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The Nature of Morals: How Universal Moral Grammar Provides the Conceptual Basis for the Universal Declaration of Human Rights

Vincent J. Carchidi[1]

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Abstract

I argue that theoretical developments in the study of the Universal Declaration of Human Rights (UDHR) should occur alongside progress in moral psychology, particularly moral cognition. More specifically, I argue that Universal Moral Grammar (UMG), a model positing an innate, regulative, and universal moral faculty characterizable in terms of rules and principles, fulfills the role of the foundational model needed to usefully conceptualize the UDHR. As such, I provide a detailed account of UMG against competing models in moral psychology. Furthermore, I combine UMG with Talbott's Historical-Social Process of Moral Discovery and Rawls's reflective equilibrium to show how the UDHR represents a major development in moral exploration, one indicating a more penetrative look into the inner moral nature of humans that attempts to reach, but does not attain, one interpretation of reflective equilibrium tied to cognitive moral psychology.

Keywords Universal Moral Grammar · Universal Declaration of Human Rights · Moral Cognition · Reflective Equilibrium · Historical-Social Process of Moral Discovery

Introduction

The science of human moral nature can provide a fundamental basis on which the nature of human rights, particularly those enshrined within the Universal Declaration of Human Rights (UDHR), may be grasped. My aim in this article is to argue that the Universal Moral Grammar (UMG) model of moral cognition is a useful conceptual framework for theorists to adopt in making sense of moral phenomena, the human rights regime especially as exemplified by the UDHR. Human morality, as understood

✉ Vincent J. Carchidi
Vcarchi1@villanova.edu

[1] Villanova University, 800 Lancaster Ave, Villanova, PA 19085, USA

by UMG, can be characterized in terms of rules and principles innate to the human mind, allowing for only limited diversity in their expression. While moral diversity is real, and evidenced by the *seemingly* extensive variety of norms, customs, rhetoric, and institutional structures found in human affairs, this diversity is highly constrained by human biology. I show how UMG helps to explain, on a fundamental level, the adoption of the UDHR. More specifically, I argue that the UDHR represents a milestone in a sprawling sociohistorical process in which individuals, exercising and developing their moral judgments, come to attain a clearer view of the principles operative in their judgments.

While human rights *norms* themselves are not innate and are temporally, geographically, and ideologically bounded, the *intuitions* that underpin such constructs do not share these qualities—they are universal, atemporal, and innate.[1] Where norms are not relevant (e.g., the production of the UDHR, prior to its completion), the intuitions that underpin the relevant *judgments* are universal, atemporal, and innate. I stress that UMG alone does not explain the adoption of the UDHR in full, as there are sociohistorical processes involved for which the cognitive framework cannot adequately account. Thus, I will introduce the notion of *equilibrium reasoning* and the Historical-Social Process of Moral Discovery (HSP) into this argument, as the mode of social reasoning individuals engage in for making sense of moral judgments or moral norms. Those involved with the drafting of the UDHR engaged in this sort of reasoning and, on appeal to UMG, we may plausibly conceptualize them as penetrating into their fixed moral competence. UMG is, to put it simply, best conceived of as *fundamental* to the adoption of the UDHR; it *sets the stage* for sociohistorical processes to hit upon the notion of human rights.

John Mikhail has articulated the initial connections between a universal moral grammar and universal human rights norms by utilizing interdisciplinary evidence in support of "the idea that human beings possess a shared, intuitive sense of justice that might also support a robust system of universal human rights" (Mikhail 2012, p. 192). He notes that "the [UDHR], International Criminal Court, and other familiar human rights instruments are real phenomena, which our best scientific theories of moral psychology must be consistent with, if not explain" (Mikhail 2012, p. 172). Mikhail's key insight regarding UMG and the UDHR is that the study of it and related phenomena should "begin investigation from the simplifying assumption…that human beings share a common moral nature" (Mikhail 2011, p. 57). This paper seeks to extend this line of thought in two primary ways. First, by bridging the gap between a theory of *mind* and human rights *norms* with William Talbott's Historical-Social Process. Second, by arguing that the drafting of the UDHR is usefully conceived of as an attempt to reach the state of reflective equilibrium on matters justice as Rawls (1971) conceived of it with his analogy of generative linguistics to the sense of justice (but not an attainment of this state of affairs).

Why should the UDHR be conceptualized, on a fundamental level, in accordance with innate moral principles when history is replete with opposition to not only specific human rights but the notion of human rights generally? The answer requires an understanding of how the moral mind structures social interaction and the specific

[1] Under UMG, *norms* are not innate, and convergence on norms does not indicate the innateness of norms and social rules (Dwyer 2008, pp. 409–411).

sociohistorical context involved in the drafting of the document. Under UMG, possible moral systems are constrained by the mind meaning that existing systems are those that have a basis in our innate moral "ingredients"—moral systems and certain norms are *manifestations* of innate moral principles which allow for the limited diversity observed in world affairs. As such, the moral faculty's constituent elements are *finite*. Because the "elements of moral cognition" are finite, social interaction between those of differing moral systems aimed at resolving matters of justice can *settle* on particular conceptions that suitably match the moral intuitions of those involved. That is, after reflection and social engagement, the groups, who begin on different instances on a constrained range of moral systems, reach an *agreement*. Conceptually, through this moral back and forth, the groups have penetrated "further" into the moral faculty and hit closer to its "core." Such an agreement, while unstable and subject to future revision, is what Rawls had in mind in one interpretation of reflective equilibrium by conceiving of disagreements in his "original position" in reference to the structure of the human moral capacity.[2]

This level of abstraction may appear unhelpful in the study of the UDHR, but by using the foundational conceptual framework of UMG, extended socially with HSP, and culminating in an *attempt* to attain reflective equilibrium, the true nature, function, and scope of the document may begin to come into view, thus allowing for revitalized understandings of universal human rights norms. While the mentalistic account of the UDHR does not exclude analyses that are social scientific in nature, it provides a compelling reason to reframe familiar debates concerning the nature of rights, with potentially serious implications for established conceptions. Indeed, such a naturalistic effort at grounding and understanding rights has been attempted by Thiele, who, drawing from diverse research in the life sciences, argues that "an intellectual grounding of rights in nature may be provided by science" (Thiele 2019, p. 14).[3] I argue that UMG is the most relevant model in helping to explain the origin and nature of the UDHR. I do not claim, however, the UDHR represents the final development of moral progress; the end of history as others have proclaimed in varying contexts (Ishay 2004, pp. 360–361). The nature of equilibrium reasoning is such that new insights may be discovered, some of which may improve our moral understandings in a way as to move beyond human rights or their international iterations.

I begin by providing a brief overview of the key elements of the UMG research program. Next, I illustrate of those historical aspects of the origin of the UDHR that are most relevant to a moral psychological account. These sections will allow the reader to appreciate what exactly UMG's and reflective equilibrium's roles are in underpinning its creation and set the stage for a multidisciplinary approach. Following this, I will introduce Talbott's model of the Historical-Social Process of Moral Discovery as an initial and general bridge between the UDHR's creation and Rawls's psychological conception of reflective equilibrium. Subsequently, I lay out the primary reasons why the UDHR is best conceptualized as an *attempt* to attain reflective equilibrium, showing

[2] For an explication of Rawls's "linguistic analogy" see Mikhail (2011).

[3] Marks has argued that "research [into human nature] will enhance our understanding of human rights and human nature if pursued rigorously (Marks 2013, p. 118) and McCauliff notes that "The recognition of the gap between cognition and consensus in the thought of philosophers Maritain and Rawls also finds expression in cognitive science" (McCauliff 2009, p. 436). Though, neither of these authors argue for the priority of UMG over alternative models.

how the rights enshrined within the UDHR have an innate, atemporal, and universal basis in human cognition. Finally, I will explicate the idea of UMG in contrast with other models in moral psychology.

The reader may think this is all too convoluted. Why is there a need for three models? Furthermore, why does the argument for UMG come after the conclusions relevant to the UDHR are laid out? First, the models used to account for the UHDR are conceptually linked, particularly with Rawls's psychological interpretation of reflective equilibrium. Also, bridging the gap between a theory of mind and a historical account of the UDHR is an unavoidably interdisciplinary endeavor; the idea is that these models are most useful in conceptualizing its creation, not arbitrary insertions. Second, while, logically, UMG precedes the UDHR, given both the depth of explication involved with UMG and human rights scholars' relative unfamiliarity with the idea, it is best, stylistically, to first make clear what is at stake in grounding the UDHR in a theory of moral cognition and then slowly build up to why scholars should find UMG to be a plausible notion.[4] I stress that to present scholars with a plausible interdisciplinary approach, the extensive psychological content they will find here is necessary to avoid simply taking this author's opinion at face value.

An Overview of Universal Moral Grammar

It is helpful to set the conceptual stage in introducing UMG. Individuals produce intuitive moral judgments in the face of commonly recognized transgressions. What is meant by "intuitive"? Mikhail explains that "[i]ntuitive moral judgments are those which satisfy a simple criterion: they are not determined by the systematic and conscious use of ethical principles" (Mikhail 2011, p. 83). When individuals who experience moral intuitions in the face of eliciting situations produce an accompanied judgment appropriate to the circumstances at hand, but with information not present in the situations themselves, how did they manage to apply the abstracted moral principles without the systematic use of the principles? Furthermore, how did they apply specific information with complex mental representations as shown when "elicited by thought experiments" (Mikhail 2011, p. 128)? Put simply, how did they project the relevant moral information onto the stimulus in novel scenarios?

UMG proceeds to answer these questions in a way that is analogous to Universal Grammar (UG) in linguistics: by positing the existence of a faculty innate to the human mind which actively imposes a "pattern of organization on the stimulus by the mind itself"—the stimulus being a morally charged "eliciting situation" (Mikhail 2007, p. 145). UMG hypothesizes that the moral faculty consists of a system of *principles* for dealing with the relevant situations. These principles are innate to the mind, particularly within the conceptual confines of a moral faculty, that emerge within the normal course of human development. The research program thus takes seriously the ability of human children to intuitively use legal concepts such as means, ends, and side-effects to judge eliciting situations, making them, as Mikhail says, "intuitive lawyers" (Mikhail 2007, p. 145). Channeling multidisciplinary evidence through the framework provided by UMG, Mikhail suggests that "developmental psychologists have discovered that the

[4] This counter-intuitive but helpful structure was recommended by an anonymous reviewer.

intuitive jurisprudence of young children is complex and exhibits many characteristics of a well-developed legal code" (Mikhail 2011, p. 104).

UMG is a theory of moral *competence*; that is, an individual's intuitive moral knowledge. As such, the research program is careful to distinguish this knowledge from an individual's *performance*; how the person behaves voluntarily in concrete circumstances (Mikhail 2012, p. 169).

Origin and Development of the UDHR

There are several myths regarding the construction of the UDHR that ought to be addressed at the outset. One myth is that the UDHR was *solely* a reaction to the atrocities of Nazi soldiers in perpetrating the Holocaust. However, the scale and extent of the Holocaust was not known until long *after* planning for an International Bill of Human Rights (IBHR) had begun; plans and calls began in the early 20th century, and efforts to accomplish this were led largely by non-state actors. The Nazi atrocities served, once known, as a greater impetus to draft such a declaration, not as an initial cause (Waltz 2002, pp. 438–440). This point should not be exaggerated, however, as pressure for an international respect for human rights from NGOs and governments became more widespread and intense during World War II in anticipation of peace (Morsink 1999, pp. 1–2). It is useful to note that the "drama of the Holocaust and, more generally, the killing of over fifty million people in World War II had highlighted the significance of the work of the human rights commission members" (Ishay 2008, p. 218).

A second myth is that the UDHR was written by either a single or a handful of individuals. The various drafts of the Declaration went through extensive, lively, and contentious debates at multiple levels of organization within the United Nations itself, and within agencies housed by member-states of the UN (Waltz 2002, pp. 441–442). A final myth is the belief that the rights enshrined in the UDHR are the imposition of culturally relative values held by Western powers, primarily the USA. By the late 1940s, the idea of human rights, particularly international human rights, did not enjoy the popularity it had during the Roosevelt administration in the USA. The Eisenhower administration effectively withdrew the USA from deliberations on the drafting of the IBHR by 1952, signaling a disinterest in the project (Waltz 2002, p. 442–443). Furthermore, responding to charges of Western cultural imperialism (and imperialism under the guise of universality), Glendon acknowledges the then-underrepresentation of the world's cultures in the UN (Glendon 2002, pp. 224–225) but is careful to note not only that "Chang, Malik, Romulo, Mehta, and Santa Cruz were among the most influential, active, and independent members of the Human Rights Commission" (Glendon 2002, p. 225), but that the "educational backgrounds and professional experiences of men like Chang and Malik" did not detract from their diversified "performance in the Human Rights Commission…" (Glendon 2002, p. 225). Rather, "each possessed an exceptional ability to understand other cultures and to "translate" concepts from one frame of reference to another" (Glendon 2002, pp. 225–226).

During the construction of the UN, particularly at the 1945 San Francisco conference, small and medium states protested the initial proposal and "called for a stronger human rights commitment" (Ishay 2008, p. 214). Culturally diverse figures including

Gandhi, Carlos Romulo, Ho Chi Minh, Kwame Nkrumah, and W.E.B. Du Bois "all condemned the proposal for ignoring human rights in general, and specifically…the rights of minority and indigenous people living under colonial control" (Ishay 2008, p. 214). Furthermore, in conjunction with amendments pertaining to the General Assembly's authority and related matters, "human rights provisions were now advanced" with the continued pressure of various NGOs (Ishay 2008, p. 214–215).

The Human Rights Commission, chaired by Eleanor Roosevelt, "included eighteen members representing a diversity of nations" including the USA, USSR, China, India, Byelorussia, Egypt, and Lebanon. Roosevelt's predecessor, Charles Malik, "assured the Assembly before the vote that the declaration reflected and synthesized many rights traditions" (Ishay 2008, pp. 218–219). The comprehensiveness of this synthesis, conducted prior to and for the purpose of the first draft of the UDHR, should not be underestimated. Glendon points out that "[t]he drafting group was not, of course, inventing rights out of whole cloth" (Glendon 2002, p. 56). Rather, "John Humphrey had instructed his staff at the UN to study all the world's existing constitutions and rights instruments, as well as the suggestions…from members of the Commission, outside organizations, and even from various interested individuals" (Glendon 2002, p. 56). Ultimately, "the UN Secretariat had prepared over four hundred pages of commentary" on diverse conceptions of rights and their legal instruments (Glendon 2002, p. 58). Ishay's extended remark on their conclusion is most relevant:

> The UNESCO committee was convinced that the members of the UN shared common convictions on which human rights depended. Affirming that the history of the philosophical tradition of human rights extended beyond Western tradition, they further argued that while human rights varied across cultures and were built upon different institutions and different political and economic backgrounds, the United Nations members nonetheless believed in similar principles.
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> Despite philosophical and political rivalries between these great minds [Pen-Chung Chang, Charles Malik, and René Cassin], each human rights commissioner understood what was at stake, and all responded to their historical call by transcending personal and philosophical differences. Ideological gaps within the wider human rights commission, and more particularly the chilly relations between the East and the West, however, often tarnished the optimism of the commission members (Ishay 2008, p. 220).

While there was a "brief time" of relative unity between the USA and USSR, "soon ideological differences surfaced, shaping the UN structure, the content of human rights documents, and the actions (and inactions) of the organization" (Ishay 2008, p. 226). Glendon makes clear that members of the Human Rights Commission were aware of the necessity of completing their work "before the deepening Cold War made its acceptance by the General Assembly impossible" (Glendon 1999, p. 1). Thus, they left the "foundations" of human rights—particularly the notion of inherent dignity—aside, and Eleanor Roosevelt guided the group toward more specific problems (Glendon 1999, pp. 1–2). Finally, Glendon emphasizes that "It is unlikely that any

other political document in history has ever drawn from such diverse sources, or received the same worldwide, sustained considerations and scrutiny as the Declaration underwent over its two years of preparation" (Glendon 1999, p. 5). On her analysis, "there was remarkably little disagreement regarding its basic substance…The biggest battles were political…" (Glendon 1999, p. 5).

The Historical-Social Process and Reflective Equilibrium

The Historical-Social Process of Moral Discovery is a compelling way to understand not only the normative aspects of human societies, but empirical ones as well. If individuals, in the process of engaging in a variety of social institutions, practices, and discourses, come to discover the universality of certain moral rules, thereby providing the underpinnings for universal human rights norms, then the UDHR can be usefully understood as a milestone in this process. Some of those involved with its creation in fact saw the UDHR as "an important milestone on a long and difficult journey" which "would lead to deeper understanding in the future" (Glendon 2002, p. 231). Furthermore, if this process can account for tensions between competing values, then the notion of universal human rights norms existing in a stable fashion becomes a real possibility.

Indeed, the settling of such tensions during intuitive yet rational deliberations reflects one conception of reflective equilibrium put forward by Rawls, one "in which our moral capacities are most likely to be displayed without distortion" (Rawls 1971, p. 46). The intuitive mode of reasoning that members of the Human Rights Commission engaged in can be usefully conceived of as an attempt to explicate or make clear the principles guiding their considered convictions on matters of justice. It is important, in utilizing HSP, to understand that individuals are socialized according to their native moral communities and, as such, their *conscious* moral judgments reflect this. However, the idea of settling tensions between individuals of divergent socialization, with UMG, indicates that this cross-cultural deliberation has moved to closer to the "core" of their moral nature, allowing for convergence. To be clear, *reflective* equilibrium refers to a state of affairs, not a method of analysis; its relation to UMG is not a necessary connection. However, such a connection is vital to understand the emergence of the UDHR.

Talbott argues that universal human rights are discovered by human beings developing and exercising their moral judgments in a bottom-up process stretching over the course of thousands of years (Talbott 2005, pp. 3–6). In response to moral skepticism, he promotes the equilibrium model of moral reasoning: "On the equilibrium model, the goal is to have one's beliefs make the most sense, all things considered. On this standard, moral skepticism is not the default position. It must be justified as making more sense than any of the alternatives" (Talbott 2005, p. 30).

Talbott offers a summary of how the equilibrium model factors into the HSP:

> As I see it, we are part of an ongoing historical-social process of moral discovery of universal moral principles. The process involves equilibrium reasoning that is largely bottom-up, because it typically moves from judgments about particular actual and hypothetical cases to attempts to formulate moral principles that

> explain them. Furthermore, the process is often bottom-up in a social sense, because moral progress is often the result of social movements from below whose response to particular practices (e.g., slavery) leads them to challenge the judgments of the reigning moral authorities. It is not necessary to discover exceptionless, universal moral truths to make progress in this process of moral discovery. The discovery that a moral principle has previously unknown exceptions is itself progress (Talbott 2005, p. 34).

Individuals ordinarily engage in social interaction aimed at supporting or opposing moral judgments/norms, and progress in this domain is made by this bottom-up reasoning hitting upon certain moral principles.

Talbott asks, "If respect for human rights can emerge from one of the more despotic and intolerant cultural traditions…are there some characteristics of human beings in virtue of which any cultural tradition should respect human rights?" (Talbott 2005, p. 41). As noted above, Mikhail has drawn initial connections between UMG and the UDHR. As such, the empirical dimension of Talbott's search for a human-specific characteristic can be taken up in Mikhail's line of thought and linked to equilibrium reasoning. To support UMG's characterization of the document, Mikhail says,

> To the surprise of many observers, these diverse thinkers were able to reach agreement on a highly specific list of fundamental human rights. Maritain writes that at one of the UNESCO meetings, "someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of those rights. 'Yes,' they said, 'we agree about the rights *but on condition that no one asks us why*.' That 'why' is where the argument begins" (Mikhail 2012, p. 172).

He further argues that UMG's distinction between operative (unconscious) and express (conscious) principles resolves the problem of locating the "locus of moral certitude" in debates over

> the practical judgment of whether a given action, practice, or institutional arrangement is impermissible or unjust, rather than in the abstract or theoretical question of why this is so. The latter, more abstract question often admits of widespread disagreement, but the former practical question does so much less frequently (Mikhail 2012, p. 172).

While individuals engaged in debates over the drafting of the document had disagreements, it is important, under UMG, to distinguish *kinds* of disagreement.

No single individual expressed the rights enshrined in the UDHR and found their remarks sufficiently acceptable to others as to warrant its adoption. As such, the document is a *social creation*, one marking a major development in a historical lineage of moral exploration, the contours of which are prominently defined by UMG. The UDHR was made *possible* by a core and fixed aspect of human nature, one that is discovered throughout thousands of years of moral development and represents an attempt to make sense of considered moral judgments from members of a culturally diverse background. This, I argue, is usefully conceived as an *attempt* to attain the state of reflective equilibrium.

The use of reflective equilibrium in explaining a social creation may seem odd given its normative role in moral philosophy. However, Rawls (1971, pp. 46–53) provided a particular interpretation of it in his analogy of generative linguistics to moral psychology. Mikhail explains that "the word "reflective" appears to play the same role in Rawls' definition of reflective equilibrium as the word "generative" plays in Chomsky's notion of a generative grammar" (Mikhail 2011, p. 204). The state of *reflective* equilibrium for Rawls is one in which we have explicated those principles operative in our 'considered judgments' (Mikhail 2011, pp. 204–205). Furthermore,

> Rawls holds that any proposed description of the initial situation is merely provisional and open to modification as a result of further investigation, hence not necessarily stable. This emphasis on the provisional nature of the original position is important: it implies that it is always an open question whether the initial situation has been accurately characterized, and thus whether our convictions of social justice are justified (Mikhail 2011, p. 205).

The UDHR is not a perfect document, which was recognized by its framers in their conceptions of both human beings and human rights (Glendon 2002, p. 231). It is subject to future revision, though its current form is significant.

Does moral diversity preclude the possibility of an innate basis for universal human rights norms? This is a point at which moral cognition must be invoked to make sense of observed phenomena. Mikhail explains,

> Although moral diversity appears to be a real phenomenon, even the most superficial comparison of language and morality thus suggests that the development of moral competence is *more* constrained than the development of linguistic competence.
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> [I]t is not clear why it should be troubling, in a cognitive domain where much less is known, but where superficial observation implies an even greater convergence, to begin investigation from the simplifying assumption, or null hypothesis, that human beings share a common moral nature (Mikhail 2011, p. 57).

In the domain of rights, such phenomena reflect inborn mechanics that are, superficially, significantly constrained. As such, a rigorous analysis may begin from the perspective that rights *signal* a constraining system of the mind.

UMG allows for a *constrained* range of moral systems, but it does not *determine* the moral system that a particular social group or society will come to hold. Indeed, individuals across cultures may place different levels of importance on even commonly held moral intuitions and, furthermore, organize their intuitions in a manner that differs between groups. This form of moral diversity is consistent with an innate and universal moral faculty. Why, then, does UMG aid us in understanding the UDHR as a result of equilibrium reasoning?[5] Put another way, how could UMG get individuals from

[5] This useful objection was raised by an anonymous reviewer.

constrained diversity (closer) to their moral "core"? There are four, interlinked, responses to this.

First, UMG *alone* does not bridge the gap between moral diversity and moral convergence. Equilibrium reasoning as embodied in the HSP is crucial to this process as it is this social back-and-forth that allows diverse individuals to reach an agreement of conceptual significance. Furthermore, the role of history in this argument is not to be overlooked; the historical dimensions relevant to morality in the creation of the UDHR are conceived of *through* the overarching model provided by UMG and reflective equilibrium. That is, the history of a particular social creation is *interpreted*.

Second, to suggest that the drafters of the UDHR reached an agreement of conceptual significance is to maintain a substantial degree of abstraction in its study. The moral faculty, as we will see, is an idealization; a generalized framework used to explain an observable phenomenon—intuitive moral judgments. To speak of a conceptual core, then, is not to deny variation nor to indicate that, if only diverse individuals engage one another's moral beliefs, then they will access a human moral center of some concrete kind. It is, simply, an abstracted means of understanding human morality, in all its diversity, subject to intentional, rigorous, and sincere discourse.

Third, the constrained nature of UMG and its influence in the production of the UHDR is best understood in its relation to equilibrium reasoning. The moral faculty is not the only human mental capacity. However, UMG most relevantly shapes the contours of moral exploration, disallowing certain paths from being arrived at intuitively. Thus, in the HSP, the "logic" of the grammar will lead individuals from differing backgrounds to equivalent intuitions on matters of moral rights and wrongs, which serve as the underpinning of universal human rights norms. As such, universal human rights norms are *social constructs* which are not inevitable, but preferentially encapsulate the internal logic of individuals' moral nature. The UDHR is best conceptualized, then, as an attempt to reach reflective equilibrium not merely because individuals agreed, but because of the *sociohistorical conditions* under which they did so.

Finally, while the preceding points are important to understand the relationship between UMG and the UDHR, they highlight a misplaced tension between moral diversity and moral uniformity. The tone of responses may take on an air of defensiveness *against* variation.[6] However, Rawls's reflective equilibrium is significant in its acknowledgement that moral intuitions have premises from which they are derived; principles with which the mind constructs intuitions. While moral diversity exists in the form of differently combined and weighted intuitions that form the bases of distinct moral systems, these differences are the *options afforded by UMG*. Moral diversity is derived from a singular mental source and to reach reflective equilibrium is to be temporarily clear on which principles constitute this source. The conceptual core that I have been referring to is most clear when this tension is dissolved, allowing moral convergence on a single point to be possible alongside a world of (limited) moral diversity.

Hoover has noted that "[t]he key point is that that no historical study of the UDHR is innocent; what we find, and how we understand what we find, depends on what we think human rights are to begin with" (Hoover 2013, p. 237). Hoover "adopt[s] an agonistic understanding" of human rights as a means of "*exemplifying* the ambiguous

[6] See Chomsky (2015) for brief remarks on this supposed tension within linguistics.

and contested nature of human dignity within the supposed consensus found in the UDHR" (Hoover 2013, p. 222). This may be a fruitful approach within the social sciences in understanding the nature of human rights, but from the perspective of UMG the reader of this history cannot grasp the nature of human rights without *first* grasping the nature of moral judgment! Once this psychological story has begun to be told, the drafters of the document will appear as much as individual organisms with a specific moral constitution as historical figures.

The nature of moral judgments under UMG indicates that moral intuitions in support of the UDHR are not *responses* to the state of the world following the horrors of World War II. These horrors merely *elicited* judgments from individual observers and did not provide the intuitive moral information which would then find itself formalized in the final document. This does *not* mean that individuals were reacting only to the events of World War II, as individuals within the HSP can be aware of humanity's prior struggles with moral evils. It does indicate, however, that individuals within this ongoing sociohistorical process, particularly the first half of the twentieth century, found themselves within conditions conducive to the relevant intuitions to be generated by the mind and put forward in cross-cultural debate.

UMG's observations of the fundamental properties of moral judgment are *so basic* that it is not surprising they are largely unknown in the study of the UDHR. For example, Reinbold argues "that the Declaration's unique configuration of characteristics—its particular tenets, paradoxes, and historico-political repercussions—might be very productively understood within the framework of "political myth" (Reinbold 2011, p. 148), leading her to place undue emphasis on how "the notion of human dignity is afforded a quite unambiguous veneration by certain of the Declaration's framers" as a means of stabilizing the modern world (Reinbold 2011, p. 162). Her emphasis is undue because an investigation with UMG indicates instead that the notion of human dignity was elicited—drawn out—*by* the sociohistorical context in which it was being promoted, not derived *from* it.

The UDHR as a Means of Attaining Reflective Equilibrium

We can extract three primary conditions that qualify as an *attempt* to reach reflective equilibrium on problems of international concern. First, serious, culturally diverse, and extended engagement with individuals who hold competing conceptions of justice. Second, moral reasoning anchored in the intuitive moral judgments of those involved (i.e., equilibrium reasoning). Crucial to note here is that not *all* the judgments made during such engagement must be the result of a moral intuition—chains of moral reasoning must have *roots* in the baseline moral perceptions of the individuals present, as these perceptions shape how each "sees" domestic justice. Third, an emphasis on rationality in structuring the resultant agreement, as Rawls understood it. That is, "in the sense that free and equal persons would choose to adopt [the principles] to govern their relations with one another, if they were given that choice" (Mikhail 2011, p. 32).

How do we know that debates associated with the production of the document involved these three conditions? There are four primary reasons that support these claims:

(1) The synthesis of cross-cultural rights traditions as well as their associated legal customs, which was used as a means of producing a document with specific universal rights, reflects the considered moral convictions of diverse groups. Social scientific conceptions of universal human rights are particularly vulnerable to follow chains of reasoning pertaining to the geography of rights. For example, the claim that Cerar makes, following a "multidimensional" analysis of rights across time and cultures, that "[t]he doctrine of human rights is a product of specific Western philosophy to which a counterpart in other, non-Occidental cultures is hard to find" and that "[v]arious traditional and religious communities or societies express their 'legal' concepts and values in a much more integrative manner than societies that have the established institutions of a modern legal system" (Cerar 2000, p. 66). It is not that this kind of analysis is without merit, as the multidimensionality of rights is certainly relevant to the study of the human rights regime. Rather, the problem resides in the lack of success of social scientists more generally in probing not just beneath the surface of geographical variation or power imbalances in the drafting of the UDHR, and not just beneath the cultural practices associated with rights and duties, but down to the foundational mechanism that makes this all possible. As such, a synthesis of the *considered moral convictions* of individuals as enshrined in the cultural and legal customs of diverse societies is of prime significance in making sense of conflicting intuitions on matters of justice—steps taken on the road to reflective equilibrium, though not enough to get to that temporary state of affairs.

(2) Consider Hoover's observation that "Reading histories of the UDHR, and transcripts of the drafting process, one is struck by how long the drafters spent suggesting, debating, and revising individual articles" (Hoover 2013, p. 227). Relatedly, Pen-Chung Chang, Charles Malik, and René Cassin in particular "responded to their historical call by transcending personal and philosophical differences" (Ishay 2008, p. 220). This could not have been possible had they lacked a common grammar. If, as we will see some claim, culture revised our moral competence during development or if emotion constituted certain judgments, these members could not have merely "put aside" their personal and philosophical differences, as this would indicate that they put aside their moral competence! This supplements (1) in that it is evidence of the use intuitive moral judgments in the drafters' deliberations, but offers further evidence in support of the use of *rationality* by way of key figures consciously "putting aside" their "personal and philosophical differences," while retaining a sense of duty or obligation.

(3) Consider how "participants in the drafting process acknowledged that declaring and institutionalizing human rights was a necessary part of the postwar reconstruction…Where there was disagreement was over what the practical implications of this shift in focus to individuals would be…" (Hoover 2013, p. 232). Furthermore, the drafters did not intend for the document to "produce completely uniform practices" in implementation of the standard therein (Glendon 2002, p. 230). The effort to institutionalize human rights in a world of diverse social structures and regional particularities is a recognition of the social conditions in which the drafters developed the UDHR. There was, then, an element of *rationality* in the sense that they deliberated not only on which human rights ought to be held as the international standard of civilization but on how these rights can be institutionalized in the social world (see, Rawls 1971, pp. 126–129).

(4) The level of *contestation* of rights present, particularly at the San Francisco Conference, including rights-based claims made by powerful and weak alike, as well as the "unlikely" possibility "that human rights would emerge as an institutional and political force sufficient to challenge the five permanent members of the Security Council" (Hoover 2013, p. 225). From the perspective of UMG, moral disagreements driven by sociopolitical experiences and affiliations are just the surface of a cognitive psychological investigation. The existence of ethical diversity is a target of *explanation* for UMG (Mikhail 2012, p. 170), and, as such, agreements reached on contested issues of domestic justice and international concern for this normative standard is of striking significance. It indicates not only that participants "see" certain standards as being appropriate for the new international order to respect within state borders but also that *agreement* on certain basic notions is indicative of biologically compatible individuals converging on the particular way of "seeing" domestic justice as embodied in the UDHR. Simply put, the primary focus under UMG is not the ideological plurality or moral disagreements that abounded in the venues surrounding the construction of the UN and drafting of the UDHR; the primary focus is on what makes these disagreements *possible*, and what agreements conceptually *signify*, bringing us far beneath established social scientific conceptions of the UDHR. As such, the contestation of rights, while prone to a certain relativistic interpretation, *supports* the Rawlsian conception of the UDHR—disagreements yielding an eventual agreement are necessary for the clearing of distortions that make the human moral capacity transparent. Regarding the UDHR, substantial *attempts* were made to clear such distortions. A problem in positing an innate basis for the rights of the UDHR would arise if there was *no contestation* or disagreement.

UMG as the Best Explanation for Observable Phenomena

To say that UMG is analogous to Universal Grammar is to say that the basic properties of moral judgment and linguistic judgment are *sufficiently* similar as to draw parallel theoretical frameworks used to specify the conditions under which subsequent empirical inquiry is to be pursued. The argument is not that language and morality have negligible *social* roles, but that the "mentalistic" perspective—in which a cognitive capacity, such as language, is conceptualized as "a subcomponent of a more complex system with enough internal integrity to be studied independently…" (Chomsky 2013, p. 35)—is the *most useful* framework of analysis.

Why would UMG qualify as the most useful conceptual framework with which to understand the human moral capacity? Mikhail observes that the broader project of characterizing moral competence is through "abduction or inference to the best explanation" (Mikhail 2014, p. 755; see also, Harman 1965). This means that UMG is the best explanation available for certain basic properties of moral judgment. Studying morality from the mentalistic perspective, while seemingly detached from social creations such as the UDHR, is analogous to the study of language and other mental capacities in that it holds a "logical priority" (Chomsky 2012, p. 3) over studies of its *social* manifestations. As such, the conclusions reached by scholars of the UDHR over its nature must have a grounding in the study of the relevant capacities underlying its creation.

Poverty of the Moral Stimulus

UMG seeks to explain how it is that individuals with impoverished experiences can make intuitive judgments regarding the "deontic status" of eliciting situations (Mikhail 2007, p. 145). As Hauser et al. note, "Thus, from an impoverished environment, the child generates a rich output of grammatical structures in the case of language and judgments about permissible actions in the case of morality" (Hauser et al. 2008, pp. 122–123). In projecting information onto stimuli not present in the stimuli themselves, there is reason to invoke the poverty of the moral stimulus (POMS) argument. There are various forms of information projected in, say, testable trolley problems, including the presupposed intentions of actors, the status of the harm caused by actors, the structure of the circumstances of the actions, etc., none of which are explicitly presented in the scenarios themselves (Dwyer 2009, p. 278). Considering this, Dwyer notes that,

> What is needed is an account of moral judgment that: (a) does not entail what is patently false, namely, that such judgments are the conclusions of explicitly represented syllogisms, one or more premises of which are moral principles, that ordinary folk can articulate, and (b) accommodates subjects' apparent grasp of the structure of the scenes they evaluate (Dwyer 2009, pp. 278–279).

Individuals in every human society can understand abstracted needs in a *moral context* as part of a stable sense of justice. How this could occur without a uniquely moral capacity is unclear. As Dwyer observes,

> Moral evaluations, like permissibility judgments and attributions of responsibility, simply cannot get started if we do not already "see" the world in terms of agents, patients, and consequences. And since every (normal) human makes moral evaluations, it is not implausible to claim that every human as the innately specified capacity to "see" actions. Indeed, considerable evidence has accumulated that shows that very, very young humans detect agency in the world (Dwyer 2006, p. 248).

What principles do we find when testing participants' "apparent grasp of the structure of the scenes they evaluate" typical of familiar thought experiments? In experimental analyses, Levine, Leslie, and Mikhail used "act trees" "to provide a direct test of the richness of these mental representations or their role in moral cognition" (Levine et al. 2018, p. 1230). Testing subjects' answers to a moral dilemma with which the principle of double effect (PDE) is famously associated (in which a large man gets stuck within the exit to a cave while the water rises, forcing the other cavers to decide whether or not they should blow the man to bits with dynamite to escape in time), they found that

> Not only are subjects willing to say that the caver did not intend the death of the man, they are also unwilling to say that the caver intended to blow the man to bits (62.5% deny both). Instead, they prefer to say that he acted only to clear the exit to the cave. This finding may call for a re-analysis of the sort of event descriptions

> that are widely assumed to be intended in cases of harm as a means (Levine et al. 2018, p. 1253).

One point of significance of this and other findings is that they

> pose a challenge to those researchers who either ignore the problem of how moral intuitions arise from eliciting situations or who uncritically assume that the mental representations of human action underlying moral judgment are exceedingly simple and can be adequately described in terms of heuristics and biases (Levine et al. 2018, p. 1259).

Not only did this analysis demonstrate that the PDE is operative in moral judgment but subjects also *assigned good intentions* to the cavers seeking to escape (Levine et al. 2018, p. 1253). Note that participants were not *told* the cavers sought to act morally; they *inferred* it from the stimulus which did not contain this information.

Jesse Prinz has criticized the POMS argument by suggesting that the gulf between a child's acquired moral rules and their environment is narrower than its proponents suggest. Focusing on the moral-conventional distinction, he observes that

> Even if parents do not explicitly teach children the difference between moral and conventional rules, there are striking implicit differences in how such rules are transmitted. Parents treat moral norm violations as more serious and they enforce them more harshly.
>
> …
>
> Moral rule violations also tend to be more emotionally charged because they often involve a victim. If little Sally bites Billy, Billy will cry, and Billy's parents will become very upset. When children judge that moral rules are not dependent on authority, it may be because they have internalized these rules emotionally. (Prinz 2007, p. 268)

"In sum, children are exposed to sufficient corrective feedback to differentiate between moral and conventional rules" (Prinz 2007, p. 268; see also, Kirchmair 2017, pp. 240–241).

Prinz's argument against POMS barley scratches the surface of what is going in the minds of children when presented with a scenario and providing a moral judgment. Although Prinz may be entirely correct that parents treat moral norm violations more seriously than conventional ones and that moral rule violations often involve more emotional content, it is not clear how this bridges the information gap between the child and their environment, *as we do not know what scenarios children are responding to* (from a mental perspective). How an individual's mind *represents* moral scenarios is critical to understanding the informational quality of their social environments. For example, what is the moral knowledge that becomes internalized once, on Prinz's model, little Sally is faced with the negative emotional reactions of Billy and his parents? As it happens,

breaking down this simple act of biting reveals itself to be far more complex than parental punishment or emotional investment admits.[7]

Moral dilemmas, including those typical of thought experiments in philosophy and cognitive science, are often quite complex in nature. For individuals to judge these scenarios, then, requires that they possess mental representations of the events and actions within their minds. How do they go about this? Mikhail applied a legal perspective to some of these classic dilemmas, arguing that many of them "appear to rely on harmful battery scenarios without explicitly acknowledging this or considering what it might suggest for…theory construction" (Mikhail 2014, p. 754). Using a conception of harmful battery that includes elements such as *act*, *intent*, *contact* (direct or indirect), and *harmful* or *offensive* (Mikhail 2014, pp. 759–766), he finds "a widespread dependence on harmful battery intuitions" (Mikhail 2014, p. 755). Most relevant for our purposes here, reviewing classic experiments by Turiel, in which children three to four years old are found to distinguish between "moral" and "conventional" wrongs, Mikhail observes that the morally salient acts judged by children to be wrong (including biting) involve harmful batteries, while the conventional scenarios do not. As such, the moral-conventional distinction *overcomplicates* the study of children's moral development while a simpler appeal can be made "by postulating an acute sensitivity to purposeful harmful battery as a property of the human mind" (Mikhail 2014, p. 780).

The issue that arises from this sort of study is how children intuitively judge situations in a way that is consistent with developed legal conceptions of harmful battery (at least in certain respects). While moral judgments, under UMG, are generated by a faculty that interfaces with other systems of the mind, one must ask how children have acquired characteristically legal knowledge by a young age. At this point, by scrutinizing just *one* aspect of moral judgment, we can be confident in the claim that children are not able to learn the moral knowledge they exhibit when asked to judge morally charged scenarios through parental instruction or the social environment. The knowledge is better explained by appealing inwards; the knowledge *originates* within the child's biological construct. It is not clear, then, how Prinz can account for the complexity of even basic moral judgments exhibited by children.

Critics of the POMS argument sometimes confuse the argument for UMG with an argument against moral diversity. For example, in arguing against Dwyer's claim that moral rules are restricted by the moral faculty, Prinz points out examples of cruelty including the Romans' love of blood sports and the Aztec practice of cannibalism as evidence of the *open-endedness* of morality acquisition (Prinz 2008, p. 429). But this misses a larger point. Notice how Prinz is making a claim regarding the mental structure of morality by using examples of morality's social manifestations. Dwyer says, "But no matter how we try to do it, *extensionally* characterized 'moralities' cannot be the targets of any serious science that *explains* how moral capacities are possible at all. At best, such phenomena are evidence that that possibility is actual" (Dwyer 2009, p. 283). To suggest, then, that UMG is ill-founded in its restricted conceptualization of morality because moral diversity exists is to *miss the point* of the UMG research

[7] Prinz accepts that "moral rules contain representations of actions, and these representations may take the form of prototypes of exemplars (e.g., a typical murder)" (Prinz 2008, p. 168). However, it is not clear that Prinz understands the depth of complexity even of a "prototype" of a "typical murder."

program. A moral grammar is a theoretical construction designed to explain the nature of moral *judgment*, not explain *away* diversity within or across cultures. The only lesson we can learn about the mental structure of morality by contrasting specific moral systems as our baseline descriptive account is that moral diversity is *possible*; the question, however, is *how* it is possible.

Prinz's objection allows us to address a related issue. Why is it necessary to posit a biological basis for morality when moral convergence, particularly on intuitions uncovered in experimental settings, could be explained by appealing to common methods of cultural learning?[8] Similarly, could common human needs (e.g., the need to not be murdered in order to secure one's interests), encountered repeatedly within societies, lead individuals to converge on particular intuitions?

Attempts to explain moral convergence with the use of common cultural or social techniques falls prey to the same sort of conceptual trap as Prinz's objection, namely that it does not take seriously the *ability* to produce moral intuitions. An observable phenomenon in human societies is that individuals readily make judgments as to the permissible, impermissible, or obligatory nature of actions or arrangements on an unbounded scope (on this last point, see below). The ability of individuals to do this is an object of scientific study. Arguing that common cultural learning methods or social needs allow individuals to come to certain intuitions—as opposed to through biology—reflects an inquiry that has started at the wrong point, preventing an understanding of the phenomenon in question. Notice how these accounts, while not explicitly saying so, come dangerously close to denying that human beings (in contrast with other creatures) even possess a distinct ability to morally evaluate. *How* do individuals produce moral intuitions at all? That is the key question in understanding both diversity and convergence, which is why the UMG research program begins from moral judgment's basic properties.

The Creative Aspect of Moral Judgment

The application of moral judgments appears to be analogous to the creative aspect of language use (CALU). CALU refers to the distinctly human "ability to produce and understand an infinite number of novel sentences—sentences that are new in the linguistic experience of the speaker/hearer and perhaps also new in the history of their language" (Asoulin 2013, p. 229). Explication of this concept is central to the explication of UMG.

Chomsky notes that "The 'normal creative fashion' of language use involves unboundedness, novelty, freedom from stimulus control, coherence and appropriateness to situations" (Chomsky 1982, p. 424). Asoulin, writing on the "stimulus freedom" of language use, says,

> One can speak of elephants when there is nothing in the speaker's environment that could conceivably be called a stimulus that caused the utterances. Or one could speak of Federico Lorca's *Poet In New York* when the only conceivable stimulus in the speaker's environment is elephants and the African landscape. Under no notion of causality can such utterances be said to have been caused by

[8] This objection was raised by an anonymous reviewer.

> anything in the speaker's environment. If one does attempt to offer a casual explanation it will not be causality as scientifically construed, but rather the interpretation of a speech event as part of a pattern that can only be identified a posteriori (Asoulin 2013, p. 230).

The central issue that emerges from these observations of linguistic creativity is how such use of language is possible; how does the mind produce and receive linguistic utterances in a way that is *outside* the bounds of causality? Generative linguists like Chomsky have ultimately appealed to some version of language faculty's constituent principles as "the mechanisms that…make [CALU] possible" (Chomsky 1982, p. 426). As we are concerned with moral judgment, we must ask: does ordinary moral judgment possess this same unboundedness, stimulus freedom, and coherence?

Chomsky says, drawing from Hume,

> Since [moral judgments], he observed, are unbounded in scope and applicable to new situations, they must be based on a finite array of general principles (which are, furthermore, part of our nature though they are beyond the "original instincts" shared with animals).
>
> …
>
> [I]t is knowledge *of*—knowledge of rules and principles that yield unbounded capacities to act appropriately (Chomsky 2009, p. 182).

The intuitive responses *themselves* in a contextual situation must be specific to the situation, on an infinite basis.

An individual may intuitively judge a specific act in a specific set of circumstances in a way that is not causally related to the circumstances themselves. Indeed, an ordinary individual's sense of justice regarding an institutional arrangement or mode of social organization must be a remarkably complicated "skill" that is not diminished by their occasional confoundment (Rawls 1971, p. 46). In a sense, the creative aspect of moral judgment (CAMJ) underlies the notion of the human "sense of justice" as an attribute made possible by the free exercise of moral judgment both *across* specific contexts and within *new* situations. Mikhail explains:

> An individual who possesses an adequately developed sense of justice is prepared to make a potentially unlimited number and variety of intuitive moral judgments about the moral properties of various acts, agents, and institutional arrangements, including judgments in entirely new situations, which are dissimilar from the finite number of situations she has previously encountered. Since the storage capacity of the brain is finite, it follows that each of these judgments (or more exactly, each of the mental representations of those situations which these judgments are about) cannot be stored in her mind individually. Instead, her brain must contain, with respect to moral judgment, something more complex: some kind of cognitive system, perhaps characterizable in terms of principles or rules, that can construct or generate

> the unlimited number and variety of representations her exercise of moral judgment presupposes (Mikhail 2011, p. 46).

UMG calls attention to the *bare bones* properties of moral judgments and draws out the theoretical implications that best explain them.

Talk of moral creativity allows us to pinpoint a deeper issue at stake in the generation of novel moral judgments: how the moral faculty interacts with other mental systems. If, for example, fMRI studies show that moral judgments recruit overlapping areas of the brain, can morality be said to be based in a unified faculty? Parkinson et al. queried participants' moral intuitions in a multidimensional way using scenarios characterized by disgust, harm, dishonesty, and neutrality (morally irrelevant) (Parkinson et al. 2011, p. 3163). Following fMRI analyses of these participants, they concluded that

> the present results suggest that the overlapping activation in [dorsal medial pFC] reflects aspects of processing moral transgressions that are not peculiar to the decision of moral wrongness. This suggests that this region is not the seat of a unified moral faculty in the strongest sense—that is, a faculty that is dedicated to judgments of moral transgressions in particular (Parkinson et al. 2011, p. 3170).

Why does overlapping activation in the brain indicate disunity? Consider an example in the literature on UG. According to Tomasello, "there is no such thing as universal grammar" in language acquisition; rather, "[c]hildren construct their language using general cognitive processes falling into two broad categories: (1) intention-reading… and (2) pattern-finding…" (Tomasello 2006, p. 258). Chomsky, responding to the idea that language is "a constellation of factors that have independent functions," says, "Note that if something like this turned out to be true, it would have no direct bearing on the richness of [UG] which would then have to account for the species-specific ways in which these capacities form a "constellation" in humans, dissociated from their other functions" (Chomsky 2013, p. 34). Put simply, for the mind to generate a novel linguistic utterance requires that it channel the relevant information through a language-specific faculty—UG.

How does this bear on morality? For Parkinson et al. to deny the existence of a unified/dedicated moral faculty based on overlapping activation in the DMPFC is to not take the phenomenon in question—moral cognition—seriously. Individuals readily make novel moral judgments, and while these judgments may have dimensions of disgust, harm, and dishonesty with overlapping activation in the brain, this provides no basis for denying the existence of a morality-specific faculty—UMG. Because the authors have not taken moral cognition seriously, they have confused the meaning of "unified moral faculty" to refer to a singular, perhaps unimplicated, region in the brain, rather than the species-specific endowment that allows moral judgments to be made in the first place.

Where, then, is the moral faculty located in the brain? The question is a potentially misleading one, as a "faculty" of the mind might give rise to the idea of dedicated neural circuitry. Johnson has argued against Hauser's conception of UMG, particularly his "very partial list of systems and capacities necessary for moral judgment" (e.g., event structure, theory of mind, etc.), by observing that this "list of capacities that are

requisite for moral judgment cannot be usefully localized to any unique, or even distinct, set of functional neural assemblies or regions of the brain" and are essentially reiterations of the makeup of human beings, not indicative of a distinct moral faculty (Johnson 2012, p. 417). Johnson sidesteps the issue of how, to borrow Tomasello's quoted language above, the systems of the mind responsible for moral intuitions form a "constellation," absent the moral faculty. How do these systems come together to direct the production of a uniquely evaluative function if not by channeling the relevant information through a dedicated faculty?[9] Dedicated neural circuitry or not, *something* in the mind must be responsible for this. Johnson might respond by arguing that "distinctively "moral" situations," as we typically define them, "overlook most of what goes into our moral thinking," insisting instead that "we should" accept the "Deweyan perspective" that "morality [is] a form of complex problem solving" (Johnson 2012, p. 426). Not only does this perspective simply ignore the problem of how these intuitions—moral, problem-solving, or whatever—arise in the mind infinitely and unboundedly, but it simply is not in line with empirical data about moral agency detection in very young children (Kirkby 2014, p. 478).

Do Biologically Based Moral Judgments Require a Grammar?

It is worth paying attention to a critical appraisal that does not deny morality's *biological* basis. Dupoux and Jacob argue that moral judgments fail to meet the criteria characteristic of a generative grammar (Dupoux and Jacob 2007, p. 376). In particular, moral judgment is unlike linguistic judgment in that it is not reversible—while the linguistic utterance of a speaker is judged by a listener, prior to this judgment the listener rebuilds in her mind the utterance and processes it—understands it—according to mental computations governed by a rule system, the purpose of moral judgment is to *evaluate* complex acts, not *generate* their structural descriptions in response to representations of such scenarios (Dupoux and Jacob 2007, p. 376). Furthermore,

> The psychological processes implementing this hypothetical mapping are unlikely to satisfy a strict informational encapsulation requirement; any background information about an action (e.g. knowledge of what a poison is, the past actions of the agent and the victim, etc.) might affect moral evaluation (Dupoux and Jacob 2007, p. 376).

There are two problems with the above. First, while language and morality serve separate functions, Dupoux and Jacob appear to have redefined the term *generative* in a way that undermines the most basic analogs between them. Under UMG, to say that moral judgment is generative is to say such judgments are produced by the mind in accordance with certain innate rules or principles—there are premises from which they are derived. While the judgments generated by the mind serve a unique evaluative function, this fact seems to have no bearing on how they come to fruition in the mind of the judger. Furthermore,

[9] "These systems are not responsible for generating representations of actions, intentions, causes, and outcomes; rather, they are responsible for combining these representations in a productive fashion, ultimately generating a moral judgment" (Hauser et al. 2008, p. 173).

> Absolutely central here is the capacity for *judgment*. Human beings do not merely believe that certain actions are permissible or obligatory and others not. They *judge* them to be so—either when actually confronted with them or when considering them hypothetically (Dwyer 2008, p. 111).

The intuitive evaluations made by individuals are not simply communicated beliefs, but *judgments*, a distinct phenomenon requiring a distinct conceptual framework. Dupoux and Jacob simply do not take sufficiently into account the basic nature of judgments, thus allowing for a redefined understanding of *generative*.

Second, in response to Dupoux and Jacob's claim that moral judgment does not satisfy the criteria of a generative grammar, Dwyer and Hauser reject their use of a Fodorian conception of modularity to characterize UMG, as the research program thus far makes no claim that this conception accurately describes the moral capacity. While Dupoux and Jacob believe moral judgment is not modular because it is prone to background information and thus not informationally encapsulated (Dupoux and Jacob 2007, p. 376), Dwyer and Hauser note, utilizing the linguistic analogy, that "It is the abstract structure of these statements, as opposed to their content, that carries the signature of the language faculty; similarly, moral judgments might also carry the signature of the moral faculty" (Dwyer and Hauser 2008, p. 1).

Comments on Universality

Can UMG be operationalized in a universal fashion? I provide three reasons to hold that human moral competence is indeed generalizable.

First, the idea of a moral faculty is an *idealization* (Collins 2004, p. 508). In this sense, to speak of "the" moral faculty is to use the same sort of abstraction in which we speak of "the" circulatory system or "the" immune system; nobody would deny that variation exists between individuals' circulatory systems, but it is implicitly understood that everyone has such a system within their biology that is usefully conceived of in this general way.

Second, consider the matter of *mutual intelligibility.* Any individual can learn any natural language in the course of their development. Once attained, there is a mutual incomprehensibility between themselves and those who speak a different language. However, the individual can learn a second language and acquire a certain degree of mutual intelligibility where there previously existed none. The lesson here is that every individual possesses *compatible* biological hardware; were they not compatible, they could not only fail to acquire a second language, but they would be more restricted in their natural development.

A similar case presumably holds for moral development in that any individual can acquire any morality and can come to consciously hold different values. One of the disanalogies between language and morality, however, is that there remains a mutual intelligibility between moralities even after they have been acquired (Dupoux and Jacob 2007, p. 377). For example, a conservative in the Southern USA can *comprehend* the moral judgments of a French Socialist. With this in mind, we can use the UDHR itself as evidence of the compatibility of human moral competences as such a diverse convergence provides empirical support for the mutual intelligibility of diverse moral minds. The implication, on the

framework provided above, of this mutual intelligibility is a common hardware for morality.

Finally, there is empirical evidence that certain morally imbued legal practices are indeed universal. While the UDHR contains specific rights, it is useful to narrow one's focus in the study of moral universals. In a similar vein to his study of harmful battery, Mikhail sought to uncover the prevalence of prohibitions on homicide within the legal codifications of "all of the 204 member-states of the United Nations and the Rome Statute of the International Criminal Court" (Mikhail 2009, p. 503). Some notable results of this study include the following: using a representative sample of jurisdictions (41 out of 205), 100% criminalize the killing of a human being, 93% define murder with reference to the mental state of the offender (e.g., their intentions), 93% make allowances for offenders who meet the relevant characteristics of insanity or other mental illness, and, illustrating less convergence, and 61% make allowances for killing out of necessity (i.e., to prevent a worse crime) (Mikhail 2009, pp. 504–509). While Mikhail does caution against exaggeration of these conclusions for reasons including ethnocentrism and quality of analytic criteria (Mikhail 2009, pp. 513–514), he nonetheless recognizes how these build on research discussed above in which children are found to possess knowledge of certain legal concepts, indicating that it at least *plausibly* sheds light on human moral psychology (Mikhail 2009, pp. 510–513).

Alternatives to UMG

Now that the main arguments for UMG have been illustrated and some of the more pressing critiques evaluated, we can turn our attention to alternative models in moral psychology. I respond to three (overlapping) models: Social Intuitionism (SI), Moral Foundations Theory (MFT), and the Dual-Process (DP) approach to moral cognition. Even if scholars agreed that an analysis of the UDHR requires a foundation in a theory of moral cognition, in principle, any theory possessing social elements could be employed to fill this gap. The crucial issue, then, is which theory is the most useful at capturing the nature of human morality.

Social Intuitionism

Social Intuitionism is a theory of moral judgment built on the conceptual foundation that the mind is "inescapably affective," with six distinct psychological processes giving rise to judgments (Haidt and Bjorklund 2008, p. 187). The essence of these six processes, or links in the chain of moral reasoning, is as follows: An eliciting situation triggers an intuition in the individual. Then, the individual makes a judgment based on this intuition. The individual proceeds to use reason to support the judgment. This reasoning may be used to try and persuade others of the legitimacy of the judgment, and the individual may in turn be persuaded by others to make a separate judgment based on a separate intuition (Haidt 2012, p. 55). Note the prominent role of social interaction in the production of moral judgments in SI, with moral reasoning (in most cases) only being granted a causal role when it "runs through other people" (Haidt and Bjorklund 2008, p. 193).

SI is a complex model within which the interactions of intuitions, reasoning, and social pressures are captured to understand the production of moral judgment (Haidt 2001, p. 829). It is worth emphasizing, then, the *emotional* nature of various forms of moral reasoning that occur after a judgment has been made (particularly in what Haidt and Bjorklund (2008, p. 200) call "fast intuition").

Moral Foundations Theory

Even if we accept SI, we still do not know *where* particular moral intuitions come from when elicited from scenarios. Haidt and Bjorklund observe that, even though there is "obvious cultural variability of norms and practices, there is a small set of moral intuitions that is easily found in all societies…" (Haidt and Bjorklund 2008, p. 202). With this empirical perspective in mind, Haidt and Joseph (2007) concluded that all human moral systems are ultimately derived from (at least) five "foundations," or modules innate to the human mind. These foundations constitute a partial construction of the moral mind prior to experience (Haidt and Joseph 2007, pp. 381–385).

The methodology used by Haidt and Joseph to reach this conclusion is important. They note that "we think it is important to begin the explanation of moral functioning by observing the individual and cultural facts about moral functioning…rather than dividing them into "moral" and "conventional" concepts at the outset" (Haidt and Joseph 2007, p. 372). Following this, they say that, because "[a]ll human societies generate and enforce norms…the first step in mapping the moral domain of any culture, we believe, should therefore be to list and count the norms that get the most attention" (Haidt and Joseph 2007, p. 372). Given the breadth of morality (e.g., the ethic of autonomy in educated, liberal Westerners in contrast with the ethic of community elsewhere), "innateness theorists…must explain how knowledge of or responses to this full set or moral issues…is innate" and "they must reconcile their story about innateness with the obvious variation of moral rules and practices, and of the moral domain itself, across cultures" (Haidt and Joseph 2007, p. 373).

Dual-Process Model

Two classic moral dilemmas pit individuals' intuitions against one another in a way that has stimulated much research in moral psychology. In one, the switch dilemma, a runaway trolley will kill five people on the track unless a switch is pulled, thereby diverting it to another track in which only one person will be killed. Is it morally permissible for a bystander to pull the switch, saving five and killing one? Consider the footbridge dilemma in which someone standing on a footbridge overlooking the track can stop a runaway trolley from killing five people only by pushing a nearby large person over into its path. In both cases, acting to reroute or stop the trolley will have the same outcome: five people are saved, one will die. The crucial difference between them is the *means* by which these outcomes are secured (Cushman et al. 2010, pp. 49–50).

Greene et al. argued, based on fMRI analyses of subjects presented with trolley problems, that "the crucial difference between the trolley dilemma and the footbridge dilemma lies in the latter's tendency to engage people's emotions in a way that the former does not" (Greene et al. 2001, p. 2106), thus granting emotion a driving role in

at least some moral judgments. Greene and Haidt later argued, while distinguishing between "personal" and "impersonal" moral dilemmas,

> On the one hand, moral thinking is driven largely by social-emotional dispositions built on those we inherited from our primate ancestors. At the same time, humans have a unique capacity for sophisticated abstract reasoning that can be applied to any subject matter. One might suppose, then, that human moral thinking is not one kind of process, but rather a complex interplay between (at least) two distinct types of processes: domain-specific, social-emotional responses and domain-neutral reasoning processes applied in moral contexts (Greene and Haidt 2002, p. 519).

This research has, in part, given rise to what is known as the Dual-Process model of morality in which "characteristically deontological judgments…are driven by automatic emotional responses, while characteristically utilitarian judgments…are driven by controlled cognitive processes" (Greene 2009, p. 581). Greene (2008) offers an extended statement providing evidence for this model making several claims concerning the aforementioned thesis. For example, due to its evolutionary history, *personal* violence predictably elicits negative *emotional responses* while impersonal violence triggers separate, "cognitive" aspects of the mind (e.g., cost-benefit analysis) (Greene 2008, p. 43).

Responses to Alternative Models

Consider, first, MFT as described by Haidt and Joseph. Why should the first step of Haidt and Joseph's methodology involve an observation of "individual and cultural facts about moral functioning" and the second step lie in an accounting of the breadth of moral norms? In this sense, they do not take seriously the novelty and unboundedness of moral judgment. Notice how their account *starts too far along* in their conceptualization of moral systems—rather than addressing basic properties of moral judgments, they instead focus on second-order aspects of such phenomena (e.g., ethics of autonomy and community (Haidt and Joseph 2007, p. 373). Moral diversity exists, allowing for variation in norms and customs, but it is not clear how variation can be effectively conceptualized without *first* understanding the mechanisms underlying moral judgments (Chomsky 2002, pp. 360–361). Surely, an inquiry into *how* the capacity for moral norms exists is fundamental and will shape future theoretical developments (see Dwyer 2009). Haidt and Joseph have thus gotten ahead of themselves theoretically in positing at least five modules that moral systems are based on.

This naturally leads to Social Intuitionism. Let us assume that there are indeed six distinct psychological processes involved with the generation of moral judgments. A similar problem nonetheless arises here as with MFT when we ask how it is that an eliciting situation—the morally charged event—gives rise to an intuition in an individual's mind. Mikhail explains:

> Although each of these intuitions is triggered by an identifiable stimulus, how the mind goes about interpreting these novel fact patterns, and assigning a deontic status to the acts they depict, is not revealed in any obvious way by the scenarios

> themselves. Instead, an intervening step must be postulated: a pattern of organization that is imposed on the stimulus by the mind itself. (Mikhail 2007, p. 145).

SI does not explain *how* it is that the eliciting situation leads to a moral intuition. An inquiry into how this occurs is fundamental to explaining an individual's moral psychology, thereby shaping future developments. That SI possesses this gap is thus serious in its ramifications for theory construction.

What of the Dual-Process model? Although DP models are prominent within contemporary moral psychology, this prominence should not detract from critical analyses of them. To make a more general point, DP, as illustrated by Greene and colleagues, mistakenly simplifies the nuances of intuitive moral judgments. Mikhail explains:

> Greene's distinction between "personal" and "impersonal" harms is far too crude to achieve descriptive adequacy. Ordinary legal casebooks—repositories of centuries of moral problems and the intuitions they elicit—are full of plausible counterexamples. By contrast, concepts like *battery*, *end*, *means*, and *side effect* are computational formulas that have stood the test of time. Not only are they capable of predicting human moral intuitions in a huge number and variety of actual cases, but they also can help to explain the variance one finds in unusual permutations of the trolley problem (emphasis in original). (Mikhail 2011, p. 121)

While concepts such as "personal" and "impersonal" harms hold a commonsense appeal in the study of moral judgment, the moral domain of not merely the abstract world but of the real world of law and jurisprudence are far more complex than these concepts admit.

There is a more specific point to be made regarding the role of *emotion* in moral judgment, particularly in the context of neuroimaging data given its prominence. SI holds that the back-and-forth social process of rationalizing intuitions and appealing to separate intuitions is littered with emotional content, while DP models hold that deontological moral judgments are constituted or caused by emotions. There are methodological problems to highlight with how these conclusions are reached, each relating to broader questions of theory construction.

When proponents of DP find that certain regions of the brain—as identified by fMRI studies of subjects presented with various moral problems—associated with emotional processing are active when individuals deliver moral judgments, how does this support the claim that (at least some) moral judgments are *caused* or *constituted* by emotion? I wish to suggest here that very little useful theoretical insight can be gained through such methods. Huebner (2015), for example, observes that such data are consistent with a *variety* of conclusions, only one of which is that emotion causes or constitutes moral judgments. Crucially, writing on the temporal nature of moral processing during neuroscientific experimentation, Huebner notes that the data collected could just as easily be interpreted as the mind utilizing emotion as a means of *amplification* of the importance of a situation as concluding that judgments *require* affective information (Huebner 2015, p. 431). "Nothing in the data requires accepting one hypothesis over the other" (Huebner 2015, p. 431; see also Huebner et al. 2009, p. 3).

There is a theoretical problem lurking just beneath the surface of such observations: how data from brain imaging studies are interpreted *depends on pre-existing theoretical assumptions*. Mahlmann explains:

> All this is nothing but a reminder of the theory dependence of the interpretation of empirical data: Data only have meaning within a theoretical framework. Concretely, the worth of neuroimaging studies about the neurophysiological basis of moral judgments is dependent on the merits of the theoretical framework they are developed in. If this framework is deficient, the interpretation of the data will be insufficient, too. (Mahlmann 2017, p. 121)

For Greene and colleagues to develop the DP model in the way illustrated above requires that they simply *assume* that the data is to be interpreted "in an emotivist framework" within which there is not "a careful phenomenology of morals" (Mahlmann 2009, p. 28).

Given the sharp limitations on the usefulness of neuroimaging data that arises when faced with this theoretical problem, it is important to emphasize how this highlights a strength of UMG in contrast with these alternative models. It may appear that claiming all humans possess a specialized faculty for moral judgment is far and away an unduly bolder or more fantastical claim than those central to alternative models. However, the ways in which its proponents arrive at the faculty-centered conclusion—in particular, by pinpointing the baseline properties of moral judgments and drawing out their implications—is the theoretically safer route in attempting to understand human morality. DP and SI claim too much for themselves by relying on assumptions or methods that are often critically unnoticed, thereby giving the reader the impression, with an array of neuroimaging and other experimental data, that these models are sturdier than they really are in the face of criticism.

Conclusion

While the UDHR can be fruitfully conceived of through, perhaps less controversial, notions such as the HSP and reflective equilibrium, the analytical thrust of the argument made here hinges strongly upon UMG. No statement on a theory in either moral psychology or human rights scholarship is final, but the purpose of this essay has been to provide an argument coherent, rigorous, and extensive enough to give scholars confidence in its plausibility. Indeed, a strength of this analysis is the *independence* of the argument for UMG, making its subsequent theoretical application to the UDHR independent of social scientific conceptions of its creation.

Through the foundational lens of UMG and associated equilibrium reasoning, the UDHR is plausibly understood not merely as a major sociohistorical and political event but as a significant reflection of the inner moral nature of human beings; a reflection brought about by voluntary, diverse, and serious cross-cultural interaction yet constrained by the very mechanism making this interaction possible. This study of the UDHR offers a framework of analysis that allows for the potentially fruitful endeavor of moving beyond, revising, or reinforcing familiar conceptual frameworks, utilizing a sophisticated conception of human nature. As such, the study of the UDHR and the human rights regime generally requires that theorists attend seriously to the study of the moral mind and its implications for established social scientific frameworks.

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