

Affirming the importance of justice as a basic human need.

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Abstract

It is a truism that justice is pre-eminently a matter of significance for everyone, no matter their current stage in the life-cycle, social circumstances or nationality. It assures personal and communal security, and is manifest in the way countries deals with crime, civil conflict and social strife within their borders or by agreement beyond.

Yet the topic is much neglected by academic and experimental psychologists, except when their professional and ethical obligations in teaching and research come into question. While the same might not be true for practising child, clinical, forensic, industrial, political and social psychologists, rarely do they address justice formally in either their practice or interprofessional discourse and the topic has yet to appear in formal course-work for their successors.

The aim of the present paper is to remedy the situation and give justice the prominence it deserves in psychological theory and practice.

Keywords: Justice, Criminal, Civil, Social, Human rights, Human welfare.

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Introduction

The Shorter Oxford defines justice as the 'maintenance of legal, social, or moral principles by the exercise of authority or power'. The concept lies at the core of moral philosophy and jurisprudence, and underpins the laws that every community develops to fulfill their obligations and objectives.

Those essential functions might be imposed either by benign autocrats or democratically elected representatives of the community at large. They led jurist Lloyd to assert that 'law is in effect no more than a form of psychology, since it is really a symbolic expression for the fact that the human mind responds in particular ways to certain kinds of social pressures' [1].

Yet despite that compliment to my profession, justice and its counterpart injustice, rarely features in the formal teaching and research domain of psychology. By default the vast area of jurisprudential scholarship is left aside as a preserve of the legal fraternity.

Towards effecting redress, this paper will touch on the principles and procedures of justice that were intended to promote harmony and human welfare. It will mention legal procedures that currently are making law more accessible for citizens, before selecting a psychological theory of

personality and behaviour that might be adapted to include the drive for justice. It is presented in the hope of bearing fruit.

The Principles and Procedures of Justice

Fortunately for the newcomer, philosopher John Rawls, social psychologist Melvin J Lerner, and Nobel prize-winning economist Sen have laid out the essentials of justice and Kadri has provided an informative and readable survey of the historical development of law and legal practice [2-5].

Rawls, the eminence gris of liberal and moral philosophers, thought mankind had an innate capacity to acquire both 'the sense of justice' and a capacity for 'the conception of the good' [2]. He argued that the former was stronger and rational and the latter weaker and emotional. Then, going beyond conventional Anglo-Saxon utilitarianism, he declared that justice and law-making should rest on the maximisation of liberty for every individual, compatible with the liberty of others. He argued that justice should allow for equal participation by all members of society and the outcome is determined in such a way as to ensure the best outcome for the least advantaged.

But a pragmatist might wonder whether the systemic application of those principles might be possible in Courts

that are a) inaccessible because of distance to travel, b) sit at inconvenient times for litigants, c) operating with arcane procedures, d) using archaic language, e) relying on evidence presented only at a set hearing, f) following an adversarial model to the exclusion of the investigatory, g) focusing exclusively on the rational, and h) costly and time consuming for the parties concerned.

However, in an absorbing treatise on justice, Sen paid tribute to Rawls and respected the complexity of rational discourse generated by all sides in any conflict [2,4]. Then with painstaking care he illuminated a path towards the most acceptable solution to bring a judicial settlement.

Social psychologist Melvin Lerner took a different tack. For him, justice had 'a special status superseding all other norms and values...with the power to legitimize and at times to demand the sacrifice of liberty, lives, and happiness...(that no) other secular norm or value had' [3]. He set all other norms and values aside in the umbrella of morality, and gave law prominence as 'the pragmatic procedure that, subject to proper rights of appeal, led to the best attainable judicial decision in given circumstances at a given time'.

Thus Lerner would have disagreed with John Warr, a critic who in 1649 declared that at 'the foundation of governments justice was in men before it came to be laws...Laws upon laws do bridle the people...' [6]. Recently New Zealand lawyer and journalist Midgley [7] went further to remark that:

'Constitutions such as courts and legal systems which start off sometimes with high and romantic origins, intents and aspirations, can, with the passing of time, if we are not constantly alert and on guard, become disfigured, unrecognisable and untrue to the benignant (sic) intentions which brought them into being'.

In responding to Lerner, I can only say that as a prison psychologist early in my career, I found it helpful to separate the elements of morality rather than lump them together (i.e., customs, ethics, philosophical principles and religious commandments), and to consider their multiple interplay with law for different offenders [8]. The outcome helped some offenders to clarify their goals and become intent on making amends.

Whereas in response to Midgley, I share his concern for ensuring that the principles of law are firmly in the public domain and that legal practice is adapted to meet the changing aspirations of society. For example there are signs that the community would adopt a more reasonable and less punitive approach to defaulters and malcontents, if not whipped into a fervor by pressure groups [7,9]. Hence the re-emergence of forgiveness as a component of the judicial decision-making process [10].

Changes Afoot

A similar movement led to the development of 'restorative justice' programmes, in which victims might confront less

hardened offender in supervised proceedings. The intention is to personalize the behavior by making offenders more responsive to the human effects of their crimes [11]. It also gives victims a role in the judicial procedure beyond laying the initial complaint and obliged Judges to apply a remedial function of the Court in helping to change the lives of offenders for the better.

The mood for reform also led progressive jurisdictions to establish special Courts for offenders having problems with drug and alcohol, mental illness and family violence. Such proceedings, termed loftily as 'Therapeutic Jurisprudence', have attracted widespread attention [12].

Here it the sterling work of Archbishop Desmond Tutu and his associates on the Truth and Reconciliation Commission come to mind after the enormity of the apartheid regime in South Africa [13].

Working elsewhere at grass-roots on similar lines for nearly two decades, Zehr et al. made progress in resolving issues between aggrieved parties [14]. Cities like Hull in Britain and townships like Whanganui in New Zealand adopted such restorative justice procedures, with groups of trained volunteers ready to apply them in local schools, factories and offices whenever called upon [15].

The spawning of such movements suggests that the seemingly disparate components of justice – the civil, the criminal, and the social – might be construed as three intertwined strands of a rope on which individuals, communities, and ultimately nations, depend for their harmonious development and existence.

Separately, the strands differentiate (a) civil justice, that covers the prevention and resolution of tension between aggrieved parties, (b) criminal justice, that does the same between offenders, their primary victims, and their communities, and (c) social justice, that address the relationships between minority and majority groups in any society and between societies.

While the civil and criminal strands of justice are firmly entrenched in the lore of many communities, the social strand has yet to be fully accepted - despite the aspirations of the 1948 United Nations Declaration on Human Rights after the atrocities preceding World War 2.

Yet in a rare comment from his profession, social psychiatrist Derek Summerfield asserted that for victims of war and atrocity, history shows that post-traumatic reactions were not simply a private problem, with the onus on the individual to recover, but 'an indictment of the sociopolitical forces that produced them' [16]. He went on to say that social reform was the best medicine, 'this means...justice' [my emphasis].

In support of that contention, Johnstone reminded her nursing colleagues of the profession's 'longstanding commitment to social justice as a core...value and ideal (that obliged them) to address the social conditions that undermine people's health' [17]. She declared that 'justice

as a basic human need warrants being clearly delineated and explicated in the philosophic, theoretical, research, ethical, and practice posture of nursing’.

The research findings of Weiss and Marmot are germane to the same theme. They show the specific links between the social injustice [my emphasis] of economic deprivation and the onset of law-breaking, poor health and life expectancy. Further, the World Commission on the Social Dimension of Globalization concluded that a ‘fairer and more prosperous world is the key to a more secure world. Terror often exploits poverty, injustice [again my emphasis] and desperation to gain public legitimacy. The existence of such conditions is an obstacle in the fight against terrorism’ [18].

Subsequently the United Nations General Assembly endorsed the WCDG theme and urged its member countries to redress their priorities to avoid further catastrophe. But the evidence of a reduction in the number of major civil and international wars has yet to be seen [19].

Then Wilkinson and Pickett gave further impetus to the parlous effects of the unequal distribution of wealth that is still reverberating [20]. Shortly afterwards the activist/economist Korten drew attention to the destructive effect on community life of the continuing corporate economic globalization [21].

From the foregoing it can be claimed that justice is a sufficiently relevant, significant, extensive and vibrant topic to be included in a psychological theory. Once positioned, a theory would allow the development and rigorous testing of constructs by appropriate conventional empirical or experimental methods.

Searching for a Congenial Theory

The choice lay between constructing either a new theory of motivation and tapping justice into an existing one. Here, the latter was preferred, because Occam’s razor determined it wiser and more economical to tap into existing theory than go to the extent of building another afresh.

A search in the extensive range, from the operational and behavioural at one extreme to the psychodynamic and humanistic at the other, revealed that only one theory was even concerned with justice. It was the theory that Maslow proposed first in and elaborated subsequently in many publications [22,23].

Presented succinctly in the now-familiar five-layered triangle (Figure 1), Maslow proposed that human development could be construed as progressing through five stages from infancy and dependence to the peak of maturity and independence. He described the first three stages of physiological, security and emotional dependency as ‘D needs’ and the remaining two of self-esteem and self-actualisation as ‘B-needs’.

It followed that in normal circumstances parents or prenatal surrogates would meet the D needs of the growing infant, child and adolescent and leave their offspring to satisfy the B needs themselves as they merged into adulthood.

Maslow referred specifically to justice, and its converse injustice, several times as he developed his thesis. He used the word justice for the first time in his seminal ‘Preface’ when describing the final stage of self-actualisation ‘in which the individual will want to strive for all the conditions which make the satisfactions possible, e.g. freedom, full information, justice, order, etc.’ [my emphasis] [23].

Then in the first article outlining his theory Maslow, emphasized the importance for a child to have ‘an undisrupted routine or rhythm...a predictable orderly world’ (in which) injustice [my emphasis], unfairness or inconsistency in the parents seems to make the child anxious and unsafe’ [24]. In his view it produced ‘neurotic or near-neurotic individuals’ who had been endangered, in addition to the ‘economic and social underdogs who behave as if a great catastrophe were almost always impending’.

In the same article, Maslow referred to the need for safety becoming evident ‘as an active and a dominant mobilizer of the organism’s responses only in war, disease, natural catastrophes, crime waves, social disorganization, neuroses, brain injury, chronically bad situations’ [24].

After the second World War, Maslow nominated several freedoms including justice [my emphasis], the denial of which could have serious consequences, e.g. ‘Freedom to speak, ...to do what one wishes so long as no harm is done to others, to express oneself, ...to investigate and seek for information, ...to defend oneself, justice [my emphasis], fairness, honesty orderliness in the group...

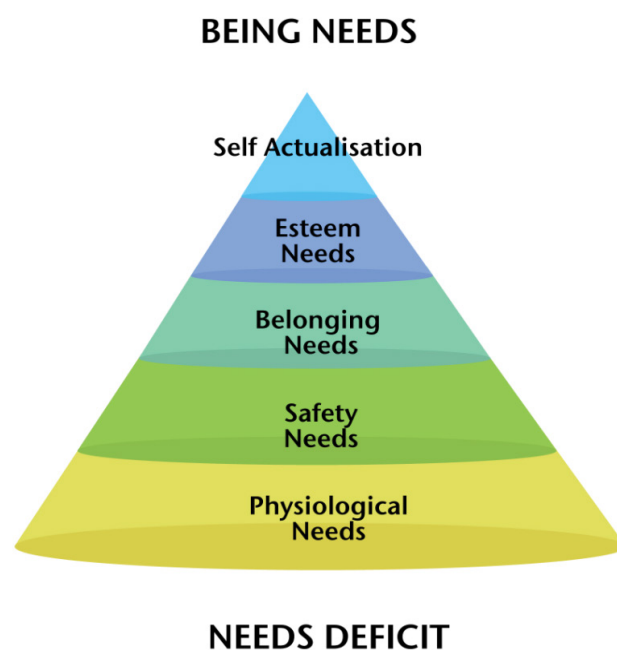


Figure 1. Maslow's motivational hierarchy.

Thwarting these freedoms will be reacted to with a threat or an emergency response' [25].

In the same 1954 publication, Maslow went on to say that 'these ends are not ends in themselves, but they are almost (sic) so since they are so closely related to the basic needs...and without them the basic satisfactions are quite impossible or at least severely endangered' (my emphasis) [25].

In a later exposition Maslow ranked justice as #4 in his list of 14 values essential for 'Being', regarded it as a component of five other values – i.e., perfection, completion, simplicity, goodness and truth and made 'living by its own laws' a component of another. Yet he remained hesitant to declare justice to be an essential basic need for personal and social development [26].

On reflection, Maslow's reluctance to take the final declaration could perhaps be attributed to the homogeneous characteristics of the original sample of 'problem-centred...remote and unruffled...strongly ethical college students from which he drew opinions as data' [25]. However years later, he wrote 'he really did not much care about helping a privileged few to lead happier lives in the age of catastrophe'.

Although he was not unfamiliar with the rigour of controlled experimentation, but having worked for a year in pioneer experimenter Titchener's laboratory, he reacted strongly against its strictures. As a result he created a counter-movement to promote humanistic psychology as an academic discipline for the creation of a 'good society'.

Personally Maslow personally had far from a shielded and charmed life. The eldest of three sons in a poor Russian immigrant family in New York in the 1930s, he was well aware of anti-semitism in the local community and in academia at the time. His father also abandoned the family and Maslow had a poor relationship with a tormenting mother that never improved. Throughout his life he became acutely aware of the injustice of a) the bitter persecution engendered by Nazi Germany, b) the growing tension between the Soviet bloc in Europe and the Western nations, c) violent reactions against the Vietnam war in his country, d) the widespread discontent of the Students for a Democratic Society leading to major campus riots [8].

With regard to those riots, Maslow, as the elected President of the American Psychological Association, joined a group of 19 eminent psychologists to declare that 'the widespread riots resulted from conditions of discrimination, poverty and unemployment...that have their roots in racial prejudice...(Accordingly), we strongly urge that direct action be taken to combat these unjust conditions.

At one seminar Maslow disclosed that he had 'a feeling of

historical urgency. There is a fire we have to put out. The world is burning up. It's literally possible there (will be) atomic bombs next week'.

The Proposal

From the intimations of both Maslow and his biographer Hoffman, together with the continuing evidence of severe national and international tensions in many parts of the world, it would not seem inappropriate to take the further step and raise justice to the rank of a basic need.

The elevation could be done conveniently by including the concept among the safety needs that Maslow identified and described as the 'almost exclusive organisers of behaviour, recruiting all the capacities of the organism in their service' Maslow [22].

At the same time it would also be appropriate to expand the supreme fifth stage in Maslow's hierarchy of development, by including the obligation on those reaching the pinnacle to show a practical concern for anyone suffering injustice. Thus it would no longer be sufficient for them loftily to muse or meditate on the plight of the legitimately aggrieved. Rather, to be regarded as fully mature, they would be obliged to respond in an appropriate manner to help others attain justice.

Although such changes of emphasis might seem slight, they would require the familiar Maslovian triangle to be reconstructed. Thus the three former progressive levels of dependency needs could be presented as separate but equal legs of a Welsh stool that support the seat on which the remaining two progressive levels of being needs of self-esteem and self-actualisation would rest. One leg would represent the basic physiological needs, other those for belonging, and the third for the security needs that now quite firmly would include justice. Reaching the peak of self-actualisation would now carry the social obligation to help others attain it (Figure 2).

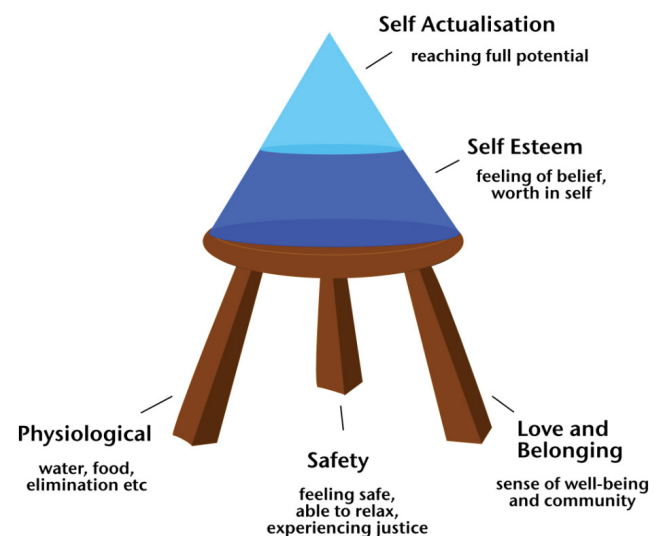


Figure 2. Maslow's schema refigured to include justice as a basic human need.

Thus, according to circumstances the proximity of the seat to the horizontal and the shape of the structure it subtends, would illustrate the stage in the life-cycle that particular humans had reached.

Conclusion

Justice is too important and pressing not to be given full status as a basic human need. With slight adjustment, Maslow's theory of motivation could be adapted to serve the purpose. Psychologists might then find the topic sufficiently challenging to study the implications and contribute their findings to the interdisciplinary pool of that intent on improving the lot of mankind.

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