally slaughtered. And there was the large-scale importation of African slaves, who had no rights. Three hundred and fifty years of slavery created a society in which, despite the use of the language of rights, class privilege prevails and power is “naturally” enforced according to a strict, unchangeable hierarchy (the same families have been the economic and political elite for centuries, in some cases, several decades). Rights are for the white elite, not for the *indios* or for the descendants of the black slaves, despite the 1988 Constitution granting equal rights to all Brazilian citizens.

At the end of the 19th century, the discourse that had justified slavery and shaped the institutions of the colony came up against the ideas of European liberalism, where the aim was to substitute the principle of individual merit for the hierarchical principles of privilege and personal favor. The clash of these discourses gave rise to a peculiar conceptual structure in which the worst elements of both survive to the present day. Society is no longer organized around slavery, but the former slaves and their descendants have never seriously been considered to be rights-holders and were never offered the chance to become autonomous economic and political subjects. Economic and political power remains firmly in the hands of an elite formed of the heirs of the slave owners and of the urban elite that rose to power after the proclamation of the Republic in 1889 (one year after the abolition of slavery). The old hierarchical order based on personal relations of power and favor, in which a local landlord would gain the loyalty and the political backing of the poorer population in exchange for material help (Franco, 1997), survived the institutional changes and found an urban counterpart in the establishment of economic and political oligarchies who would keep the power for generations. Notwithstanding the relevance of these traditional, patrimonialistic and personalistic forms of power, the justification of social positions according to the liberal principle of individual merit was used in Brazil as a strategy for rationalizing the status quo and blaming the former slaves for their abject situation. This conceptual structure still serves as a basis for social institutions and practices that perpetuate and even deepen the gap between the poor black majority and the wealthy white minority. Access to university education was until recent years, and partly still is, restricted to the elite through an extremely selective entrance test (*vestibular*), while investments in primary education are restricted because they are deemed useless: the poor’s role within Brazilian society has always been to form a reserve army of cheap labor to be employed in low-grade services and menial jobs. By keeping wages for unskilled jobs extremely low (thanks to the enormous

labor pool), the higher classes keep the lower classes just under or slightly above the level of bare survival, making social mobility practically impossible, so that their privileged situation is not threatened. This is justified by the widely shared view that unskilled workers do not deserve to be paid well, no matter how physically and psychologically demanding their jobs might be. Furthermore, class segregation is omnipresent in Brazilian society, not only in the education system and labor market but in everyday life as well. For example, it can be seen in shopping habits (the wealthy go to high security, socially segregated shopping malls, while the poor go to *comércio* neighborhoods in dilapidated inner cities) and even in the architecture, with the distinction, common in a great many buildings, between lifts for the better-off residents and lifts for their servants. This highlights the social apartheid (Michel-Muniz, 2018) that divides the rich from the poor, the white from the black. Inequality reigns even before the law, not only informally, due to the fact that rich people can hire lawyers while poor people have to rely on overwhelmed public defenders, but also formally: during pre-trial detention, people with an academic degree receive different treatment and are not put in cells with uneducated people. There are many more examples. The fact that all these institutions have prospered for centuries and are still extremely powerful cannot be simply explained by the material difference in power. As Gramsci (1992; 1996) convincingly argued, power cannot be based on the use of brute force alone. If those in power wish the system to remain stable, they need to convince those subjected to it of its necessity. This is the task of conceptual structures and the justificatory discourses associated with them. Brazilian poor people accept the dominant narrative and do not claim their rights, as has been shown in empirical studies (e.g., Marins, 2017; Rego & Pinzani, 2018). The grammar of rights does not work properly in Brazilian society, either because the ancient logic of personal favor and loyalty prevails, or because its language is abused to express what is actually a grammar of privilege.

At the same time, the legitimacy discourse based on merit promises that the needs of all hard-working members of society will be satisfied, if they only will make the right effort. This puzzles and angers poor people, who work hard and suffer duress nevertheless. The language of rights may not resonate with them, since they were not taught that language, but they speak and understand the language of needs and the legitimacy discourse that claims to reward hard work. The abovementioned empirical studies indicate that poor people do complain about the fact that, no matter how hard they work, they do not have enough to eat and have nothing to hope for. This kind of complaint opens up the possibility for an ethical criticism that might proceed bottom-up, giving voice to the dominated. Ideally, attempts should be made to ensure this criticism does not become merely functional criticism (i.e., claiming that Brazilian society fulfills its promise to reward individual merit) but calls into question the very idea of merit, highlighting its untenable character, its emptiness when applied to the distribution of social positions within a society marked by historical inequality, and by class, race and family privilege. Whether this will be possible is not a question that theory can answer, but we defend the thesis that, in cases like Brazil's, adopting the grammar of needs seems to be a much more promising strategy for formulating effective social criticism—be it functional or ethical—because of the mentioned lack of resonance of the grammar of rights among the dominated groups. Of course, this should lead to their adoption of this grammar, once they will have become aware of its real meaning (as opposed to the

ideological use of its language by the dominant groups) and once they will have realized that the satisfaction of their needs is a legitimate object of their rights as citizens who stand on a par with all the more powerful members of society in their legal equality. However, as long as the concept of rights remains extraneous to their experience, any social criticism that is really interested in listening to their voices and in proceeding bottom-up should adopt the grammar of needs, which they understand and already use in their revindication and demands, even when these are limited in scope or assume the form of requests of help from local power-holders and oligarchs.

Conclusion

In the introduction to this paper I have presented a general distinction between grammar and language and, more specifically, a distinction between grammar and language of rights and grammar and language of needs. In doing so, and following Habermas's distinction between moral and ethical issues, I have connected the use of the former to a moral criticism of society, whereas the use of the latter to an ethical criticism of society. Secondly I have presented possible problems in which the grammar of rights might incur when adopted as an instrument of social criticism. Further I have attributed to society the task to define and satisfy human needs, highlighting that society always adopt the grammar of needs not only in order to fulfil this task but also in order to justify the way in which it realizes it. This means that there is always an implicit normative dimension in society that allows for an immanent form of critique and might lead to social transformation. Finally I have abandoned the terrain of Critical Theory as a theory about social criticism and moved to social criticism itself, although in a very perfunctory way. I discussed the case of Brazil to show how the grammar of needs resonate more than the grammar of rights among the most unprivileged groups, suggesting that the adoption of the former might be more conducive to social transformation than the adoption of the latter.

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