

Honoured in the Breach: Human Rights¹ as Principles of a Past Age²

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ABSTRACT *Rights define the prevailing relations that constitute a community. They are in turn defined by the character of a given mode of production, and as that changes so too the system of rights. The rights that comprise “human rights” evolved in the transition from feudalism to capitalism and represent the principles of the emerging world order in the 18th and 19th centuries. Only in the aftermath of World War II with the exhaustion or defeat of the European states and Japan was it possible to declare these same principles as belonging to the whole world equally and as intrinsic to all humans - yet within national frameworks. The accumulation of capital on a global scale, however, soon began to undermine the national practice of these human rights. By the end of the 1980s the construction of regional or global “enabling frameworks,” quasi-states for capital, detached from any formal or legitimate means of countervailing political leverage, made human rights appear increasingly like anachronisms. An increasingly violent usurpation of the Universal Declaration of Human Rights and other forms of rights around the world followed. In the absence of a legitimizing set of principles for this new global economy, a growing need for a rationale to govern by fiat becomes the central problem of the day.*

Property relations define the nature of all communities; they constitute the rights or claims or entitlements to the use and disposal of the goods and services that are essential to the reproduction of the social unit. As a relationship, property is synonymous with rights, the socially legitimated relations that members of a social unit have to each other with respect to the social product. The distribution of power over the means of production and share of the social product are expressed in the form of prevailing rights. Appearing in a wide variety of forms, these rights may be possessed by a whole community as a collective, or by smaller social groups such as families, clans, bands, classes, or other social aggregates. In a system of private property, the prevailing form of right is that possessed by the individual exclusive of others (Blackstone, 1765; Macpherson, 1978; Macpherson, 1985).

All rights are socially sanctioned; in stateless social formations, however, the sanction will be informal or customary, while in systems with a state it will be formal

¹ Human rights discussed here refer to those rights found in the Universal Declaration of Human Rights and associated conventions and covenants. The term is also used loosely to refer to many other claims and demands made by various groups, but this broad use makes the concept ‘human’ redundant, because all rights in this sense are human rights. The UDHR refers to specific rights declared as human in UN forums and accepted as such by wide international agreement.

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and legally enforceable. Customs or states, then, merely ratify or confirm the legitimacy of the rights; they provide a seal of authority; but they are not the source of the character or content of the rights.

If rights are at one with the distribution of power and the share of the social product, then, the origin of rights lies where this distribution arises - in the mode of production and accompanying social division of labour, the set of relations that obtain in the process of material reproduction. For every variation in the mode of production, there is then an alteration in the rights that reflect these changes and the consequent differential access to the social product. The history of rights, it follows, is the reflection of the history of changing modes of production and their respective social relations.³

The breakdown of feudalism with the advent of the rise of private property took place over several centuries, but at each stage of the transformation there were demands for a growing number of rights for "free men" whose "freedom" lay mainly in the individual possession of certain means of production and accumulated wealth unencumbered by feudal obligations. When wealth, as capital in moveable form, has accumulated sufficiently to challenge the totality of feudal rights (which rested on landed wealth in a non-moned economy) those demands necessarily took on a revolutionary character.⁴

Having grown to the point at which feudal property relations significantly frustrated further private accumulation, capital precipitated the so-called "age of revolution" in which new property relations reflecting a capitalist mode of production were proclaimed in one country after another. Their principles were placed at the centre of their new constitutions. The American and French revolutions were the first to overturn completely the remaining feudal property relations that had culminated in monarchical absolutism. In their place, the French "Declaration of the Rights of Man and Citizen" (1789) and the American "Bill of Rights" (1791) proclaimed coherent sets of rights that made the relations of commerce into the definition of a new society. The principles of the marketplace had become the defining characteristics of the new "community" (Hobsbawn, 1968; Hobsbawn, 1996; De Toqueville, 1953).

In these declarations, there is no vision of genuine community; there is only the mutual interdependence of buyers and sellers. Members of society are related to each other, not as social beings deriving meaning from each other, but as isolated individuals with mutually exclusive and competitive interests – their interdependence guided by the tenets of commercial exchange. With the atomized individual as the basic social unit, human relations were transformed into relations mediated by money; humans were defined as embodiments of private exclusive rights. The role of the state was defined mainly as protector of the sanctity of these private rights in this society as marketplace.

All the rights asserted in these declarations have as their foundation the individual as private property incarnate; this was the basis of the new societies born in the revolutions of the 18th and 19th centuries. Such rights were compelling because they rested on an empirically obvious fundamental unit of community, the individual (albeit not as a social being), and liberating because they freed whole strata and classes from the life-long restrictions, oppression, and arbitrariness of feudal relations by

³ This argument is taken from K. Marx and F. Engels (1845).

⁴ For an interesting class analysis of political change, see: C. A. Beard (1957).

providing the framework for the power of moveable capital to expand more or less without restraint. As the principles of a new mode of production with a long course to run, they were proclaimed as universal and absolute, and inspired the ruling classes of both France and the United States to expand their revolutions with all the confidence of forces backed by the truth.

These principles were far from universal or absolute, however. Above all, they were national declarations whose practical reach did not extend beyond the limits of the nation-state. Even within national boundaries, they did not extend to women, certain racial and religious groups, particular strata and classes, or colonized peoples. Despite these contradictions, the principles of private property continued to find widespread support, particularly among aspiring bourgeois classes in nations or colonies suffering arbitrary rule (James, 1963) because they offered a promise of freedom from oppression, albeit the “freedom” of moveable capital.⁵

The circumstances that arose in the aftermath of World War II allowed for a change to some of the national limitations to these rights of “man” and citizen. The United States was the only real victor in the war, emerging as the chief military power over Western Europe and Asia, the most industrially advanced with a home “front” undamaged by the war, and as the main creditor to Britain and the European powers, while all the other industrial powers were economically devastated – their industries and infrastructure worn out or destroyed - and their populations exhausted by years of war and/or occupation. For these reasons, the US was in a position to model the postwar capitalist world in its own image.

In 1944, even before the war ended, the US began to set the stage for a transformed postwar world. At a conference in Bretton Woods, the basis of the postwar international economic system was established in which the American dollar was made central and the World Bank and the IMF, among other institutions, were created to oversee international trade and commerce. In 1947 these institutions were complemented by the formation of GATT, a mechanism to negotiate the progressive removal of national barriers to world trade and to establish global regulations for freer commerce. At another conference in San Francisco, the United Nations was established as the political foundation of a “new international world order.” Throughout its early years, the UN oversaw much of the process of decolonization, and was used to contain the demands for socialism throughout the colonial world and to advance the principles of liberal democracy and private property. To complete this remaking of the world, the US promoted the creation of larger markets (a “United States of Europe,” among other regional units); it financed the rebuilding of capitalism in Europe (UNRRA and the Marshall Plan); and it set out to subordinate the military forces of capitalist nations through treaties and pacts that it dominated (in particular, among others, NATO).

⁵ The ravages of industrial capitalism and the rise of the working class gave rise to another concept of freedom, as first formulated in *The Communist Manifesto*. Here, the notion of freedom was grounded in the unity of the majority class and to be realized in democratic, critical, class control over the means of production and distribution of the social product. Freedom in this sense is to be realized within social relations; it is the right that follows from membership or inclusion in a community; it is not a private right arising from exclusive, individual relations to the social product and whose realization is necessarily anti-social.

Although these changes greatly benefited US corporations, their import lay in the fact that they facilitated the extension of the principles of private property. In other words, what the US was demanding for the world would benefit capital in general, notwithstanding the dominance of US capital and the continuing competition between national capitals. To create a global capitalist regime, the US was the only power in a position to dismantle the colonial empires yet retain the new nations within the orbit of capital, to work for “free trade” within the same compass, and to promote and protect capitalist relations throughout the “free” world.

Simultaneous with these developments, the United Nations began to formulate the set of principles that would reflect this new world order, justify the imposition of capitalism in the post-colonial world, confront the widespread demands for socialism, and yet seem universal, absolute, and unassailable. The civil and political rights of liberal democracies were by and large unquestioned as the definitive or essential rights belonging to all humans. There was very limited philosophical critique of the principles of private property underlying these rights, and no existing alternative to point to. The constitution of the Soviet Union closely approximated a model republican system, in which representatives of the people purportedly exercised sovereign power through elections. Its main difference with liberal democracy in the West was that actual power rested with those who controlled state capital rather than those who controlled large private corporations. After considerable debate amongst the drafters, certain principles (belonging to liberal democracy, a historically particular system) were agreed upon, systematized, and proclaimed as universal and extended to the whole world in the form of the Universal Declaration of Human Rights (UDHR).

The Soviets made a difference during the formulation of the UDHR, it should be mentioned, by insisting on the inclusion of the so-called “economic, social and cultural rights” (Articles 22-27 in the UDHR) that reflected parts of their own constitution (Articles 118-122 in 1936) that were, and still are, for the most part absent in capitalist constitutions. Given the vagueness of these rights, the general postwar circumstances, and the fact that the UDHR was meant more as statement of principles than a basis for policies and programs, the inclusion of these articles was not deemed by the US or other Western powers as overly problematic⁶ (though undesirable and inconsistent with civil and political rights).

Proclaimed in 1948, the UDHR contains three sets of rights - civil, political, and social (commonly referred to as “economic, social, and cultural rights”). Often overlooked, one of the most significant achievements of the Declaration is that it stands as the first international authoritative affirmation that all humans are human. Coming remarkably late in history, this recognition nevertheless represents a milestone in the development of human consciousness. That we are all fully human is now accepted as a self-evident truth, which was far from the case before 1948. Because the UDHR was

⁶ The UDHR itself carries no obligation by UN members to enact or enforce the contents; the preamble calls merely for ‘teaching and education to promote respect for these rights...and by progressive measures...to secure their universal and effective recognition and observance.’ Only in 1966 were Covenants devised to cover the three sets of rights and oblige the signatories to enact and enforce them. These Covenants -- the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights -- ‘entered into force’ only in 1977. The United States signed the former in 1977 and the later only in 1992, but has not ratified either of them.

the first international proclamation and embodiment of this truth, it carries enormous weight as a general statement of human absolutes. But this assertion is really a half-truth. The human in the Declaration is a particular vision of the human; it is the human as a self-sufficient atomized individual, the human as possessor of exclusive private rights. Such is the conception of the human because the rights proclaimed are the principles of the marketplace, which assume as their foundation the individual as the embodiment of private property.

That the human in the first international declaration that all humans are human should come in the form of a historical particular is a paradox. To put it another way, that the rights of the individual as private property incarnate are defined as human rights is a paradox. This contradiction in the UDHR, however, has begun to be exposed in the growing demands for various collective rights by classes, groups, strata, women, children, regions, nations, and indigenous peoples. Not to mention rights in the name of all humanity - claims for all as all that may extend to a global redistribution of wealth, cooperative self-determination, environmental protection, world peace, and the expansion of the global commons – rights that strictly speaking are not in accord with the human rights of the UDHR. The definition of human in human rights is challenged and transformed by these growing struggles for broad sets of collective countervailing rights.

There are very few rights in the UDHR that do not reveal similar contradictions arising from the changing political economy of the late twentieth century. Just as the civil, political, and social rights that evolved through several centuries changed in concert with developments in the mode of production and class conflict, so now these same rights are undergoing dramatic changes because of globalization.

We understand globalization as the shift of the process of capital accumulation from the national to the transnational level, grounded in massive technological changes primarily based on computer development. The construction of global and regional enabling frameworks (quasi-states for capital, detached from any formal or legitimate means of countervailing political leverage) greatly facilitated this transfer. Several of these regulatory structures were created at Bretton Woods in 1944. At the same time that the *global framework* for a global economy was being established, a set of universal rights wedded to the *nation state* was being formulated. It was inevitable, then, that the shift to a global economy would gradually and necessarily subordinate all rights at the national level to the rights of transnational corporations. The whole structure of human rights in the UDHR, evolving over several centuries and belonging to the national configuration of capital, comes into question as the national state loses its sovereignty. States find it increasingly difficult to uphold these rights in the face of the demands of transnational corporations (TNCs), which are defined and asserted by supra-national agencies, not to mention the corporations themselves.

Under these circumstances, civil rights in the UDHR become increasingly a question of corporate versus individual civil rights. Corporate civil rights, exercised by global or regional corporate oligopolies in every sector, progressively usurp individual civil rights at the national level. The rights of freedom of assembly and association, for example, are restricted in the world-wide circumscription or denial of trade union rights, nationally and globally, and in the “enclosure” of public spaces by means of private ownership. Freedom of speech and thought and cultural expression are

increasingly limited by growing concentration of global corporate media (McChesney, 2000; Winter, 1997; Schiller, 1989). Freedom of movement is restrained by the privatization of the means of transit. Corporate patents, moreover, on seeds and other biological or genetic material and on pharmaceutical drugs have been upheld by the WTO as more important than the rights of non-corporate entities or even of any human or environmental consideration. In general, global intellectual rights are intended to override all similar rights at the national level (Drahos and Mayne, 2002). Legal rights are also usurped by increasing costs - of lawyers and judicial proceedings - and the decline of state legal aid. These are only some examples of similar usurpations across the entire range of civil rights (Hartmann, 2002; Mander and Goldsmith, 1996).

Political rights are also being undermined. The right to be elected, for instance, has always depended on the amount of money available to spend on the campaign, but now this is so more than ever. Electoral office increasingly becomes the preserve of the rich or of those who, for a price, do the bidding of the corporations (Hertz, 2003; Palast, 2002; Parenti, 1983). National political office, moreover, provides jurisdiction over territory limited by national boundaries, a jurisdiction increasingly overridden by transnational agencies and organizations. The more self-evident these restrictions to political power become, the more the right to vote seems pointless – an attitude that would appear to be reflected in voter apathy, where voting is not a legal obligation. Universal suffrage has always presented a dilemma for large corporations; political rule in the name of the majority represents opposing principles and practices to the “market” in the allocation of social resources. The principle of “majority rule,” furthermore, holds the possibility of the majority actually taking control of its own affairs, or at least protecting its interests via the state. The “threat” of universal enfranchisement is today, however, constrained by the content of much legislation determined by global organizations and agencies. All capitalist governments, in the face of global agencies, have effectively relinquished much of their sovereign right to promulgate laws for the protection of their citizens or even to defend what they may consider to be national interests.⁷

The practice of competing political parties which is central to liberal democracy also loses its meaning. Competing political parties in capitalist governments have generally represented the interests of one division of national capital or another and advocated more or less reform to the system. When the corporate sector, however, becomes structured as monopolies, oligopolies, or cartels *and* is organized transnationally and represented by agencies at the global level, there is no need from their point of view for competing political parties. Certain differences between sectors of capital may remain, but these are now fought out, increasingly, in global forums. Liberal democracy progressively descends into “coalition” governments, single dominant party systems, or the sham of competition between political parties with more or less the same agenda.

Social rights have, most obviously, come under attack because they provide a certain respite for the working classes from the terror of an unmitigated labour market

⁷ Demands, conditions, recommendations, and rules and regulations from supra-national bodies are more the source of national legislation today than national interests. Market consolidation in the form of the European Community or multinational trade agreements (NAFTA, Mercosur), and WTO regulations are just some of the supra-national constraints facing all national and regional or local governments.

and the dictates of the workplace *and* because they create “spheres” in civil society (in education, health, social security) that are not directly subject to so-called market principles and the unmitigated pursuit of private profit. From the point of view of transnational capital, however, all social rights present barriers to capital accumulation. They represent political choices rather than “market” mechanisms as a means of resource allocation. They “tie up” vast amounts of capital outside the realm of private accumulation. For these reasons, neo-liberal and structural adjustment policies have been aimed at limiting state-provided entitlements and have obliged broad changes to national control over social reproduction by means of de-regulation and privatization.

These now obvious contradictions between human rights and the changing global political economy confirm at least a couple of critical assessments of the UDHR. First, the Declaration reflects principles that are far from absolute. In fact, they appear to be from a past era, a period in which national sovereignty had a certain validity grounded in national configurations of capital, in which political choice was possible as long as the dominance of private property was not challenged, and in which economic conditions allowed for or necessitated compromise in the expansion of social rights to address class conflict. Second, these contradictions reveal that human rights are not, and never were, a coherent, consistent, or integral set of rights. Principles marked by irresolvable inconsistencies can make no claim to being permanent, conclusive, or universal.

Even in the period in which these principles were first proclaimed and hailed as absolute they were never fully realized in the countries that promoted them. The system that gave rise to them at no point fulfilled the promise embedded in the UDHR. In fact, in the early 1970s there was sufficient concern amongst the powers that be about the realization of these rights that they were made the object of special study. The Trilateral Commission authorized research into the “problem.” The results were published in 1975, entitled: “The Crisis of Democracy.” The crisis was not about too little democracy but an “excess of democracy.” Too many demands were being made on the state, an obvious reference to the growing realization of social rights through political means and the “high” expectations of the citizenry that had to be curbed. The report made recommendations on how to limit these demands, pointing out that for the system to function in a “balanced” way “some measure of apathy and noninvolvement” was required. A passive citizenry was necessary to the operation of liberal democracy (Wolfe, 1980; Crozier, Huntington and Watanuk, 1975). By 1977, when the two covenants covering the UDHR had “entered into force,” obliging signatory governments to respect these rights and ensure their fulfillment, they were already suffering criticism and under assault. The elections of Margaret Thatcher (1979) and Ronald Reagan (1980) introduced systematic attacks on the whole range of human rights.

Human rights are increasingly subordinated to corporate civil rights which are, now established and advanced at the transnational level. They come into question because they were largely established, and are, by and large, only enforceable, within the nation-state. The national state, however, has lost much of its traditional role as the embodiment of national corporate property relations. It increasingly represents global property relations, and, as such, it is reduced to a “local” state mechanism to advance these relations. The sovereignty of liberal democratic industrial nation-states, that at

best afforded the working classes a measure of social reform as ‘welfare states’ through political leverage, now becomes, increasingly, an illusion.

The agencies of the “enabling frameworks” are anything but democratic. They are staffed by bureaucrats and appointed officials, and decisions about policies and practice are often determined by the relative weight of national economic power. There is no meaningful access to the decision-making process other than by career bureaucrats and representatives of governments and TNCs. Most of their business, moreover, is conducted *in camera*, out of view of the world’s public. The working classes and other subordinate groups and peoples have little or no recourse to decisions and policies at the global level other than extra-parliamentary or extra-legal action.

There is, then, a contradiction between the persistence of national governing systems that pretend democracy and an adherence to human rights *and* a global or regional economy organized and overseen by transnational agencies representing transnational corporate rights. Although the world’s populations have come to believe in the rights embodied in the Universal Declaration of Human Rights (UDHR), and similar regional declarations, the practice and enforcement of these rights⁸ and the popular belief in them only hinder the exercise of transnational corporate rights. The very system that gave rise to these rights is no longer able to respect them. To replace a political system of competing parties and a certain reality of human rights with openly arbitrary rule, however, is to make oppression or subordination or unfree conditions more transparent, and opens the door to increased resistance. Resistance to despotism is never a matter of choice but of obligation arising from the human condition. The Preamble the UDHR warns: “...it is essential, if man [the authors meant to say ‘humans’] is not to be compelled to have recourse...to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

There is no long-term future in a globalized economy for the nationally based liberal democracy that reached its zenith of achievement for working people in the 1960s and early 1970s. If, however, arbitrary rule or military dictatorship are problematic because they discredit the imposition of global corporate rights on the nation-state, the political options that remain are limited: democracy can reduced to, more or less, a formality *or* a plausible reason can be found to circumvent constitutional processes *or* a measure of both. In the industrial nations, the constitutional systems are becoming increasingly more a question of form than content, choices of wrapping for a single set of permitted policies, elections without meaning, mechanisms to “let the people do it to themselves,” thereby obscuring the real power relations. When ruling illusions become unconvincing, however, a probable reason to govern by fiat is needed.

Seen in this light, the attacks on September 11, 2001, take on a new meaning. They can be taken as the denouement of the process of globalization, the point at which

⁸ Besides the UDHR, there are several regional declarations, namely, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953), the American Convention on Human Rights (1969), the Helsinki Agreement (1975), African Charter on Human and Peoples’ Rights (1981), Universal Islamic Declaration of Human Rights (1981), the Cairo Declaration on Human Rights in Islam (1990), and Arab Charter on Human Rights (1994).

It is important to note that none of these documents contains genuinely effective mechanisms to protect or enforce these rights.

the illusions of a world of sovereign states come to an end, and the power of a single global authority is asserted as preeminent.⁹ It marks the moment that the many contradictions of a world of declining national powers are resolved into a single set of dominant oppositions - the demands of TNCs in the shape of global and regional frameworks and other blocs, largely overseen by Washington, confront the rights of all other sectors, classes, and peoples.

The contradiction can be seen in the growing shift from the rule of law (articles 6-12, UDHR) to political arbitrariness, in the corporate usurpation of individual civil rights, in the increasing meaninglessness of political participation, and in the dismantling of the welfare state. Violations and abrogations of the whole range of human rights – breaches of what were once the system's very principles – become continuous and increasingly tolerated and justified as means to counter the threat of terror, the source of which remains a question mark (Daniels, et al., 2001; Olshansky, 2002; Chang, 2002; Cole and Dempsey, 2002; Leone and Anrig, 2003; Schulhofer, 2002; Brown, 2003; Hentoff, 2003; Deller et al., 2003; Mandel, 2004).

The concept of terror has been so broadly defined as to include almost all acts of resistance and all criticism of the status quo. Yet, state terrorism (in the form of assassinations, disappearances, death squads, arrest and imprisonment without habeas corpus, restrictions on civil and political liberties, retrenchment of social rights, land seizures/dispossession, small arms trade, sanctioned torture, and so on), justified as counter-terrorism, is everywhere vastly more significant than terror perpetuated by non-state actors. Terror appears, for now, to be the rationale to govern increasingly by fiat in a world in which the foundation of national liberal democracy is rapidly disappearing.

⁹ This is not to say that this power is left unchallenged by other blocs of capital (Europe, the Shanghai Cooperation Organization, the Mercosur nations) but those blocs are no more interested in human rights than the US. The real challenger has yet to come as an organized force from the people of the world. For similar interpretations of 9/11, see: N. M. Ahmed (2002); N. Chomsky. (2001); M. Chossudovsky. (2002).

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