

The Rights Gene:
Applicability vs. Universality in the Human Rights Debate

By J. Michael Cole

The debate surrounding the universality of human rights as stipulated in the Universal Declaration of Human Rights and its successor, the International Covenant on Social, Economic and Cultural Rights, is as much alive today as when the leaders of a different world met in San Francisco in 1948. In fact, as our world becomes increasingly connected through air travel, the Internet, and mass media communication — and as a superpower seemingly has embraced a vocation to spread its values, forcibly if so required — never in history has the question “do human, social, group, and economic rights have a universal application?” been of such import.

The post-colonial world we inhabit has mostly been rid of the spurious notion of a racial hierarchy, whereby certain classes of people were considered “more human” than others. Given this new reality, one could now argue that the notion of “human being” as nothing more and nothing less than a human being is universally accepted. Instances of racial discrimination, such as the white supremacist movement, are now seen as an aberration and as a divergence from accepted norms. The genetic unit of humanity — in other words biological life — therefore becomes the one indisputable right: the right to live. Of course, numerous countries where ethnic cleansing and genocide is made policy do not respect even that primary right, but in the commission of such policies their authors are fully aware that their actions are a transgression of a universally-accepted concept.

Not so with other rights. One encounters problems and divergence of opinion at all the subsequent levels of rights — where the genetic unit of humanity encounters the social, cultural, and religious realities that are proper to states, regions, and civilisations. Given these

hurdles, how do we expand the concept of universality so that it will encompass the variegated rights included in the Declaration and the Covenant? Is this even possible? Can we, indeed, as Charles Malik, the existentialist philosopher who participated in the creation of the Declaration, claim that the document is more than “a mere catalogue of hopes and aims”?¹

Human rights as a social construct

Beyond the genetic unit — in other words, the right to life — all declared human rights appertain to the social realm, in that they lie outside the biological world. A product of human intellect and social interactions, these rights are social constructs and, though it is not fashionable to say so, are therefore not intrinsic to nature. Nor, we should add, are they a legacy of the divine. The product of civilisation, history, geography and the vagaries of human nature, societies are by definition not homogenous. Given that social human rights are shaped by society, societal interpretations of human rights will inevitably differ, and will be inspired, shaped, and transformed by the society in which they emerge.

An example of this lies in the conception of the unit of reference, in terms of rights, within societies. As Richard Falk, Professor of International Law and Practice at Princeton University, argues in *Human Rights Horizons*:

The issue of human rights has traditionally been focused on the rights of the individual. Protection of group identity, whether involving religion, culture, or gender, has generally been approached as a matter of individual freedom to engage in group activity without enduring discrimination or persecution. There is an increasing demand, however, to treat group rights as a truly collective concept.²

How do individual rights fare when a society’s concept of rights is rooted in the needs of the group as opposed to those of the individual? This idea is not as alien as it sounds: in most of

the Asian world, people refer to themselves with surname first, followed by given name, which is indicative of a tradition whereby group identity has precedence over the individual. In the language of rights, the foregoing societies would likely emphasise group rights over those of the individual. In the more individualistic West, on the other hand, the surname follows the given name, and there is no arguing that the rights of the individual, as opposed to those that pertain to the group, have primacy. While further research into this topic is beyond the scope of this paper, one could probably safely argue that these traditions could in part have been informed by such variables as family size, size of a country's population, and population density. In this respect, there feasibly exists an inverse correlation between family size and the primacy of individual rights. Of course, over time these societal traditions and perceptions can change, but they are nevertheless reflective, at a fixed moment in space and time, of how a society views itself and the role of the individual within it.

The subsumption of the individual unit into the group can at times be so strong that individuals will even be willing to sacrifice the right to life for the greater good. That the phenomenon of suicide bombers is more prevalent in certain parts of the world and less so in others is reflective of different cultural mores. Military culture – and this very much includes Western armies – also has its own idiosyncratic notion of sacrifice, whereby a soldier will risk his own life to save that of a fallen brother. This serves to demonstrate that even if the right to life itself is, in principle, an agreed-upon basis for all human rights, various cultures – and cultures within cultures, such as the military – can still impact upon how rights are applied in reality. A similar, albeit less extreme, example of a Western nation varying its own interpretation of human rights is that of the United States after the multiple terrorist attacks on September 11, 2001. Soon after the attacks, individual rights – certain freedoms – were curtailed to ensure the survival of the greater unit, that of the group, the nation. Since, as was argued above, life is the only true universal right, are not all other rights irrelevant whenever the very survival of the group is at stake?

Societies which are similar in make-up and origin, such as Great Britain and the United States, for example, will usually tend to agree on the definition of human rights. Despite the occasional divergence, similar societies will tend to incorporate the same rights into their respective constitutions. A critique of this argument would rightly point out that the rights of homosexuals in Canada, for example, where gay marriage is on the brink of becoming legal under the constitution (Bill C-38), are greater than those of their counterparts in the United States, a society very much akin to that of Canada. Upon closer scrutiny, however, one would soon realise that while same-sex marriage is not yet an article of law, American society has long been engaged in a debate over this very question, a sign that the concept of this right is within reach.

Human rights as a social cohesion gene

Since a society adopts certain rights and chooses to ignore others according to its intrinsic set of societal traditions, and, as argued above, given that a society's interpretation of rights will change — after all, one need not look to far back into history to find a time when women had no voting right in Western societies — how do these different societies fare in the international arena? More importantly, how do we address the inevitable clash, seen today, on the issue of the definition of rights?

Perhaps the theory of evolution can help us find an answer. In the preceding section it was proposed that social human rights are the product of a social construct issuing from a society's traditions, and that as a society transforms itself over time by virtue of its being exposed to other societies, the definition of human rights within that society will also change. Let us then imagine that human rights are in fact social genes, not grounded in biology but in a society's psyche, which are selected for by the societies that adopt them. These would be akin to the bits of copied cultural information the neo-Darwinist Richard Dawkins has dubbed

“memes.”³ Rights that are selected and that are retained by a society are, at that specific moment in time, appropriate for that society. Given the circumstances, other rights may be abandoned, or to be added to the list in the future. Once a right is adopted by a society, it is also changed by it, shaped and refined through its application within that society. Through trial and error, societies choose social genes that will contribute to their success. There is no arguing that *given the right social circumstances*, the full set of human rights would feasibly contribute to the success of the society that has adopted them, as human rights by definition improve social cohesion, harmony, and interaction. To make a business analogy, rights that “work” could be seen as best business practices. Conversely, societies that, for various reasons, fail to adopt and adapt rights will feasibly not fare as well and will fall behind comparatively in terms of human social development. It is important to note, though, that the amelioration of societies through the adoption of human rights genes is by no means teleological, nor can we be certain that it will result in universal harmony. Like in the natural world, the process of selection is one of fits and starts, with the arrow of directionality unknown. We can therefore only hope that the social experiment leads to a better place.

At the global level, the divergences in various societies’ adoption of human rights are akin to genetic variations based on variables that are proper to localities and regions. As with the biological world, the process of globalisation continues to shrink our world. Through mass media, travel, trade and the so-called social imperialism, different societies are increasingly confronted to the realities of others. This process, then, serves as an accelerator, constantly bombarding the subject of the experiment with various genes.

In combination with other factors, the human rights genes are indubitably an instrument with which the lot of mankind can be ameliorated. Indeed, if, as this paper argues, human rights are contributors to the success of a society — and provided that various societies construe those rights as beneficial tools — then we can hope that they will increasingly be selected for by various societies, a process which, short of utopia, could nevertheless take us

close to a universality of rights — a universality not in essence, mind you, but in applicability, for even then, one would need to account for variations upon the interpretation of those rights within differing societies. Furthermore, as the nature of societies is constantly in flux — and so, by design, are human rights — rights that at a certain point in time appear to have been universally adopted could later be forsaken in certain regions of the world. Consequently, the universality of rights cannot be considered to be a permanent phenomenon, and not until all societies are the same — a near uncertainty— will all human rights be universally agreed on.

But how are human rights genes adopted by various societies? And how do we explain the adoption of a set of rights in certain societies but not in others? Now that we have agreed that human rights need be discussed in terms of temporal and spatial applicability rather than universality, it becomes easier to see how rights are selected if we see them as instruments of social cohesion. Society is a contract between its constituents, an arrangement through rules and regulations. It is also a contract between the individual and the group. Without these rules of conduct, our world would be disorderly, chaotic. It therefore comes as no surprise that the Declaration of Human Rights came in the wake of the greatest social catastrophe in the history of humanity. In the preface to *Human Rights Today*, UN Secretary-general Kofi Annan is absolutely right when he claims that “the absence of human rights is more than a denial of human dignity [but] is also at the root of the poverty and the political violence that plague our world.” He is wrong, though, when he makes all human rights, “whether civil, cultural, economic, political or social [...] indivisible and interdependent.”⁴

Given that human rights emerge from society, they, too, contribute to (or can be deleterious to) societal cohesion. It is from this, from the realisation that human rights are part of a society’s toolbox, that the argument that all human rights are universal loses momentum. If all rights were, indeed, universal, where would we draw the line? Pushed to an extreme, one would theoretically have a right to kill, or not to pay at the restaurant. Of course, these rights

have been selected out, as they undermine social cohesion. We can see, then, that human rights are constrained by an overarching need to ensure order within society.

While we can theoretically extend human rights to almost every aspect of human behaviour, only the rights that have adaptability within a given society will be selected for. As we have argued above, not all societies are the same in composition, rules, and values. As a result, certain sets of human rights will not be selected for in a society not because they have an intrinsic fault but rather because these rights would, at that specific point in time, lose to the social constraints imposed by that society. For example, a society where the group has primacy over the individual would fall apart from the sudden adoption *en masse* of rights of the individual.

Applicability rather than universality

If, as argued above, universality of rights is unachievable, does this mean that societies are doomed to perpetually disagree on human rights? The situation is not as gloomy as it sounds. Rather than wage war and attempt to impose those rights on societies whose traditions are ill-suited to adopt them, however, what needs to be achieved is an understanding of the applicability of human rights to the various societies that comprise our world. In fact, waging wars in the name of liberty and human rights is likely to be counterproductive, as societies under siege tend to abandon individual rights for the sake of the group, the clan, the nation. The disruption that war visits upon a society also undermines the social cohesion which is necessary for the development and adoption of human rights. In certain cases, only many years after hostilities have come to an end will a state warred against be stable enough to resume its social progression.

What is required, therefore, is a general understanding that rather than being universal and a given, human rights as tools for social progress are something precious, something to be

gained through debate and experimentation within the various societies of this world.

Furthermore, proponents of human rights-oriented policies must come to the realisation that the adoption of human rights is not a linear phenomenon. As various time zones mean that noon in one corner of the planet is someone else's midnight, all societies are not alike, and all historical journeys to the present were different. As a result, different circumstances, different histories, even different geographies, gave rise to different societies. While by its very nature a society is an experiment in social cohesion, the different paths to the present have engineered various ways by which that cohesion can be arrived at and be maintained. The imposition of rights that for one reason or another threaten that stability – akin to a human rights “shock and awe” – is almost certain to undermine the very fabric of a society. That is why, as has been argued throughout this paper, that contemplating the full set of human rights, whether they be civil, cultural, economic, political or social, in terms of temporal and spatial *adaptability*, rather than as part of an assumption of universality, is the more constructive approach. It is also important to remember that human rights are not teleological, and that even nations that proclaim themselves champions of human rights will, given certain circumstances, abandon or severely curtail rights which had been taken for granted.

Universality is an extreme, possible only in a world bereft of the social dynamics that exist between the individual and the group. Unless human beings cease to group and generate societies, the indivisibility of human rights will be but a dream. As this paper makes it quite evident, it is very difficult to answer the question on the universality of human rights from someone else's perspective. After all, the mind cannot dissociate itself from the society in which it developed. It is therefore with humility and an awareness of one's own cognitive limitations, that we must approach this question. We can hope, we can aspire to a better world through the adoption of human rights, but the multifarious societies that comprise our world will always ensure that conflict, rather than cohesion, emerges whenever one society or group of societies attempts to impose its understanding of rights on others.

Notes:

¹ Quoted in Glendon, Mary Ann, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), p. 165.

² Falk, Richard, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (New York: Routledge, 2000), p. 127.

³ Dawkins, Richard, *The Selfish Gene* (Oxford: Oxford University Press, 1976).

⁴ *Human Rights Today, A United Nations Priority*. UN Briefing Papers. Department of Public Information, United Nations: 1998, p. v.