

“Making gay rights a component of the international human rights regime promises to give the human rights movement much-needed momentum. . . .”

Human Rights and Gay Rights

OMAR G. ENCARNACIÓN

When, many years from now, historians undertake to determine the watershed moments in the evolution of the international human rights movement, they likely will single out for attention the June 2011 United Nations Human Rights Council (UNHRC) resolution affirming that “gay rights are human rights.” A simple fact underscores the resolution’s momentousness: It has become common to think of gay rights and human rights as closely intertwined, yet the 1948 Universal Declaration of Human Rights—which asserted that human rights are inalienable rights that a person is entitled to simply because he or she is a human—made no mention of sexual identity, even as it addressed a wide range of rights, such as the right to work, housing, education, association, religion, and even leisure. So how did this commingling of human rights and gay rights come about, and what does it say about the future of both movements?

The dominant narrative about the emergence of gay rights as an internationally sanctioned norm points to the success of the human rights community in expanding the boundaries of the 1948 Declaration. Lending credibility to this view is the robust campaign waged on behalf of the UNHRC resolution by major human rights groups, such as Amnesty International and Human Rights Watch, and the staunch support for the resolution from Western powers, including the United States, which in recent years has made gay rights a diplomatic priority.

Although compelling, this narrative can be found wanting on at least two fronts. On the one hand, it overlooks the human rights movement’s long-standing reluctance to embrace gay rights. A

heartfelt endorsement did not materialize until the mid-1990s, after intense prodding and shaming by gay rights activists. On the other hand, the dominant narrative ignores the genesis deep within the gay rights community of the claim that gay rights are human rights, and the skillful use of human rights by gay activists to frame the campaign for gay rights. Although often overlooked in favor of flashier strategies, human rights discourses have been pivotal to the global rise of gay rights, having positively shaped every juncture in the progression of the gay rights movement—from the fight against laws criminalizing homosexuality, to the battle against discrimination on the basis of sexual orientation, to the struggle for marriage equality that has raged in earnest since the dawn of the twenty-first century.

ARM’S LENGTH

The fact that the UNHRC gay rights resolution came more than six decades after the drafting of the 1948 Universal Declaration of Human Rights is itself revealing as regards the mostly dispiriting history of the human rights movement’s support for gay rights. So is the tameness of the resolution, which is limited mainly to calling for the end of discriminatory laws and acts of violence against lesbian, gay, bisexual, and transgender (LGBT) people. By 2011, same-sex marriage was already legal in seven Western European democracies, nine American states and the District of Columbia, and Canada, and had made important inroads in the non-Western world with its introduction in South Africa in 2005 and Argentina in 2010.

Telling, too, is the fact that human rights organizations have historically kept gay rights at arm’s length, believing that an association with gay rights would be detrimental to their cause. Amnesty International’s embrace of gay rights came only in 1995, more than three decades af-

OMAR G. ENCARNACIÓN, a professor and director of the political studies program at Bard College, is the author of *Democracy Without Justice in Spain: The Politics of Forgetting* (University of Pennsylvania Press, 2014).

ter the organization's founding in 1961, and in response to a coordinated campaign by gay activists. Amnesty marked its new commitment to the cause with the publication of *Breaking the Silence*, a landmark study that catalogued human rights abuses against the LGBT population around the world. The study is credited with pressuring and shaming countries about their treatment of LGBT people, especially in the developing world, and this in turn is thought to have aided in the global rise of gay rights.

There is no shortage of explanations for the human rights movement's delay in taking up gay rights. For starters, issues regarding sexuality, even gender, have traditionally been secondary for the human rights movement, as reflected in feminists' long-standing criticism that, since its creation, the movement has mainly concerned itself with promoting "the rights of men." This "neglect" of sexuality reflects the human rights movement's origins in the struggle against totalitarianism and the horrors of the Holocaust, and before that in the fight for religious freedom and against slavery. Also

relevant is a significant gap in the timing of the seminal events marking the rise of both movements. Two decades separate the 1948 Declaration and the 1969 Stonewall riots—the series

of spontaneous, violent confrontations between gays and police at the Stonewall Inn, a bar in Manhattan's Greenwich Village, widely regarded as having launched the contemporary struggle for gay rights.

Last, but not least, are the negative views that have traditionally shrouded homosexuality in Western societies most closely associated with the promotion of human rights. Homosexuality was classified as a mental disorder by the American Psychiatric Association until 1973, and by the World Health Organization until 1990. Antisodomy laws remained on the books in the United Kingdom until 1982, and in the United States until 2003, when the Supreme Court struck them down. In 1996, a Democratic president, Bill Clinton, with the support of large majorities in both chambers of the Congress, signed the Defense of Marriage Act (DOMA), which defined marriage, for federal purposes, as the union of a man and a woman. DOMA inspired some 30 state constitutional amendments banning same-sex marriage, and remained the law

of the land until the Supreme Court declared it unconstitutional in 2013.

EARLY ACTIVISM

Even as they were denied membership in the human rights movement, gay rights groups put human rights arguments front and center in their activism. The earliest struggles to eradicate laws criminalizing homosexuality were rooted in the claim that such laws were an affront to humanity. Pioneering this perspective was the Scientific Humanitarian Committee, the world's first organization created for the purpose of advancing the rights of homosexuals, founded in Berlin in 1897 and active until the advent of the Nazi regime in 1933. The Committee inspired groups in other European countries and across the Atlantic—including Chicago's Society for Human Rights, founded in 1924 and recognized as the first American gay rights organization. Although political and public pressures forced the group to end operations within months of its creation, its founders managed to publish *Freedom and Friendship*, the first US publication for homosexuals, which advanced the view that they should not be punished for something over which they have no control.

Human rights arguments were also at the heart of the "homophile" movement of the 1950s and 1960s, led by the Los Angeles-based Mattachine Society, a gay rights group founded in 1950, widely regarded as the first viable gay rights organization in the United States; and the Daughters of Bilitis, the first American lesbian rights organization, founded in San Francisco in 1955. Both groups issued pleas for tolerance, arguing that sexual habits do not define gays—that what defines them is the common humanity they share with heterosexuals. The intention was to instigate a change in the public's perception of homosexuality, which, in turn, would lead to the assimilation of gays and lesbians into society. To those ends, the homophile movement encouraged gays and lesbians to conform with conventional gender norms of dressing and behavior, which generally meant discouraging signs of femininity in gay men and of masculinity in lesbians.

The wave of gay rights organizations that followed the 1969 Stonewall riots, led by New York's Gay Liberation Front, put an end to the homophile movement. Post-Stonewall, the gay rights

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movement rejected assimilation strategies in favor of carving out a separate sexual identity for gays and lesbians, and calling out the homophobia prevalent in heterosexual society. Alongside the decline of the homophile movement came waning interest in human rights claims among gay rights activists. Inspired by the US civil rights movement, the gay liberation movement was more inclined to argue that the legitimacy of gay rights was grounded in “civil rights” rather than in “human rights.” Whereas human rights derive from universal values, civil rights are rooted in the laws of individual states. In particular, the gay liberation movement pressed the view that discrimination against homosexuals violated the US Constitution’s guarantee of equal protection under the law.

BACK TO HUMAN RIGHTS

Gay activists began to reengage in earnest with human rights during the 1980s, with the advent of yet another wave of gay rights activism fronted by new groups such as the Human Rights Campaign (HRC), founded in 1980, and today the world’s largest gay rights organization. Echoing the activism of the homophile movement, the HRC argued for “mainstreaming” homosexuality, emphasizing that gays could be free without destroying the foundations of heterosexual society. A priority for the HRC was securing state recognition of same-sex unions, based on the belief that the relationship rights of same-sex couples are

basic human rights. This new wave of gay activism took urgency from the HIV/AIDS epidemic, which began killing gay men by the thousands from its onset in the early 1980s. Like never before, AIDS forced gays to confront the legal limitations of their relationships when dealing with such issues as estate inheritance, hospital visitation rights, and surrogate decisions regarding medical care.

By the late 1980s, the courts, especially in Europe, began responding to claims by gay activists that LGBT people were protected under human rights conventions. In *Dudgeon v. the United Kingdom* (1981), the European Court of Human Rights ruled that all existing sodomy laws among the members of the Council of Europe violated the European Convention on Human Rights, a ruling that effectively decriminalized homosexuality in all Western European countries. In *E.B. v. France* (2008), the same court held that an unmarried woman could not be denied the right to adopt a child due to her sexual orientation, and that same-sex couples should have the same rights to adopt as heterosexual couples.

Curiously, some of the most innovative efforts to wed human rights and gay rights emerged in places not usually associated with the struggle for gay rights, such as Latin America. In Brazil, the São Paulo–based AIDS Prevention Support Group successfully lobbied for enacting the so-called “Brazilian model,” a policy that guarantees free and universal access to anti-retroviral therapy through the national health care system for anyone infected with the HIV/AIDS virus. This controversial 1996 measure pitted the Brazilian government against powerful international pharmaceutical companies. It is widely praised as one of the most effective AIDS responses implemented by any government, certainly among developing countries. In pressing for action, gay activists made the case that medical treatment for HIV/AIDS was a human rights issue.

In 1984, the Argentine Homosexual Community was founded with the motto, “The Exercise of Sexuality is a Human Right.” The slogan aimed to tie gay rights groups to the human rights community, which at the time was thriving in Argentina due to the prosecution of the former military regime for crimes against humanity between 1976 and 1983. This conjoining of gay rights and human rights paid dividends all the way to the 2010 legalization of same-sex marriage in Argentina, the first for a Latin American country. Among those

From the archives
of *Current History*...

“During the 1980s, activist Islam became synonymous in the Western mind with political extremism, terrorism, hostage ordeals, and suicide bombing. As the decade came to a close, the Islamic resurgence began a new phase; Islamic movements began to participate in the political system instead of opposing it. Increasingly, the Iranian model has been shunned and the fanatics’ bullets have been forsaken for the ballot box.”

Robin Wright

“Islam’s New Political Face”

January 1991



pushing for the legislation was the Madres de la Plaza de Mayo, a group of mothers and grandmothers who gained worldwide fame for pressing the issue of the “disappeared,” those who vanished while in police custody under the military regime. This support lent a moral weight to the campaign for gay rights in Argentina unmatched in Latin America, and perhaps the rest of the world.

INTO THE FUTURE

Making gay rights a component of the international human rights regime promises to give the human rights movement much-needed momentum, and to ensure that the movement will remain relevant in the current century. What human rights will do for gay rights in the coming years, however, seems less clear. For one thing, the record of nations complying with human rights treaties, conventions, and resolutions is not very impressive. In fact, it is depressing. One of the better-known studies, by Yale Law School’s Oona Hathaway, examined the record of 166 countries in respecting treaties on genocide, fair prosecutions, women’s rights, civil liberties, and torture. It concluded that “treaty ratification is not infrequently associated with worse human rights abuses ratings than otherwise expected.” The 2002 study further found that because human rights treaties reward “positions rather than effects,” many states have little incentive to follow through on their treaty commitments.

Meanwhile, the vote on the UNHRC gay rights resolution itself illustrates how divided the world community remains on the issue of gay rights. In favor of the resolution were regions where gay rights are already quite advanced, such as Western Europe, North America, and South America. Opposing the resolution were regions where gay rights are nonexistent, minimally developed, or

under heavy assault, such as Africa, the Middle East, Russia, and other postcommunist states. The opposition to the resolution revealed that the notion of gay rights as human rights is far from universally accepted. Speaking on behalf of the Organization of the Islamic Conference, which opposed the resolution, Pakistan’s envoy declared: “We are seriously concerned at the attempt to introduce to the United Nations some notion that has no legal foundation.”

Unsurprisingly, the ink had hardly dried on the UNHRC resolution before its foes began trying to undermine it from within the council. In 2012, the UNHRC passed a resolution titled “Promoting Human Rights and Fundamental Freedoms through Better Understanding of the Traditional Values of Humankind,” a not-too-thinly-veiled attack on LGBT rights. It was introduced by Russia, which currently claims the mantle of the world’s leading defender of traditional values, having recently enacted an anti-gay propaganda law so broad that it actually bans gay pride parades and LGBT symbols such as rainbow flags and pink triangles. Even an admission of homosexuality, unless cast in a negative light, could be regarded as a violation of the law.

Nevertheless, there are reasons to believe the UNHRC resolution also signals a new era for gay rights at the global level. The resolution offers a tool for activists to challenge anti-gay discrimination in countries where such bias remains legal and socially accepted. Less apparent, but arguably more important, is the fact that international norms, once established, tend to spread to even the most recalcitrant corners of the world as part of the international “socialization” of states. This socialization process hinges, above all, on establishing the aspirations that all nations are expected to realize. ■

From *Current History*’s archives...

“The long struggle for liberty and accountability gradually made at least some states accountable to the people, but globalization, by shifting power from states to firms, has allowed international bureaucracies to undermine that accountability. None of the new non-state authorities are accountable; few are even transparent. There is a democratic deficit, not only in Europe, but in America, Japan—the entire globalized economy.”

Susan Strange “The Erosion of the State,” November 1997

HISTORY IN THE MAKING
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