

Universal Human Rights and Their Justifiability.

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Do Human Rights have foundational validity independent of municipal law? The modern doctrine of human rights has been the subject of some controversy, especially after WWII. Much debate surrounds the basic justification of human rights, but also about precisely what rights are human rights, which ones are fundamental, universal, and which are merely cultural and contingent.

In discussing universal human rights (UHR) one cannot avoid discussing the concept of “natural law,” and the “law of nature,” the historical forerunners of UHR. Human rights cannot be universal in any fundamental sense unless we accept that there are universal norms. Manent writes that “we cannot speak of human rights without referring implicitly but directly and concretely to “nature.” (Manent, 2020, p. 8)

The concept of universal norms appeared in ancient times but were fully explored by Cicero and later by Thomas Aquinas. Natural law has traditionally been seen as a higher law, a universal law moral that transcends and trumps municipal law. It is said to exist beyond the realm of positive law and is a benchmark against which the justness of positive laws can be judged. Augustine of Hippo stated, in short, that unjust laws are not laws at all.^[1]

In premodern times natural law theories held that the whole world of human affairs are regulated by natural law, i.e., “binding moral laws that supply normative constraints on states whether or not these dictates are incorporated into any system of positive Law.” (Nussbaum, 2004) This view basically follows the Aristotelian understanding of human beings as an integral “part of a comprehensive natural order.” (Deneen, 2018). This was endorsed by early Christian philosophers who further developed the concept of human freedom as “freedom under law.” The Christian contention is the biblical one that sees the genesis of humanity taking place under law and, obedient or disobedient to it, they remain under the law.

The ancient hypothesis then was that the apotheosis of human freedom is reached when

people live fully within the parameters of the natural order of things, according to natural law. The natural order was understood to require all living things, including man, to live within the prescripts of that order or suffer the consequences: unhappiness, withering health, withering wellness, even group extinction. The natural order is a system that allows all life to either exist and flourish, or to wither, die and go extinct.

Manent argues that natural law has the distinction for having been radically discredited by modern philosophy and held in contempt by enlightened opinion. (Manent, 2020, p. 1) This is actually not entirely accurate. According to George, (George, 2008) there are modern natural law theorists. They seek authority for their views on human rights in principles that can be identified without having recourse to any authority other than the authority of reason itself. Finnis (Finnis, 1983) identifies the principles of his moral theory as self-evident, meaning simply that these principles cannot be derived from some other more foundational proposition. However, how these self-evident truths are to be discovered is muddled in vagueness and uncertainty.

Ethical intuitionists on the other hand, make the argument that neither a foundation nor a justification of human morality can originate from the social or natural sciences. They view facts as irrelevant to morality. This accords with the so called natural fallacy. However, I shall argue with Narvaez that “(i)f we take our animal nature seriously, facts and values are only artificially separated.” (Narvaez, 2014, p. 430)

The fundamental epistemology of intuitionism is that all moral knowledge derives its justification from certain “intuitive” moral truths. (Huemer, 2008) Moral knowledge is then seen as *sui generis*, no other knowledge can give rise to or inform intuition. Intuition, however, is a very precarious basis for discovering fundamental truths, moral or otherwise. Not only is intuition particularly subjective, but if it cannot be measured or weighed against any objective values, its intrinsic value is moot.

If human rights, and all positive laws are bereft of any objectifiable morality, they have no intrinsic substance. They are law by no other measure than sanctioned violence, or the threat thereof.

My purpose in this article is to reassert the intrinsic substance of morality as being embedded in human nature. I approach the question from an evolutionary psychology perspective. Moral values are the result of natural selection for those groups that practiced and adhered to positive pro-social norms. Frans de Waal claims that that we, as a species, started out with moral sentiments and intuitions, in continuity with other primates. We did not develop morality from scratch through rational reflection, “we received a huge push in the rear from our background as social animals.” (De Waal, 2013, p. 17)

In recent decades, psychology has been undergoing a type of paradigm shift to under-

standing that most of human behaviour is governed by implicit processes. (Narvaez, 2014, p. 379) Implicit processes are what might also be described as intuition, and intuition is merely the rational perception of instinct. Darwin very pointedly remarked that “it can hardly be disputed that the social feelings are instinctive or innate in the lower animals; and why should they not be so in man?” (Darwin, 1998 [1859], p. 1873)

Humans and their group living predecessor species have over millions of generations had much the same survival experiences and developed such survival ‘instincts,’ and only those groups with individuals who internalised them survived in the long run. The evolved instincts of humans are thus the result of successful survival strategies. Due to the universality of this evolutionary process, the instincts and resulting human intuitions are universal.

Clearly, all life has a naturally implied telos: survival. Consequently, the fundamental justification of morality, properly so called, is survival, ultimately the survival of the species. And not merely survival at its lowest fundamental level but flourishing life. Human evolution is the product of gene-culture coevolution. This means that genes and culture influence each other. Our received moral codes are the result of the combined interactive forces of natural genetic selection and socially driven cultural evolution.

Because we are social animals, the existence of society is a precondition for individual life. It follows that the survival of society, of the group, is more important than the survival of any particular individual. People who are seen as heroes are always people who in one way or another has put the interests of the group before their own self-interest. I have yet to learn of a person regarded as a hero who sacrificed his group in order to save himself. Self-sacrifice is a universally lauded human characteristic.

The “principles” of survival, thus of morality, are not chosen, they are learned and embedded by natural selection and articulated by cultural co-evolution. The rules are not compulsory either. People can either live by them, or not. But if disregarded, perverted, or countered, the result will be a continuous degradation of life quality, eventually leading to extinction.

This understanding returns us full circle to the Aristotelian view of the human being “as part of a comprehensive natural order.” (Deneen, 2018, p. 35) The ancients regarded humans as having such a natural *telos*. These self-same instincts underlie our sense of justice, of right and wrong and serve as a guide to successful living in society.

Positive laws can be tested against this *telos*. Do they serve to make society more cohesive, or are they divisive? Do they alienate people, or do they encourage widespread sympathy and cooperation? If they facilitate people to identify with one another, to feel part of a greater whole, they are in accord with our natural *telos*. Such laws are just. They command obedience through the force of our human nature as highly developed, intelligent, social animals.

Regarding the justification of human rights then, one has to inquire whether the proposed

rights are rights that flow naturally from our life circumstances or not. Are they rights that are fundamental to living peacefully and prosperously in cohering social groups? I propose to illustrate the argument by means of two examples: the right to life and the right to property.

The right to life, if it means that we are obligated to respect, protect, and preserve as far as possible the life of every person, is clearly fundamental. No group of people can cohere if they do not mutually guarantee each other's lives.

Contrariwise, the right to own real estate is not such a fundamental right. People have lived and prospered for hundreds of thousands of years without such rights. Many groups of people still do. Groups of people have obviously laid claim to exclusive access to areas of land as their hunting or fishing grounds as well as to certain natural food and mineral resources, but the idea of individual property rights is a relatively modern one. Property rights are rights enabling one person to exclude other people from a piece of this planet. Such rights are only the trophies of the victory of the rich and powerful over the interests of the common people. No such right is morally justifiable although it can be enforced. But it is not a human right and is certainly not universal.

It is unfortunate that these fundamental social rules are presented as the attributes of individuals. It results from the Western emphasis on the individualism of classic liberalism, the result of European history.

It is trite law that rights and obligations are two sides of the same coin. In this regard we should distinguish between what is prior and what is derived from the prior. The fundamental rules of social cohesion are truly universal moral obligations. They are the obligations not only of individuals with respect to other individuals but are binding on all of us with respect to every one of us. No society can exist coherently for long without the fundamental rules of morality. Consequently it is clear that moral obligations are prior to the rights. The rights of individuals can be derived from the moral obligations of society, from our obligations as a collective.

In the result the justifiability of human rights is grounded in the justifiability of their derivation, namely the moral obligations of the human collective. That means it also represents the moral obligations of nations towards each other.

References

[1] Thomas Aquinas, *Summa Theologiae* I-II, q. 96, a. 4, c.

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