

The Multiplicity of Human Nature and its Relation to the Rule of Law

Given a critical value of social norms prevalent in a society in favor of procedural justice, or as Huo et al term it, relational evaluations, human nature is able to uphold the rule of law. Leaving the explanation of the origin and maintenance of the rule of law up to economic self-interest does not sufficiently explain the phenomenon. Not until a sufficient amount of sentiment exists in a society favoring rule of law, limited government, and other democratic norms, can these institutions begin to be the method of governance. Even if there are certain “subgroups”, as Huo et al term them, with unfavorable dispositions toward the rule of law, if a “superordinate” group championing the rule of law emerges with sufficient social or political capital or even with sufficient brute strength, that group can implement rule of law at the expense of the self-interest of other actors or even itself.

Comment: excellent

Human nature, rather than being a constant exhibited by all people in an analysis of the origins of the rule of law, is variable; it varies not only between people, but can vary within the individual as well. Skitka argues that there are at least three dominant behavioral and relational predispositions of people. For only one of these “identities” is pure economic interest the overriding behavioral and judgmental factor. The three identities are material, social, and personal. Associated with these three identities are two understandings of justice spelled out by Huo et al: instrumental and procedural (relational). Material identity is the one given to self-interest calculating people, as they are concerned about the material outcome of events. At first glance, it seems they would be concerned primarily with distributive (instrumental) justice and getting what maximizes their cost-benefit analysis. Social identifiers are those who are primarily concerned with their status and place in social groups. Relevant group associations can be as

large as citizenship or as small as friendships. These people are primarily concerned with procedural justice according to Skitka. They accept losing outcomes if they feel like the social structures and procedures in place which came to the conclusion respect their position as equal or a part of the social structure. This is the most important group identity for Gibson. He argues the anti-coup demonstrations in Russia in the early 1990s are best explained by people acting on social incentives to oppose the coup, rather than people actually concerned with upholding democratic reform. Personal identifiers are concerned with principles, morals, and religion,

Comment: well, he argues that both are important – right?

among other more abstract principles of good and bad outcomes. Skitka points out that for these people, the type of justice preferred is more complicated. If their personal identity is built around closely held religious or moral beliefs, instrumental justice will be more important. They want to see the morally right outcome. However, for the purposes of this paper, personal identifiers who support procedural justice are the key group for upholding the rule of law.

Comment: You could be clearer and you could lay out what implication this has for your argument (I see what you are saying but a good writer makes it absolutely clear) but this is excellent integration of the reading.

Furthermore, Skitka says that all three of the identities she has laid out are present in all people. She claims that what is relevant is the hierarchical order in which everyone has placed these three identities in their self-concept.

Comment: OK but what conclusion do you draw from this?

Rational choice theorists argue that this is a mistaken account of human nature. To them, the only relevant identity upon which all decisions are made is material identity. Other identities are irrelevant when analyzing conduct because people are only concerned with whether or not the outcome of any transaction or legal decision maximizes their self-interest, regardless of the means which came to that end. Proponents of rational choice theory would have us believe that people within societies and across societies all have the same self-interest calculating nature. This conception of human action with regard to the rule of law does give a strong argument in favor of human nature being equipped to uphold the rule of law; however, the ability of the

fundamental assumption of human nature posited by this theory to hold up under rigorous analysis is suspect.

First, that people act purely out of material interests is not consistent with a great deal of action we observe in the world. As Gibson showed, people in Russia were acting more out of social pressure rather than belief that their action actually prevented the coup. Second, there are many examples of action in which the actor had no self-interest in assisting a stranger they would never see again. Game theory says that this action can be explained when the actor observes a multi-round game. However, if the person helped is a stranger who will never be seen again, how is it a multi-round game? Third, people are innately social beings. As such, the supposition based on Hobbes' account of human nature that people are wholly self-interested, only cooperate to further economic well being, and increase personal security does not play out across all relationships. Why would parents feel compelled to care for children or people feel any familial ties if self-interest calculations were all we considered?

Comment: Generally speaking, do not ask questions – this essay is excellent but it is weak at drawing conclusions at the end of your paragraphs – be sure to relate your subarguments with your main argument.

Rational choice theorist would then counter that all of these are just extensions of the definition of self-interest; the new definition now includes social desires and all psychological basis for acting. This seems more compelling on its face, except that now rational action is no longer falsifiable. No action can be thought of as not being rational and the theory becomes tautological.

Fortunately, self-interested human nature fits into the multiple identity theory developed by Skitka and utilized as the basis for this paper. Purely self-interested actors may not share the same reasons for upholding the rule of law as others interested in procedural justice, but in light of their self-interest and the multiple-round game of politics, they can be included in a procedural justice system. Weingast's argument does a good job of demonstrating the possibility of rule of

Comment: You could even make this argument stronger by connecting it with the argument about our identity

law among self-interested individuals, but simply does so in a model with only one type of human nature.

If self-concepts of identity shift to an identity hierarchy favoring procedural justice and a system of arbitration and government based not on outcomes for certain groups, but to a group-interest neutral approach, the rule of law becomes more embedded (Skitka). It is not a given that an identity hierarchy favoring procedural justice is present in people. A shift in social norms is necessary among a group in a position to affect change in order for procedural justice and the rule of law to be implemented.

Comment: OK – well my comment above is now answered – good work.

If, on the other hand, a majority of citizens, or a minority of those holding sufficient power to impose their will, shift their nature to an identity hierarchy which favors instrumental justice, then the rule of law is in a precarious position. A shift of social norms in favor of instrumental justice among a group or majority most able to affect political change will cause the rule of law to erode. The new social conditions seek to get favorable outcomes rather than principled outcomes. If one particularly effectual group or majority can implement such changes so that the government or legal system favor their outcomes, then the system has been co-opted and is no longer based on the rule of law, but on one group's interests. This shift in identities is a shift to the either the self-interested human nature of which rational choice theorists base their argument, or to personal identities based on moral or religious edict.

Weingast and other rational choice theorists argue a shift toward procedural justice is just a shift in thinking, among those with power or the majority, away from discounting the future, to a multi-round game. When this shift has occurred, people see it in their self-interest to have a system of procedural justice and rule of law because in a system of instrumental justice, conditions in your favor can easily shift to conditions not in your favor at the whim of whoever

controls the system. Accordingly, Weingast believes people will, in light of a multi-round game, give up present benefits to secure continuing future benefits. Clearly in this system, the group which was at the losing end of the instrumental system has interest in joining the new procedural arrangement for two reasons. First, they will now be able to seek respite for current negative outcomes. Second, they also will join the other group in enjoying the protection of self-interest in future rounds. Unfortunately, this simplistic model of human action is deficient in describing human nature, as it ascribes only one human nature to all people in all time. The shifts in identities detailed above run counter to this fixed, self-interested identity model of rational choice theorists.

In order for a malleable conception of human nature to lend itself to upholding the rule of law, all three categories of self-identifiers must be satisfied that rule of law considers their idea of justice. It has already been demonstrated, by Weingast, how the nature of material identifiers will be satisfied by rule of law. Once they start looking at politics and justice as a multi-round game, they will see it is in their self-interest to allow temporary negative outcomes to maximize positive outcomes in the future.

Social identifiers are equipped to uphold the rule of law because they are primarily concerned with procedural justice. They want equal status and recognition among peers. This is best acquired by a system which does not give special status to any group or let anyone co-opt the system, but through a procedural system.

It may be argued that social self-identification may not support the rule of law because people may seek processes which favor their group rather than procedural, group neutral procedures. Social identifiers in the certain conditions, however, can support procedural justice. Membership in a subgroup does not necessarily preclude identification with a superordinate

group which does support procedural justice (Huo, et al). These biculturalists, as Huo terms them, can identify with both their subgroup goals as well as superordinate group goals.

Finally, personal identifiers can also be satisfied by rule of law as well. If principles are the most important determinant when taking stock of the outcome of a dispute or transaction, rule of law can be upheld when these principles are rooted in beliefs supporting the rule of law and democratic norms. While personal identifiers with overriding moral conceptions of justice may only be concerned with instrumental justice (outcomes in their favor), those with high democratic ideals will be concerned with procedural justice.

Some may argue that this view of personal identifiers does nothing to secure the rule of law and to this I concede. Personal identifiers can uphold ideals of justice which do not support the rule of law if their sense of justice appeals to other-worldly imperatives or absolute truths. However, I contend that given certain conditions of personal identification, rule of law will be supported because it can be the principle around which the personal identity is formed.

Conclusion

For advocates of the rule of law, the argument laid out can be rather disconcerting because it reveals that there is no innate predisposition in human nature to uphold the rule of law. However, given the track record of human history with regard to rule of law this should come as no surprise. Given the prevalence of certain self-identifications among people, the rule of law will not be upheld. When, on the other hand, material identifiers (self-interested) view outcomes in light of a multi-round game; social identifiers wish to be given equal status and treatment along side other citizens and groups; and personal identifiers view democratic principles and the rule of law at the top of their belief system, the rule of law and procedural justice will be realized.

Thus the pertinent question not addressed by this paper, regardless of whether one is for or against the rule of law, is how these conditions of human nature, which uphold the rule of law, are engendered in social groups and individuals.

Comment: This is an excellent essay – its only weak spot is the drawing conclusions at the end of paragraphs.

95.