

HUMAN RIGHTS AND GLOBAL LIFE-SUPPORT SYSTEMS

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Summary

The paper is a critical examination of the limitations of human rights as protective devices for the preservation and development of global life-support systems. While it is true that there is an emerging global consensus about the legitimacy and value of human rights, this consensus tends to ignore a key ambiguity in the meaning of the terms ‘right.’ It can and does mean both an individual entitlement to pursue one’s private advantage and a shared claim to social recognition and resources. This ambiguity generates two antinomies– between negative and positive rights and, more deeply, between corporate and human rights. The resolution of these antinomies requires discovery of the life-grounded normative foundation of human rights.

1. The Essential Ambiguity of the Idea of ‘Right’

In *The Age of Rights* Norberto Bobbio reconstructs the moral development of the idea of ‘rights’ from the French Revolution to the present. It was during the French Revolution that the essential tension found in the modern theory and practice of rights emerged. This essential tension is between what can be called the classical liberal doctrine of negative rights (rights as formal-legal protections private property against state and social interference) and the egalitarian conception of positive rights for all members of society (which can trump private property in cases of contradiction).

In either case, classically, rights have been understood as entitlements held by *individuals* as legal persons, even though positive rights became effective only through the collective struggles from below against the privileged power of property-owning minorities. The foundation of positive rights in shared life-interests (as opposed to private property) is perhaps best expressed in the formulation of Alan Gewirth in *Communities of Rights*. According to Gewirth, “The importance of... human rights,

[stems] from the great value of the objects or interests that need to be protected: interests ranging from life, physical integrity, and economic security.” (p.9) Gewirth’s formulation, however, ignores the profound ambiguity and conflict that attends the use of the concept of right today by the owners of corporate money capital and their egalitarian-cosmopolitan opponents whose version of rights can be called, following McMurtry in *Unequal Freedoms*, life-grounded. A proper estimation of the value of human rights to global life-protection and life-development cannot be achieved without this ambiguity being understood and resolved. To do so is the primary aim of this essay.

A close examination of the contemporary idea of human rights in the context of intensified capitalist globalization uncovers contradictory social implications. The term ‘social implications’ means the sorts of changes in the material relations between human beings implied by the recognition and enforcement of human rights as distinguished from their commercial interpretation. The paper will argue that the recognition of universal civil, political, and economic and social rights is indeed a world-historical step forward in the struggle for the social conditions of human freedom. Yet it will also explain that the right to private property, as now enlarged to include international corporate property, overrides these opposed positive rights in practice and in theoretical obfuscation of this practice. In reality positive rights can be effectively displaced by the assertion of corporate property rights to exploit what are in fact shared requirements of human life (as for example, by destroying indigenous subsistence agriculture by multinational agribusiness). In theory, mainstream philosophical and political defenders of human rights either ignore the conflict or domesticate it by reducing it to an inevitable opposition of interests which, by “trade-offs for development” must be accommodated rather than understood and overcome. The paper will argue that the conflict can be resolved only when universal life-interests are made the common foundation of the human rights argument.

2. The Development and Ethical Foundations of Human Rights

Since the Second World War, the struggle for the universalization of civil and political rights and the recognition of economic and social rights in the liberal-democratic world has been joined by an increasingly global struggle for the recognition of universal human rights binding on all states regardless of local history and culture. Bobbio reads the emergence of struggles for globally enforced human rights as Kant read the French Revolution, as a sign of the moral progress of humanity. He argues in *The Age of Rights* that “from the point of view of the philosophy of history, the current increasingly widespread and intense debate on human rights can be interpreted as a ‘prophetic sign’ of humanity’s moral progress, given that it is so widespread as to involve all the peoples of the world and so intense as to be on the agenda of the most authoritative international judicial bodies.” At a political and legal level Bobbio is certainly correct to see the emergence of intense debate around human rights as a sign of moral progress.

To the extent that there are now documents (such as the *United Nations Universal Declaration of Human Rights* and the *Covenant on Economic, Social, and Cultural Rights*) that have, to varying degrees, the force of state-endorsed norms, is truly a sign of the growing recognition of the reality of universal life-interests. That human rights do in fact presuppose the reality of universal life-interests in the having secure access to the

fundamental requirements of life-maintenance and the realization and enjoyment of life-capabilities, is clear from the work of their most important cosmopolitan liberal defenders. In *Global Covenant*, David Held points to what he calls the ‘moral gap’ in life chances that currently typify human life as the basis for his support for enforceable human rights. The Western media have made everyone aware of the 3000 people that died on September 11th but is silent on the much grimmer reality that 30 000 children under 5 die each day from preventable diseases. He concludes that “such overwhelming disparities in life-chances are not found only in the area of health, but are reproduced across almost every single indicator of global development.”(p. 96) From the perspective of cosmopolitan human rights theorists this moral gap is illegitimate because it violates the human dignity of the people forced into squalor and suffering by the “life-blind mechanics of the global market order.” (See *Economic Reason and the Crisis of Global Life Systems*).

Although universal life-necessities are presupposed by the norm of human rights, as the foregoing makes clear, they are not directly theorized as the necessary foundation of human rights by received moral philosophy, or indeed human rights discourse itself. Instead, the contemporary idea of human rights looks back to the work of Immanuel Kant for its normative foundations. Two ideas in particular are essential in this regard. The first is Kant’s explicit method for distinguishing what he calls “categorical imperatives” from “hypothetical imperatives.” Categorical imperatives are principles that human beings are duty-bound to obey regardless of whatever particular ends that they desire to pursue in their everyday life. Hypothetical imperatives, by contrast, are relative to particular ends and have no binding moral force (and indeed, may turn out to be contrary to the categorical imperative). What is significant about this method is that it seems to ground a form of objective moral reasoning that issues strictly universal framework principles governing the treatment of others. Modeling reasoning about global life chances on this method can yield, according to Held in *Global Covenant*, a set of human rights “that nobody, motivated to establish an uncoerced and informed agreement, could reasonably reject.”(p. 170).

The second important element of Kant’s moral philosophy is his understanding of human beings. According to Kant, human beings are simultaneously members of the natural world and rational beings belonging to a ‘kingdom of ends’. In our material, embodied nature we are governed by physical and psychological laws whose operations are indifferent to moral considerations. It is only our rational nature that makes us objects of moral concern. As rational beings humans are able to determine the conduct of their own lives, posit and pursue goals for themselves, and think about their responsibilities to others. In other words, as rational beings humans are both ends in themselves and capable of respecting others as ends in themselves. Human beings are not just physical bodies, they are essentially moral persons. In so far as humans are persons they are agents, and in so far as they are agents they are capable both of determining rational ends for themselves and respecting the rational ends of others.

Human beings exist within a moral realm of ends (as opposed to the natural realm of physical causes) to the extent that they relate to each other as intrinsically valuable persons. As Kant explains in *Foundations of the Metaphysics of Morals*, “by “realm” I understand the systematic union of different rational beings through common laws.”

Laws, rooted ultimately in the categorical imperative and made possible by our rationality, signify the creation out of the given natural world a moral world in which mutual respect and not egocentric self-interest rules. Kant claimed that the realm of ends could be progressively approximated in human history to the extent that social life, both nationally and internationally, became governed by constitutional principles that respected the freedom of individuals, in the first place, and the security of nations, in the second. Kant sketches his idea of the realm of ends as a global constitutional order in a number of short political essays, most notably “Perpetual Peace” and “Idea for a Universal History from a Cosmopolitan Point of View.” What is most significant for present purposes is not the detail of Kant’s political arguments, but the moral principle that undergirds them.

The basic principle undergirding the idea of a human rights based global constitutional framework is clearly stated by Held in *Taming Globalization*. The principle asserts that “humankind belongs to a single moral realm” (p. 196) in which each is of equal dignity to all the others. Human rights, therefore, can be conceived as the legislation of the world understood as a realm of ends whose citizens are intrinsically valuable persons. Practically speaking therefore, human rights define a world, in the words of Charles Jones in *Global Justice*, in which “nation-state borders lack any fundamental ethical standing and... the demands of global justice include various positive actions aimed at protecting the vital interests of everyone, regardless of their location, nationality, or citizenship.” (p15). The idea of human dignity is thus a hinge connecting the individual ethical and the collective political. Human beings are ends in themselves because they are rational. Positive duties to others stem from this dignity attaching to our ability to govern ourselves and determine our own lives. In practice these duties are defined by human rights which no agent, individual or collective (i.e., a national government or corporate money-capital owners) can legitimately override or ignore. If it were the case that human rights could be interpreted this unambiguously, then there could be no doubt as to their efficacy in promoting institutional structures that secured to each the universal life-requirements necessary for the equal realization and enjoyment of vital capabilities. It is only when the focus of analysis shifts from the ethical foundations of human rights to the real history of their institutionalization that the crucial ambiguity that limits their efficacy emerges. Since it is that ambiguity that must be understood if a proper evaluation of the possible future contributions that human rights may make to global life-support, it is essential that this analysis now shift from a consideration of ethical grounds to historical and political realities.

3. The Political and Economic Foundations of Human Rights

A critical understanding of the strengths and limitations of the idea of human rights is made more difficult by the polarized interpretations of the concept ‘right’ itself. In its most general signification the term means a legal entitlement that secures the rights-holder against political power from above and social power from below. In Ronald Dworkin’s useful metaphor, a right is a “trump” that can be played against the power of the state from above or social power from below when the aims of the exercise of collective power violates certain individual interests taken to be fundamental. It is on the question of the content of ‘fundamental’ individual interests that the ambiguity in the interpretation of rights emerges. The liberal tradition as a whole has tended to

identify the conditions of human freedom with the possession of individual rights and to see in any critique of the concept a threat to “liberty.” Where the repressed problem lies is over whether rights entail the material means to their realization. The classical liberal tradition, preserved today especially in the so-called libertarian or neo-liberal movement, has steadfastly resisted the legitimacy of positive rights-based claims to the material conditions of realization of the negative rights they claim. In contrast, the egalitarian and social-democratic interpretation of rights, represented by thinkers like Alan Gewirth, discussed above, as well as liberal critics of capitalist globalization like Martha Nussbaum (for example, in her essay “Duties of Material Aid”), have consistently argued that the very meaning of ‘right’ as a protection of individual freedom of action is incoherent unless it secures access to the material resources without which life cannot be lived freely. To fully understand this ambiguity and its implications for human rights it is necessary to set the conflict in historical context.

Liberal rights first emerged in seventeenth century England in the context of revolutionary struggles over socio-economic relationships on the land. (See also *Life-Blind Liberalism and Life-Founded Democracy*). As Ellen Wood demonstrates in her important works, *Democracy Against Capitalism* and *The Origins of Capitalism*, the assertion of the primacy of individual rights over traditional social duties coincided with the transformation of the relations of production on the land towards agrarian capitalist forms of ownership and production and resistance on the part of the gentry towards the attempts of the Stuarts to tighten monarchical control over the land. The rights asserted against the Crown during the English Civil War have become the core rights familiar to us from the constitutions of liberal-democratic nation states and are typically, if falsely, equated to democracy. In their origin, however, these rights were sectarian in so far as they were asserted against both royal power from above, and, more significantly, against the majority who held no property. In other words, liberal rights evolved from aristocratic resistance to both absolutism and popular democracy. This assertion of the exclusive privilege of private property ownership would have its most profound effects in England because there it became articulated with a new, agrarian capitalist mode of social relationships on the land.

Whereas social relations on the land under feudalism were structured by a complex set of reciprocal vertical duties and were based upon the direct control over productive land by the peasantry, the emergence of agrarian capitalism depended upon a labor force separated from any means of life-maintenance save wage labor. The assertion of the right to private property as the foundational right of individual freedom coincides with the expropriation of the peasantry, the enclosure of common lands, the overturning of all descending obligations from lord to producer, and the establishment of economic power as a private sphere free from political ‘interference,’ whether from above or from below. Initially, the assertion of individual rights for the agrarian capitalist gentry meant a new sphere of legitimate private interests and self-activity. For the expropriated peasantry, however, it meant a new form of absolute dependence on the emerging capitalist market forces. As money-profit assumed the role of preponderant determinant of economic activity, the newly emergent agricultural workforce increasingly found its ability to satisfy its basic life-requirements hostage to fluctuations of market conditions. At this point, the idea of private individual rights served to legitimate these social relations. The right to own, control, and dispose of private property as the individual

saw fit meant, in practice, the right to utilize that property for the sake of accumulating ever more monetary wealth. In other words, the emergent idea of individual rights, in the context of a developing market economy, was interpreted to mean that economic agents were not tied together by any material obligations to satisfy their common life needs.

Thus, the social processes which underlay the emergence of liberal rights entailed fundamental transformations of the understanding of human being and the normative foundations of human society itself. Organicist conceptions of social order that saw social obligations and social positions (especially class and gender positions) as anchored in a cosmic hierarchy broke down in favor of private-exchange contractarian grounded in the interests of private property owners. While the link between the legitimacy of power and the consent of those over whom it is exercised appeared to be consensual, its original configuration excluded both the voice and the material life-interests of the majority of people. Most of society lacked the property qualifications assumed to be the necessary condition of having an independent interest. While that contradiction was eventually resolved by universalizing the basic civil and political rights of citizenship, this universalization itself has set the stage for recognizing the ambiguity attaching to the liberal conception of individual rights.

The defining assumption of classical liberalism about human beings is that they are self-interested atoms engaged in a competitive struggle against in the market, with each oriented by a private conception of the good and happiest when their private interests are maximally satisfied through “voluntary” market exchanges. This interpretation of human nature entails, to begin with, a conception of society as essentially a web of conflict between competing interests. Those conflicts are, in the words of Isaiah Berlin, “ineliminable;” they can be domesticated but never superseded. Kant presents a paradigm expression of this link between divergent self-interests and the possibility of social order. In “The Idea of a Universal History From a Cosmopolitan Point of View” he argues that “the means employed by nature to bring about the development of all the capacities of men is their antagonism in society... by ‘antagonism’ I mean the unsocial sociability of men, i.e., their propensity to enter into society, bound together with a mutual opposition which constantly threatens to break up the society.” (p 15). From this sort of assumption about social order and historical progress two opposed interpretations follow. On the one hand, as classical liberals, libertarians, and neo-liberals consistently argue, if individuals are defined by private interests which are formed independently of social relations, and these interests are of paramount importance to those individuals, then any stable, just, and progressive social order must respect these interests by recognizing certain fundamental rights of private individual spheres that cannot be abrogated by political or social power. Yet that very form of individual rights means, in practice, that the majority of people whose lives depend as instruments of labor on the fluctuations of market forces have few effective rights in practice. In other words, people are forced into economic relations that rule out their rights as persons because they lack the property to exercise them.

Hence the idea of positive rights emerged, based upon, however, the same premises about human nature and social development as underlay negative rights. In this counter-formulation, rights remain of paramount moral value, but the realization of this value is

tied to policies that transfer resources from the property owning class to the economically dependent classes and groups. Yet, since the defenders of positive rights share the classical liberal assumptions about human nature, they open themselves to the charge that the policies that they claim are necessary to realize the value of rights are “paternalistic” in relation to the dependent classes and groups and “despotic” in relation to private property owners.

As the historical context makes clear, the social presupposition of the value of holding a right is a society in which there are divergent and mutually exclusive interests. The social function of rights is not to overcome this condition of society-wide conflict and competition, but to domesticate them. Yet neither liberal approach to domesticating the conflict can succeed in its conflict with the other since each draws opposed conclusions from the same principles of human nature, and neither explicitly rejects the economic relations that regulate a capitalist market-based society. The classical liberal doctrine of negative rights proceeds from the premise that individuals are intrinsically valuable centers of private interest and concludes that political power must never interfere in those interests for the sake of satisfying the material life-interests of all classes. The egalitarian liberal opposition, in contrast, proceeds from the premise that individuals are intrinsically valuable centers of private interest, argues that gross inequalities of wealth undermine the possibility of forming real independent interests and goals, and concludes that positive rights to fundamental life-resources are necessary. But egalitarian liberals never challenge capitalist social relations themselves, preferring to ignore them in highly abstract argument which avoids material reality *a priori*. From within the horizons of liberal social philosophy then, it is clear that the interference problem cannot be resolved. So the confinement of liberal rights-based discourse is apt to motivate anyone whose fundamental concern is the overall well-being and freedom of human beings to abandon the concept of individual right altogether. On the surface, this strategy appears to be the one adopted by Marx.

3.1. Marx

In *On the Jewish Question* Marx became the first critic of liberal capitalism to *systematically* disclose the historically contingent connection between liberal rights (both negative and positive) and human freedom. It is easy to interpret Marx (as important Marxists, including Lenin, did) as claiming that rights are nothing but bourgeois obfuscations of the underlying social power relations of international capitalism. However, a more nuanced interpretation is possible. Perhaps Marx is not arguing that there is *no* positive relationship between rights and human freedom, but only that the connection between bourgeois rights and human freedom depends upon the existence of a society structured as self-maximizing competition among self-interested individuals. For Marx, market transactions are not win-win, as classical and neoliberals maintain, but rooted in exploitative and alienating social relations. If these transactions are sanctified by grounding their legitimacy in inviolable negative rights to private property the result is exploitative and alienating social relations. On the other hand, asserting positive rights to a greater share of social income, as recommended by egalitarian liberals, does not overcome the social bases of exploitation and alienation either, but only lessens its effects on the dependent classes and groups.

In this interpretation, Marx is arguing that positive rights are necessary only so long as natural and social wealth is not collectively and democratically governed according to the principle that everyone's interest in satisfying his or her universal life-requirements is the essential goal of social organization. As long, that is, as society is regulated by the interest of the money-capital class in increasing private accumulations of money capital without limit, then the lower classes require positive rights as protections against the life-destructive effects of that social system. If, by contrast, this underlying antagonism and conflict were resolved and the investment of natural and social wealth became governed by the principle of the priority of all-round universal life-requirement satisfaction, the need for positive rights would be thereby transcended. Marx can be faulted for failing to insist upon the need for a genuine private sphere of life in a free society, but the essential point he is making is important if the ambiguity of the implications of liberal rights is to be resolved. Since both negative and positive rights assume the necessity of competition where many individuals lose and others increase their holdings of money-capital, the material and institutional conditions of free life-capability realization and enjoyment for all are ruled out in principle.

3.1.1. Beyond Marx to Universal Human Life-Requirements

In the contemporary period, however, Marx's argument needs to shed its political foundations in industrial wage-labor class struggle and be recast in universal terms. As the empirically demonstrable degradation of global life-support systems (in both their natural and social forms) proves, the basic conflict in the globe today is not between classes, but between forms of life that serve to preserve and develop the natural and social means of life-support and enrichment and forms of life that systematically degrades them. According to McMurtry (*Economic Reason and the Crisis of Global Life Systems*) the driver of this conflict is the rule of the money-capital over 'life-capital,' but it cannot be resolved by putting another class in power (as Marx hoped), or spreading liberal democracy (as liberals of all permutations hope). Regardless of what society calls itself:— socialist, liberal, social democratic, or whatever— unless society is consciously steered by "universal human life necessities," not only of its members, but of all humans and indeed the whole web of planetary life, the same threats of economic activity unhinged from the life-ground and life-value will recur.

Is it not possible, however, for egalitarian liberal defenders of positive rights to object to this argument that their concept of rights is thoroughly life-grounded and practically feasible, thus making the ambivalence discussed above a mere logical curiosity? It is certainly true that claims on social wealth legitimated by appeal to social and economic rights have elevated the living standards of the working class in liberal-capitalist countries and expanded the real opportunities and living conditions of oppressed groups. Elevating standards of living and expanding the real range of opportunities are true life-goods. To that extent the principle underlying the egalitarian understanding of positive rights expresses a genuine life-support system at the level of law and policy. At the same time, however, it remains true that society is not only steered by law and policy, but the increasingly overriding forces of the global market order. These forces, however, are not simply quasi-natural powers driving an economic system independently of people's motivations and demands. The global market system reproduces itself not simply on the basis of coercive power, but at the level of

consciousness in terms of regulating ideas that always select for maximum monetary returns to self over contributions to collective well-being. The money sequences that drive the system also operate in mind, as the dominant value system according to which people evaluate life-plans as good or bad. Unless law and policy consciously seeks out and diagnoses this life-blind value system as the primary mechanism of the various social and ecological problems the world faces, they will not be successful solutions (any more than the real achievements of the welfare state finally solved the problems of poverty, exploitation, and alienation). It is necessary to explain in more detail the meaning of the term ‘value system’ if this point is to be readily understood.

Following McMurtry a ‘value system’ may be defined as a more or less comprehensive structure of orienting principles whose function is to legitimate a particular way of life in its individual and social dimensions. It exercises its influence over public policy and individual life-decisions by justifying different ‘social moralities.’ A social morality may be defined as a set of principles that legitimate definite modes of producing, distributing, and appropriating resources in a given social formation. Ruling value systems and social moralities are always linked. In the period at issue here, the last three hundred years, the ruling value system may be called, again following McMurtry, ‘money-value grounded’ and the ruling social morality, as Noonan calls it in *Democratic Society and Human Needs*, ‘rights-based.’ The instantiation of a rights-based social morality involving both negative and positive rights in a society where economic decisions and personal motivations are dominated by the interest in maximal accumulation of pecuniary wealth for self has had contradictory implications for life-grounded understanding of freedom (individual realization and enjoyment of vital capabilities). On the one hand, where civil and political, economic and social rights have been universalized, dependent classes and groups have been able to satisfy their minimum life-requirements and develop, within the limits of money-capital accumulation, their vital capabilities. On the other hand, the recognition of formal rights does not confer legitimate power on citizens to collectively govern their working lives, to directly participate in the development of national or international economic objectives in the common life-interests, or to ensure that economic development is geared towards the free development and enjoyment of meaningful capabilities within the known carrying capacity of the planetary field of life. Instead of solving the problems, positive rights, since they still depend on the legal form of the idea of right as such, enter into an unresolvable conflict with negative rights. That is, since the existence of a positive right does not contest the legitimacy of the negative right of private property and the system of money-capital the latter sanctifies, the society in which they conflict must be one essentially driven by conflict between the two.

Indeed the history we are examining here is a history where first one and then the other gain ascendancy. In the last thirty years the world has witnessed a massive roll-back of material life-gains as corporations have become the subject of property rights and have exercised these effectively, first at the national, and now at the international and global levels. (For a detailed history of this development the reader should turn to Ted Nace’s *Gangs of America*, 2003). This development was a reaction against the gradual development of life-grounded regulations on capital and life-supporting investment in public infrastructure that dominated the period from the end of the First World War to the oil and currency crisis of the early 1970’s. Moreover— and this point is crucial— the

global corporate elimination of life-supporting regulations and policies does not appear as contrary to the deepest values of liberal democracy because it can claim, with justification, that the sacred rights of private property in money stocks are entailed by this social form. As a consequence, criticisms of corporate globalization which do not go to deeper ground than the concept of “positive rights” cannot break free from the self-serving value system at the root of the problem.

Considered from the political-economic, rather than the ethical, standpoint, human rights are a true response to social crisis, but seek to solve that crisis within the socio-economic value system that causes it. The specific historical moment of the emergence of human rights normative discourse was the catastrophe of the Second World War. The Holocaust in particular impressed upon reflective politicians and legal theorists the moral limitations of state rule. As a principle of international politics, human rights serve as a primary justification for schemes of international intervention. As Jones explains in *Global Justice*, human rights make national sovereignty contingent upon national governments recognizing and honoring human rights norms.

Just what this ‘human rights norm’ is, however, is subject to debate. The best known interpretation (expressed in the Universal Declaration of Human Rights in 1949) follows closely the conception of civil and political rights familiar from classical liberalism, with only one article, however, recognizing the existence of economic and social rights. The basic interests of humans are interpreted according to the liberal understanding of persons as atomic individuals defined by self-interests in security of life, property, belief, and action. Despite references to the right of national self-determination, the philosophical premises of this document seem to assume the spread of capitalist markets and the norms of liberal-democratic governance as their social framework. As should be evident, the spread of these social forms not only limits the right of national self-determination to follow a non-capitalist path, but is necessarily destructive of the social life-organization of aboriginal peoples and, if the current state of global natural and life-support systems is evidence, also destructive of the long-term health of human and planetary life-organization.

There is also, however, a maximal interpretation of human rights. This maximal interpretation is given voice in the thinkers mentioned throughout this examination. It also has some legal substance in the form of the *Covenant on Economic, Social, and Cultural Rights*. Unfortunately, however, the existence of minimum and maximum interpretations of human rights tends to replicate on the international stage the conflict between defenders of negative and positive rights in the national arena. The debate thus far has favored the defenders of the right of corporate money capital to override life-conditions wherever their market-value appropriation serves greater returns to private money investors. Where such corporate rights have been successfully resisted (as in Cochabamba, Bolivia, where peasants organized against the Bechtel Corporation to forcibly return the town’s water supply to collective democratic control) it has not been by means of the assertion of countervailing positive rights, but, as McNally demonstrates in *Another World is Possible*, by physical mass resistance and reappropriation of the resources that had been taken from them through the exercise of corporate property rights across borders.

Rather than directly support such democratic movements to return life-necessities to serving the needs of local human life, the most influential theorists of human rights have preferred abstract debates that ignore these conflicts. It is true, of course, that theorists like Held, Jones, Nussbaum and Sen consistently maintain that human dignity is violated by life-destroying poverty, but they do not identify the causes of this indignity. On the other hand, political and economic leaderships of the world's wealthiest states say little or nothing about protecting the economic and social rights of the poor against life-destructive social programs, while they are apt to be selectively outspoken against those who do. In this one-sided concern for rights they repeat the nineteenth century arguments in favor of the *laissez-faire* market on an international scale. Global institutionalization of life-grounded rights would, in contrast, contribute significantly towards the recognition and amelioration of the worst examples of human deprivation. However, just as the national welfare state did not end poverty, much less establish the material conditions for the maximally free development of vital capabilities, there is little reason to believe that the global institutionalization of human rights by itself would do better in the absence of corresponding fundamental changes to social and economic institutions and their governing value system.

If we examine international social development over the past thirty years, it is not surprising to see the sorts of theoretical debates that one does in fact see. In many ways the intensified globalization of market forces has re-created in the developing world the social conditions of early capitalism in the now-developed world. Chief amongst these conditions is the expropriation of agricultural peoples and the forced urbanization and proletarianization this dynamic produces. New forms of social conflict have emerged at the same time as old ones are intensified. Differences concerning the proper scope and implications of human rights express opposed economic interests. Even the most complex and far-reaching articulations of the human rights ideal, however, do not resolve these conflicts in by presupposing them away from the parameters of discourse.

Since private property is dominant and the basis of liberal individual rights, and corporations, as Nace shows, have secured this dominant right for themselves free from public intervention, rights-based solutions seem inadequate to the problem. Gary Teeple's *The Riddle of Human Rights* thus argues that human rights are always only countervailing rights to the rights of corporate property. If the aim of human rights activists is not merely to reach a *modus vivendi* with dominant money-capital rights, but to secure the real social conditions of human dignity, it seems clear that a deeper transformation in the steering values of the global system are required. The justification for this transformation lies in the objective and universal life-interests of human beings, which include, most basically, their life-support systems. Before spelling out this justification we return to the deep antinomies of liberal rights, which have long obscured these life bases of human flourishing.

4. The Antinomies of Rights

As Kant defines it, an antinomy is a conflict between two arguments whose conclusions contradict each other but which are, considered in themselves, equally valid. In the context of the purpose of this paper, the ambiguity of meaning attaching to the use of the concept of right generates two sets of contradictory arguments. Specifying them will

crystallize the analysis developed in Sections 2 and 3 which together call for the philosophical alternative introduced above and to be explicated in the concluding section.

4.1. First Antinomy: Formal and Substantive Rights

The first antinomy expresses the basic conflict between defenders of classical liberal negative rights and defenders of positive rights.

The Argument for Formal Rights:

Human beings are intrinsically valuable individuals defined by interests that are unique to them. The primary threat to these interests is concentrated political and social power. The function of rights is to create an inviolable private space in which individuals may freely pursue their interests. Any impediment that political and social power may place in the way of the free pursuit of these interests, save when the pursuit violates the rights of other individuals, is consequently illegitimate. The primary value protected by rights is the independence of individual interest and life pursuit. Consequently, governments cannot favor some interests over others without violating someone's rights. Therefore, substantive support in the form of the redistribution of material resources to better enable some to pursue their individual interests is illegitimate if it is true that all individuals are of equal intrinsic value. Thus, rights are only formal and cannot entail any legitimate claim on the resources that are the rightful property of others.

The Argument for Substantive Rights

Human beings are intrinsically valuable individuals with interests that are uniquely valuable to them. The primary threat to these interests is concentrated political and social power. The function of rights is to create an inviolable private space in which individuals may freely pursue their interests. Any impediment that political and social power may place in the way of the free pursuit of these interests, save when the pursuit violates the rights of other individuals, is consequently illegitimate. The primary value protected by rights is the independence of individual interest and life pursuit. However, it is the case that accumulations of private property, when they reach the point that some control what others need in order to freely pursue their private interests, can actually violate the rights of those so deprived. Consequently, it is not only not illegitimate, it is morally necessary if equality of rights is to be upheld, for duly elected governments to redistribute material resources to 'level the playing field' and ensure that everyone has roughly equal opportunity to formulate and pursue their private life plans. Thus, substantive positive rights are necessary if it is true that people are of equal intrinsic value.

Since the arguments proceed from the same premise about intrinsic value, the same general concept of right, and can both supply historical evidence in favor of their particular interpretation of the concept, there is no way to resolve the conflict from within the normative horizons of the concept of right or the historical horizons of liberal democratic capitalism. They must remain in permanent conflict unless a deeper normative foundation which does not rely directly on appeal to rights can be found.

4.2. Second Antinomy: Rights of Corporations and Rights of Embodied Individuals

The second antinomy expresses the conflict between corporate rights and the rights of embodied human individuals.

The Argument for Corporate Rights

Rights, in order to be effective, must be encoded in law in accordance with due legal and political procedure. Rights are not metaphysical entities that exist independently of historical, political, and legal practice. It follows, therefore, that whatever rights are recognized by legitimate legal and political authority are legitimate rights, and therefore of equal normative force in any conflict of rights. Corporations are individuals in law and this recognition of corporate personhood entitles corporations to the same rights of persons in all those spheres where they are relevant to corporate practice (secure property ownership, free speech, etc.). Furthermore, the extension of the political space in which rights are effective is again a legal and not metaphysical issue. Thus it follows that corporations may legitimately exercise their rights wherever those rights have the force of law. Since both national and international law recognizes corporate personhood and therefore rights, the rights of corporations are effective both nationally and internationally. Thus, in any conflict between individual and corporate rights corporate rights must be given equal normative weight to the rights of individuals.

The Argument for the Rights of Embodied Individuals

Rights, in order to be effective, must be encoded in law in accordance with due legal and political procedure. Hence rights are not metaphysical entities that exist independently of historical, political, and legal practice. It follows, therefore, that whatever rights are recognized by legitimate legal and political authority are legitimate rights, and therefore of equal normative force in any conflict of rights. Since it is true that the legitimacy of rights is tied to legal practice and not metaphysical speculation about the limits of personhood, political and legal bodies' practical reasoning must take account of specific differences pertaining to the actual power, interest, and practices of the entity in question. Due limitation of rights is necessary if any moral equality of rights is to be maintained. Corporations are collective entities defined by accumulations of power which, if given equal standing under law, can and will necessarily exploit their market advantage to the detriment of the competing rights of embodied individuals without any countervailing means of realization. Thus, in order to balance this power asymmetry, the rights of embodied individuals must be given primacy in law.

As in the case of the first antinomy each argument is consistent with different aspects of the philosophical and political history of liberal democratic capitalism. Thus, one cannot secure victory over the other so long as both proceed from the normative principles of liberal democratic capitalism. The proof of the reality of both antinomies is the actual three hundred year history of dispute, both at the level of theory and at the level of practice, between the opposed positions, although the effective rights of embodied individuals are seldom advanced. Only a normative argument that clearly and unambiguously grounds law and policy in the universal life-interests of people enables

resolution at higher level of rational comprehension. As these antinomies reveal, rights cannot supply a common normative ground. Universal life-interest in the equal realization and enjoyment of life-capabilities denotes this common normative ground. Normative concern for this shared life-base of human well-being and freedom must break out of centuries of liberal-capitalist confinement within an atomic social metaphysics which excludes a higher order social comprehension in principle.

5. Life-Interests and Life-Value

Recall that the normative foundation of the human rights ideal implicitly recognizes the existence of objective life-interests, but proponents typically turn to the Kantian value of the equal dignity and intrinsic value of the human being *in abstracto*. In practice, human rights are designed to protect this equal dignity and intrinsic value. What is it about human beings, however, that constitutes the basis of the dignity that human rights are designed to protect? Why is it that human beings have intrinsic value, according to Kant, whereas non-human beings are, from his perspective, mere things? The Kantian answer is that rationality determines the intrinsic value of human beings. By ‘rationality’ Kant intends not only the capability to calculate the consequences of different strategies of action, but, more deeply, the capability to determine the ends that will govern one’s own life. Humans, in other words, are not mere objects of external forces but essentially subjects of their own history, capable of directing themselves in relation to a self-chosen end or goal. As Martha Nussbaum explains in *Sex and Social Justice*, “human beings have a dignity that deserves respect from laws and social institutions ... rich and poor, rural and urban, female and male, all are equally deserving of respect, just in virtue of being human ... [thus] to respect the equal worth of persons is ... to promote their ability to fashion a life in accordance with their own view of what is deepest and most important.” Equal dignity, then, is bound up with our subjectivity, with our capability, to determine our own life-activity.

However, no one can freely determine their own life-activity who does not have secure access to the means of life that humans require to live. That is why so many different groups over the centuries have struggled to gain these means of life— to have a life to live it was not simply to secure a *legal* entitlement to life? It was to access *needed* goods. Consider the value of a formal right that is unenforceable. The republics of the former Soviet Union had the constitutional right to secede from the Union, but until 1989 this right was unenforceable. It was, therefore, of no real value. Such examples illustrate that the value of a right is proportional to the means it ensures to exercise it. Rights are the way in which claims on needed goods are legitimated in liberal democratic capitalist society. Rights themselves are only real and legitimate when they enable embodied individuals to secure actual means of life and life-expression. This is the real content of rights and it is anchored in the social-organic nature of human beings themselves, whose means of reproduction and expression is the ultimate aim of struggles for their rights. The universal rights of human beings are thus defined by their universal life requirements instrumental to realizing and enjoying their life-capabilities.

At their most basic, the universal means of human life are defined by the basic physical needs of the human organism: for food and water, for shelter and clothing, for care while young, and for treatment when sick. These fundamental physiological needs are

qualitatively invariant across all concrete differences of class, sex, race, and culture. As Doyal and Gough in *A Theory of Human Need* point out, the content of need-satisfiers may vary, but the structure of needs themselves do not. It is thus a serious category mistake to say, for example, that a vegetarian culture has a different need than an omnivorous culture. The need is the same (for nutritious food), the need satisfier is what differs.

The structure of basic needs illuminates a daily reality for every human being on the planet but does not distinguish human beings from other life forms. However much dignity we do or do not want to accord other life forms, it is nevertheless the case that human beings are distinct in a normatively significant way. That which distinguishes our organic nature from the organic nature of other living things is the degree to which we are self-conscious social beings, social-organic beings who communicate by language and symbols, including our lives as referents of our talk. The structure of our needs and the complexity of our brains links us together in different sorts of social and symbolic relationships outside of which individuals cannot develop and live as *humans*. Not only must we satisfy our basic needs through collective labor, but our capabilities for affective response to environments, for giving and accepting care and love, for communication and creative production, all depend upon definite modes of social organization. Thus there is a second set of fundamental needs that derives from our social nature. The first set of needs is one of physical needs of existence. The second set of needs, equally objective, is for the socio-cultural means of existence *as a human*. These needs include educational institutions in which our cognitive and affective capabilities can be developed, cultural institutions in which our creative capabilities can be realized, economic institutions in which people can play an active and meaningful role in the production of the goods required for the maintenance of human life, and political institutions in which citizens can participate in the necessary debates about the different possibilities for legitimately governing collective life.

Human beings are not only distinguished from other life forms by their symbolic orders of consciousness, but by the master-capability of determining the governing ends by which they orient their life-activity towards what-is-not-yet, as existentialists like Jean Paul Sartre have emphasized. That is, they are distinguished by conscious individual freedom. This capability too has material conditions which constitute a third and final set of basic needs, which may be called temporal. No one can *live* whose physical needs are not satisfied; no one can live as a *human* whose socio-cultural needs are not met; and no one can live as a *free* human whose temporal needs, needs for free time in which self-reflection and imaginative self-projection can take place, are not satisfied. In other words, where human life is determined by social dynamics over which those affected by them have no real choice, such that the content of activity and the time spent engaged in is not decided by those affected, where *life-time*, in short, is determined by external demands and not in light of agreed upon ends, human life is not free.

All human needs can only be understood to the human capabilities of our social-organic nature they enable. Following McMurtry, human needs can be distinguished from consumer wants by the objective harm that ensues for the being that regularly fails to satisfy them. The harm that follows need-deprivation is the reduction or destruction of the vital capabilities whose enjoyment in expression and realization is, in turn, the

ultimate end or goal of human life activity. Assuming that people who are alive wish to stay alive, (and the daily exertions people undertake to maintain life confirm the assumption), and that they seek to maximize the human enjoyment of this life so far as they have a choice, these three classes of human need constitute their common interest as humans. Failure to satisfy any of these classes of need thus constitutes a failure to satisfy the shared life-interests of human beings, and so constitutes a reductive harm to the affected person or group. The persistence of absolute poverty, the erasure of intrinsically valuable human activity, and a value system blind to the economic causes of these problems is *prima facie* evidence that global market society, as presently constituted, does not fulfill people's right to a human life.

6. Distinguishing Rights from Universal Life Requirements

In classical liberalism a right is an enforceable entitlement to pursue one's self-interest free from interference from above or below. Positive rights, as defended by Gewirth, Held, Nussbaum and others, extend the idea of enforceable entitlement to embrace claims on the material conditions presupposed by any vital life-activity. Viewed in abstraction from the social structure of a capitalist market society, it would seem that the recognition of positive rights entails the recognition of universal life interests and provides a non-controversial normative justification of the legitimacy of the demands encoded in the positive right. To insist on the difference between the foundation of the life-interest (human need) and the legal mode of the expression of the interest (positive human rights) seems therefore otiose. Once, however, one remembers the inescapable antinomies generated by these conceptions of rights it directs us toward the missing life-ground of the entire liberal tradition of rights.

Human life value is not found in the private possession of rights, but rather in the enjoyment what our humanity confers as a right to for all humans— sensing the world outside of us, moving freely within it and expressing our selves in different individual and collective activities, in exercising our minds in learning about and trying to solve the problems of understanding the natural and human world poses to us, in uniting affective response and deliberative thought in the appreciation of beauty in its diverse forms, in being psychologically capable of forming non-exploitative relations with others, in separating ourselves from the noise of the world and our mundane cares in reflective speculation about the ultimate concerns and limitations of a finite, embodied, thinking being who gets to share in the wonders of the wider universe for but a brief moment of time, and finally, to contribute, in whatever way one best can, to the fuller realization and enjoyment of these same capabilities in others. Human rights are society's recognition of everyone's claim to these fields of being— precisely not a private possession or territory that others may not enjoy. Any and every social institution, legal concept, and philosophical argument must ultimately be judged (as difficult as this may be in hard cases) in light of these enabling, as opposed to disabling, fields of life-value. Legal systems, ought to encode the regulations that enable human life to live humanly in these ways. Instead, observation teaches us that they serve to normalize the asymmetries of power that define given social forms. That is why the struggles of the excluded and brutalized arise— not to change legal forms, but to gain greater realization and enjoyment of life capabilities. What follows at the political level, then, is to assert those capabilities and the means of their realization as the goal, not

merely formally, as abstract rights, but concretely, as the institutions universally required for all humans to express and enjoy their human being.

If human dignity is grounded in freedom, not simply as a platitude but a concrete living reality, then the current structure of global social relations violates human dignity in principle. Positive human rights, while they recognize the injustice of inequality and poverty, oppression and subjugation, do not challenge the underlying structure of violation, nor do they provide the common ground for the satisfaction of the universal life-interests they assert. The life-grounded argument, in contrast, situates human rights along an historical continuum of life-grounded social development. Viewed over the long term, the tendency of social development is towards more inclusive and participatory democratic forms of social organization, including participation in the determination of the values to be served by economic systems and the modes by which they produce and distribute life-necessities. Unless, however, consciousness of the ultimate value of human life as sovereign steers these social institutions, they can too easily cultivate forms of consciousness in which ultimate and instrumental values are reversed. Once such an inversion takes place, societies can select towards life-undermining practices all the while their members believe themselves to be living a developed life. Just as an agricultural people whose farming practices increase the salinity of the soil literally sow the seeds of their own collapse, so too, at a higher level of discourse, a global society that measures good and bad by the rapidity with which it can convert life-value into money value, blindly prepares the way for a global collapse of life-support systems, both natural and social. The measure and substance of human rights discourse is the extent to which it can recognize such a pattern of human life violation.

If rights exist only in abstraction from these life-grounds, then understanding and debate bog down in the antinomies explained in section 4 . Beneath legal and philosophical argument within these unresolvable antinomies, however, the behavior of people confronted with objective harm to others proves that they are capable of recognizing and responding to the harms suffered by others as if they recognized a human right to be free of them. As McMurtry points out in *The Cancer Stage of Capitalism* “if people observe or know of the destruction or brutal reduction of life ranges where no compensating gain in or security of other’s life can explain it, they rebel from within as if there were an acquired structure of thought which put them ‘in common’ with the lost life, and the life that remains.”(p. 214) That which moves consciousness in these experiences is not simply the physical state of the other but the knowledge that, had conditions been otherwise, the person would have been enjoying their unique humanity. This capability to recognize the harms that others suffer and its positive correlate, the capacity to delight in and grow in the experience of the creations and achievements of others, is what makes human consciousness human, or humane, as the matter is often put in moral discourse. It is the non-sectarian ground of political argument and action which unites beneath classes and private interests as a consciousness of humanity in common, the basis of *human* rights as distinct from private possessory demands.

This argument concludes that when we affirm human rights, we properly ground them not in atomic possessory claims, as liberal defenders do, but in the universal life-interests these rights protect for the individual human being. The implication is that

what people really need are not more rights in the abstract without the means to realize them, but access with others to the life-resources they need: even if they are claimed by life-blind corporate demands to pecuniary self-gain which use the same language of rights to override this access. Only changes in the relation to life-means, and in the underlying value system of economic rule over them, can close the ‘moral gap’ rightly decried by cosmopolitan liberal proponents of human rights— a deeper implication than they have yet followed through.

Glossary

- Antinomy:** A special form of contradiction in which the conclusions of two arguments on the same subject are valid but contrary to each other.
- Classical Liberalism:** A social-political philosophy first systematically elaborated in the seventeenth century whose inner logic of argument maintains that individuals are self-maximizing property-holders with inviolable rights to protection from external political power from above (the “state”) and social power (the majority) from below.
- Life-Interest:** The claim to life-resources that grounded in human social-organic nature.
- Life-Value:** The realization and enjoyment of the essential capabilities of living beings, most highly developed and expressed in human social organisms.
- Needs:** The universal means or resources required to maintain life (satisfy life-interests) and realize life-value.
- Rights:** In received theory, a legal entitlement that protects individual interests from the coercive use of power. Rights can be negative (to exclude interference) or positive (to some good of self-realization). Human rights are universal entitlements, negative and positive, that people hold in virtue of being human.

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Biographical Sketch

Jeff Noonan was born in 1968 in Sudbury, Ontario, Canada. He received his B.A (Philosophy and Social and Political Thought) from York University (Toronto) in 1991, his M.A (Philosophy) in 1993 and his Ph.D (Philosophy) 1996 from McMaster University (Hamilton). He taught as Visiting Assistant Professor of Philosophy at the University of Alberta (Edmonton) between 1996 and 1998. He is currently Associate Professor of Philosophy and Head of Department at the University of Windsor. He also serves on the Coordinating Committee of the Centre for Studies in Social Justice and the Coordinating Committee of the Program in Labour Studies. He is the author of *Critical Humanism and the Politics of Difference*, (McGill Queen's University Press, 2003) and *Democratic Society and Human Needs*, (McGill-Queen's University Press, 2006). His articles have appeared in such journals as *Dialogue: Canadian Philosophical Reviews*, *Philosophy Today*, *Res Publica*, *Social Theory and Practice*, and *Rethinking Marxism*. He is also co-editor of *Studies in Social Justice*.