

## Identity and the Hegemony of Universal Human Rights

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### Abstract

*Human rights are commonly portrayed as a narrative that passes through several chapters before reaching its inevitable conclusion. This narrative begins with the horror of Nazism, moves to the centrality of human rights in the UN Charter, eulogizes the Universal Declaration, celebrates the achievements of standard setting as set out in the major covenants, offers detailed analysis of methods of monitoring and, finally, speculates on the future of compliance. This narrative is sustained, firstly, by 'naturalist' foundationalism and, secondly, by a widely held assumptions about the move towards 'settled norms' in the contemporary world order. Although some pessimism is voiced over continued reports of torture, genocide, structural economic deprivation, disappearances, ethnic cleansing, political prisoners, the suppression of trade union rights, gender inequality, religious persecution, and many other violations of internationally agreed human rights, most commentators and activists tacitly adopt an optimistic stance that envisages a future rights based international order. The still prevalent naturalist account of human rights, together with a narrative that boasts 'settled norms', suggests that the human rights regime represents a final 'truth' about the essential nature of all humankind; a common identity that describes the individual in an increasingly globalized world.*

*This paper interrogates the 'naturalist-settled norm' account of human rights from the perspective of power and knowledge. It begins by distinguishing between the international human rights regime and the global discourse of human rights. The former adopts a legal approach, where the neutral, value-free, unbiased and impartial nature of the law is tacitly accepted. The latter refers to human rights as social, political and economic practice, and must therefore include an account of power. From this perspective, the discourse of human rights might be said to ascribe a particular identity to human beings as agents of a particular type and kind, which serves the interests of some groups over others. While the human rights regime is presented by world leaders, commentators and the majority of academics as the legitimate articulation of norms*

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*founded upon timeless 'truths' about human nature, the argument presented in this paper suggests that the norms associated with the discourse of rights offer a more cogent insight into the status of human rights in the current world order. Thus, complex questions arise about power/knowledge, foundationalism, the status of international human rights law, and the politics of rights.*

*The paper begins with an account of discourse as a meeting place for power and knowledge. A second section discusses 'discipline' as a mode of social organization that imbues the individual's identity with particular ways of thinking, knowing and behaving, thereby instilling a particular social consciousness. A further section looks at the global development of 'market disciplinary' norms (as opposed to legal norms) that act as a guide for action. The paper concludes with a discussion on issues of human rights and identity in the age of globalization.*

### **Introduction**

In recent years several authors have argued that the terrain for political struggles has shifted from the politics of poverty, egalitarianism, and scarcity to that of identity, difference and exclusion.<sup>1</sup> The new politics of identity is often couched in the language of cultural relativism, which assumes a 'clash of cultures' in the struggle for moral dominance.<sup>2</sup> At the heart of cultural relativist arguments is the assumption that any claim for moral universality is fundamentally flawed because it fails to acknowledge that the validity of rights is derived from the cultural context in which it is asserted. Thus, all claims to universality are false, 'because the history of the world is the story of the plurality of cultures.'<sup>3</sup> From this perspective, those who promote universal human rights are open to the charge of imperialism, understood in the current period as the moral arm of the United States of America and its allies. Universal human rights should therefore be treated with deep suspicion, if not downright rejection.

However, in the current period, it is a mistake to understand the new politics of identity as a reaction to imperialism, if this is seen as an attempt to generalize the moral values of a particular social, cultural, and moral tradition. Instead, the new politics of identity should be seen as emerging in the wake of changes to the global socioeconomic context within which people (and peoples) must live their lives. In the age of economic globalization, the demand for changes in systems of

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1. See: Fraser, 2000: 20-107.

2. See: Huntington, 1997.

3. See: Vincent, 1986.

production, agriculture, and exchange have seen the emergence of new forms of social relations that challenge existing social habits, moral ideas, and cultural identities. In many locales, these changes instigate feelings of anomie and social disintegration, as traditional knowledge is replaced by the new.<sup>1</sup> The increasing grip of economic globalization therefore provides the context for political struggles that may threaten those whose interests are most closely associated with the move to a new global order characteristic of recent decades.<sup>2</sup>

Two possibilities present themselves for avoiding disruptive threats caused by the politics of identity. The first is the threat or actual use of force to coerce discontented groups into accepting the full consequences of the new socioeconomic order. Policies that require the constant policing of the 'uncivil' are, of course, costly, cannot be relied upon indefinitely, and often fuel further dissatisfaction.<sup>3</sup> The second is to institutionalize universal civil, political, economic, social and cultural rights, which are said to 'trump' all other claim. In this way, those who suffer threats associated with identity and difference as a consequence of economic globalization are guaranteed their rights, backed by the full force of international law and the international community. The universal human rights regime, which includes the Universal Declaration, the major covenants and current arrangements for monitoring progress on human rights issues, provides the focus for this project. In this way, those groups who suffer the worst consequences of economic globalization, and who seek to engage in political struggles founded upon threats to identity, are provided with a set of principles, norms, and values on which to mount legitimate resistance.<sup>4</sup>

However, the human rights regime, which is a legal discourse, is not presented merely as a pragmatic solution for those who suffer the worst consequences of economic globalization: simply as a corpus of international law that has to be honoured. To sustain the claim of universality, the regime has sought to promote a secure philosophical foundation upon which human rights might be sustained. Although this project has investigated many possibilities, including the existence of a deity, human need, self-evidence, and theories of justice, in the most

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1. See: Salmi, 1993; van der Pijl, 1998.

2. See: George, 1999.

3. See: Pasha and Blaney, 1998: 417-540.

4. See: Pupavac, 2003.

recent period the tradition of natural rights is widely acknowledged. Claims that all rational nations now subscribe to the 'settled norms' of human rights<sup>1</sup> and that 'amazing progress' has been achieved in recent decades<sup>2</sup>, reinforce the regime and its foundational project. The claims made for the natural rights/'settled norm' foundations of human rights allow proponents of the regime to represent human rights a 'neutral' set of claims; a final 'truth' about the essential and eternal nature of humankind, legitimated both by reason and law.

An alternative way of viewing the project for universal human rights distinguishes between the human rights regime and the socioeconomic context in which the discourse of rights is conducted. While the contemporary discourse of rights refers to the creation of international law, and methods for implementation, 'market discipline' associated with the conditions of globalization provides the normative order in which rights must be promoted and claimed. Those seeking to gain an insight into human rights by contextualizing rights in this way reject all notions of 'neutrality, insisting instead that human rights cannot be fully understood without an analysis of power. From this perspective, the post-war discourse of universal human rights should be seen as an attempt to ascribe an identity to all individuals as agents of a particular kind and type; agents fit to take their place within the global political economy. While the human rights regime describes a wide range of rights, the perspective gained by including an analysis of power seeks to expose the interests supported by promoting a particular vision of rights. In this way, the regime can be said to mask the actual normative foundations upon which global decision-making and legitimate action is conducted.

The paper begins with a brief overview of economic globalization, as the context in which claims for human rights are constructed. It then moves to a discussion on the discourse of human rights, where power and interests associated with economic globalization are exercised. This is followed by a further discussion on market discipline, which provides the normative rules for economic, social and political action. Finally, some conclusions are drawn concerning claims that the human rights regime offers a legitimate foundation upon which to conduct political struggles on identity, difference, and exclusion.

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1. See: Frost, 1996.

2. See: Opsahl, 1989: 13-33.

### **Globalization and Human Rights**

Although there are many disagreements across and within academic disciplines on the exact nature of globalization<sup>1</sup>, most theories accept that we are witnessing a significant shift in the special reach of networks of social relations at all levels; transnational, interregional, and global. Globalization is understood as an historic process that both ‘stretches’ and ‘deepens’ transnational patterns of social relations. ‘Stretching’ social relations suggests that events, decisions, and activities in one part of the world often have an immediate impact on the economic, social, and political well-being of individuals and communities in distant locations. This is distinguished from the ‘deepening’ of social relations, which suggests that patterns of interaction and interconnectedness are achieving both greater density and intensity.<sup>2</sup> In the words of Anthony Giddens, although ‘everyone has a local life, phenomenal worlds for the most part are truly global.’<sup>3</sup> While Giddens and others would argue that globalization should be seen as a multidimensional project, economic globalization remains the most influential element that challenges existing notions of identity and the tolerance of difference.<sup>4</sup>

While some studies have attempted to re-contextualize human rights as an important aspect of globalization, most adopt a neo-liberal approach, which tacitly assumes that globalization presents new opportunities for strengthening the regime. Following the approach of George Washington and the nineteenth century British parliamentarian Richard Cobden,<sup>5</sup> who saw international trade as a ‘civilizing’ influence on the ‘uncivilized’, the move towards ever greater levels of economic integration is said to parallel ever greater levels of ‘moral integration.’<sup>6</sup>

According to neo-liberals, these processes provide the context for the emergence of a global civil society, which will, in time, empower the global citizen in the struggle to claim the rights set out in the human rights regime. Neo-liberals acknowledge that while the past era saw the development of legal standards for universal human rights, in the form of international law that reflects the timeless universalism of human rights, implementation was inhibited by the principles on which the

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1. See: Spybey, 1996.

2. See: Held, 1999; McGrew, 1992.

3. See: Giddens, 1990.

4. See: Carver, 1998; Cox, 1997; Hoogvelt, 2001.

5. See: Vincent, 1986.

6. See: Donnelly, 1989.

international system of states was built, including sovereignty, non-intervention and domestic jurisdiction.<sup>1</sup> Today, so the argument continues, the conditions of globalization provide an opportunity to develop new forms of 'humane governance', including new and more effective ways of securing universal human rights.<sup>2</sup>

Critics of neo-liberal optimism are less sanguine. First, critics accuse neo-liberals of a myopic vision of globalization, which stresses present and future benefits but remains blind to current, potential and future costs. These critics argue that the forms of global finance, capital accumulation and consumption associated with economic globalization are supported by new social, economic and political structures that present an enormous challenge for the politics of identity. Second, critics point out that the institutions on which neo-liberals place so much hope for securing human rights, including international law, may well be less effective under conditions of globalization because these institutions reflect the statist logic of the previous era, rather than those of the future. If under conditions of globalization the authority of the state has diminished, then international law, the law that governs relations between states, has less potential in regulating the practices of non-state actors, who are at the forefront of economic globalization.<sup>3</sup>

Third, critics argue that it is demonstrably over-optimistic to claim that wide agreement has been reached concerning the nature and substance of universal human rights, as can be seen in the recent debates over 'Asian values' and the invisibility of women in the human rights debate. (Bauer and Bell, 1999, Pasha and Blaney, 1998, Peterson and Parisi, 1989) Finally, critics argue that the uneven consequences of globalization suggest that economic and moral integration is not indicative of the emergence of a single, globally accepted moral code. Rather than signalling the 'end of history', (Fukuyama, 1989) critics argue, neo-liberal observations about processes of global integration suggest the emergence of particular forms of class formation and new hierarchies of knowledge and power. (van der Pijl, 1998) Neo-liberal assertions about the prospects for human rights are, therefore, little more than a reflection of particular class interests, not an all-embracing global phenomenon that will eventually bring human rights protection to all

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1. See: Cassese, 1990.

2. See: Clark, 1999.

3. See: Panitch, 1995.

people. (Aziz, 1999) Expressed cogently by Scholte:

liberal globalists of the late twentieth century readily fall prey to a naïve optimism, sometimes bordering on the euphoric, that modernity will, almost as a matter of historical inevitability, yield a universal, homogeneous, egalitarian, prosperous and communitarian world society. Yet in practice, globalization has often perpetuated (and in some instances increased) poverty, violence, ecological degradation, estrangement and anomie. [Furthermore], liberal accounts of globalization lack a critical examination of their own terms and the social structures that this mind-set bolsters. Tacitly if not explicitly, liberal orthodoxy treats the market, electoral democracy, growth, national solidarity and scientific reason as timeless virtues with universal applicability. This discourse effectively rules out the possibility that capitalism, individualism, industrialism, consumerism, the nationality principle and rationalism might be causes rather than cures for global problems. (Scholte, 1996: 43-57)

This more pessimistic view casts economic globalization as posing continued threats to human rights, including mass migrations, refugees, famine, violence, environmental degradation, cultural dissolution and structural deprivation. Pessimists argue that far from strengthening human rights, the practices of globalization may not lead to greater human emancipation but, rather, to new forms of repression. For the pessimists, '[t]here is no obvious or unambiguous, let alone, necessary, connection between globalization and freedom.<sup>1</sup> If the project of universal human rights can be further promoted within the context of globalization, then according to the pessimists, we must begin by unmasking the weaknesses and inadequacies of the neo-liberal approach, so that our hopes are not thwarted and our energies dissipated by undertaking actions that lead to inevitable failure. Political struggles based upon the politics of identity that appeal to the human rights regime may therefore be misplaced.

### **The Discourse of Human Rights**

The contemporary discourse of human rights must therefore be placed within the context of economic globalization. The term 'discourse' refers to the argument that language is not merely a way of describing external reality - a technique for labelling objects - but acts to signify generalised,

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1 . See: Scholte, 1996: 43-57.

socially constructed categories of thought to which important social meanings and values are attributed. Discourses promote particular categories of thought and belief that guide our responses to the prevailing socioeconomic environment. In this sense, discourses lend structure to our experiences, and the meanings we give to our experiences. An example of this can be seen when we use the term 'lawyer', which does not simply describe an individual by professional category but also invokes a bundle of other meanings, expectations and understandings that go far beyond mere empiricism. Included among these are assumptions about authority, fairness, social class, punishment, justice, legitimacy, erudition and notions of social order. Discourses therefore provide sets of values and beliefs that inform our social responses and actions, although not always self-consciously. Professional and intellectual discourses are among the most influential in this respect. Crucially, as professional, intellectual and interest based groups move to 'privatise' and institutionalise discourse -- through the introduction of specialised language, images concepts, and the institutionalization of knowledge -- the veracity, reliability, integrity and authority of discourse 'experts' is reinforced, while other voices from outside the discourse are marginalized, derided, excluded and sometimes prohibited.<sup>1</sup> The most prominent voices within the human rights discourse are lawyers, NGOs, and academics, whose authority ensures that the 'true' discourse is maintained.

Discourses therefore act as the meeting place for power and knowledge.<sup>2</sup> While neo-liberals assumes that knowledge can flourish only in the absence of power, from the perspective of discourse, there can be no knowledge without power or power in the absence of knowledge.<sup>3</sup> To gain an insight into the truth-claims emanating from discourse must therefore include an enquiry into power relations. However, such an investigation does not imply that the generation of truth is necessarily corrupted by power but, rather, that the social world described by discourses always involves power relations. In this sense, neo-liberal concerns that power can be defined in terms of legitimacy and illegitimacy misses the important point that even the legitimate exercise of power also excludes, marginalizes, silences, and prohibits alternatives.

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1. See: Hunt, 1993.

2. See: Foucault, 1977: 1-46.

3. See: Cozens Hoy, 1995: 91-173.

Mutua illustrates this clearly in his discussion of the human rights discourse, which he argues is often expressed through images of the 'saviour' overthrowing the 'savage' to restore human rights to the 'victim'.<sup>1</sup> While the image of good triumphing over evil to save the wretched may inspire a sense of moral righteousness, it fails to acknowledge that the wretched may aspire to an alternative view of dignity, rights and the good life than that promoted by the saviour. Within the context of the current global order, the saviour is concerned to promote the values, norms and principles of the dominant discourse of human rights, which is associated with the neo-liberal project for economic globalization. The victim, on the other hand, may harbour other expectations, perhaps group rights and the right to cultural identity, which the neo-liberal project finds difficulty in accommodating.<sup>2</sup>

Following this approach to discourse suggests that human rights are better understood as three overlapping discourses – the philosophical, the legal and the political -- each with its own language, concepts and normative framework. The philosophy of rights discourse, as noted in the introduction, has achieved widespread acceptance of its foundationalist 'settled norm' project. In this sense, the philosophical discourse has been described as a 'culture of contentment'<sup>3</sup>, a conservative rather than radical project,<sup>4</sup> and a point of 'arrival' for the neo-liberal project.<sup>5</sup> Confirming this view, the president of the United Nations General Assembly once noted that the 'quest for the basis of human rights to which philosophers, jurists and politicians devoted their interest and concern in the past ... [has] lost its significance'.<sup>6</sup>

In contrast to the moral abstract nature of the philosophical discourse, the legal discourse focuses upon a large corpus of international human rights law, mostly generated under the auspices of the United Nations. The legal discourse focuses upon the internal logic of the law, its elegance, coherence, extent, and meaning, which the application of legal reason is said to reveal.<sup>7</sup> A second aspect of the legal discourse investigates questions concerning the extent to which human rights law can be said to

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1. See: Mutua, 2002.

2. See: Evans, 2000.

3. See: Gill, 1995: 399-423.

4. See: Carver, 1998.

5. See: Raphael, 1966: 22-30.

6. See: Chandler, 2002.

7. See: Vincent, 1986.

have transformed the principles of international law into a system perhaps more appropriately labelled transnational law.<sup>1</sup> The purpose of this move is to resolve the contradictions between the cosmopolitan claims of human rights and the principles of sovereignty, non-intervention and cultural difference, upon which the international system and international law is built. Although this move may have noble motives, critics argue that it ‘impedes the application of basic international legal doctrine to human rights law; impedes its conceptual and academic development and obscures conflicts between the two’.<sup>2</sup> In common with natural rights foundationalism, which, reason reveals, stands above the values that describe any particular society, culture or civilization, international human rights law claims to articulate a set of ‘neutral’ values to which all reasonable people should subscribe.<sup>3</sup>

Lastly, the political discourse seeks to contextualize the prevailing values expressed in law and philosophy. It is therefore concerned with questions of power and interests associated with the dominant conception of human rights and the expression of those interests as legal and philosophical ‘truths’<sup>4</sup> While the application of reason and claims of neutrality have tended to legitimate the historic contribution of philosophy and international law, the political discourse is often seen as a value-laden, ideological project; a potential cause of conflict over human rights rather than a source of further ‘progress’. From both the philosophical and legal perspective, to take account of power and interests in the human rights discourse raises the spectre of old conflicts over foundationalism, fosters doubts about ‘settled norms’, offers comfort for cultural relativists, raises questions over the legitimacy of international law, and thus threatens to bring down the whole post-World War Two project for universal human rights. The political discourse is therefore treated with suspicion.

In response, those engaged in the political discourse argue that the failure to include an account of power and interests obstructs further investigation into human rights within a changing world order. Mutua, for example, argues that the ‘end of history’ thesis promoted by Fukuyama and others<sup>5</sup>, which proclaims the triumph of particular truths

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1. See: Cassese, 1990.

2. See: Chinkin, 1998: 29-105.

3. See: Marks, 1998: 449-514.

4. See: Evans, 1996; Stammers, 1993: 70-82.

5. See: Fukuyama, 1989: 3-18.

over all previous heretical doctrines, fails to understand the dynamic nature of social formation.

Mutua argues that the human rights movement is still young and its youth gives it an experimental status, not a final truth. The major authors of human rights discourse seem to believe that all the most important human rights standards and norms have been set and that what remains of the project is elaboration and implementation. This attitude is at the heart of the push to prematurely cut off debate about the political and philosophical roots, nature, and relevance of the human rights corpus. (Mutua, 2002)

Put simply, it can be argued that the legal discourse plays the dominant role, while the philosophical discourse has atrophied and the political discourse is marginalized. The often stated assertion that the 'major deficiency of the regime in the eyes of many professional observers is poor compliance to the purposes of a treaty' reflects a commonly held perspective that the failure of human rights is a failure of international law.<sup>1</sup> Although continued reports of gross violations of human rights arouse some feelings of pessimism, the dominance of the international law brings many commentators to the conclusion that a rights base international order is not only possible but has already made considerable 'progress'. While there is still much work to do, the literature reflects a view that the normative power of rights, together with the development of an extensive system of international law on human rights, provides a clear indication of steady 'progress' towards achieving the aims of the regime.

The habit of assuming that human rights is best understood as a singular, legal discourse, a discourse upon which general agreement has been achieved, therefore conceals important and continuing disagreements that are seldom confronted. Most importantly, the substitution of legal norms for human rights norms, reinforced by drawing a line under the philosophical discourse and denying the political discourse, offers an illusion of concord that is often inconsistent with political struggles associated with identity and difference.

### **Discipline and Human Rights**

If the assertion that there actually exists a global consensus on human rights is correct, theory and practice would be in harmony, assuming that international law represented an accurate reflection of that consensus.

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1. See: Dunér, 2002.

Questions of power and interest would not arise because the human rights regime, through the medium of international law, would express the interests of all, rather than particular groups. However, an increasing number of scholars argue that it is no longer acceptable that we view the human rights discourse as an 'unproblematic articulation of moral progress in the twentieth [or twenty-first] century, as allegedly demonstrated by near-universal state recognition of the [Universal Declaration of Human Rights] and subsequent instrumentalities'<sup>1</sup> If this assessment is apposite, and claims of global agreement are indeed premature, then the privileging of the human rights regime as a solution to an imagined consensus raises many questions. What, for example, is the role of international human rights law in the global order? Why is international law so privileged within the discourse of human rights if no consensus exists? What interests does the privileging serve?

An insight into these questions can be gained through the concept of 'discipline', which is closely related to that of discourse. Discipline refers to a mode of social organization that operates without the need for coercion. It is a form of modernist power that imbues the individual with particular ways of thinking, knowing and behaving, thus instilling modes of social consciousness that make social action predictable. Discipline is learned and practiced in the day-to-day complex of social life, through institutional training received, for example, in the school, the university, the workplace, the church and the socioeconomic institutions found within civil society, where notions of correct and incorrect behaviour and thought are clearly delimited. The epithet 'common sense' is achieved when a particular mode of thought and conduct is unquestioningly accepted as normal<sup>2</sup> This is not to argue that the disciplines cannot be defined as systems of rules, but these are not necessarily the rules articulated within the pages of international law. Instead, these rules are concerned with 'norms' and the generation of 'normalization'<sup>3</sup> In this sense, the disciplines, which are the domain of global civil society, operate without 'compulsory obligation, but nevertheless, [exert] a collective pressure and [obtain] objective results in the form of an evolution of customs, ways of thinking and acting'.<sup>4</sup>

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1. See: Langlois, 2002: 96-479.

2. See: Gramsci, 1996.

3. See: Foucault, 1994:1-46.

4. See: Gramsci, 1996.

The maintenance of disciplinary power is conducted through systems of surveillance: the processes of data collection through observation, recording, measuring, inspecting, reporting, and monitoring, which today are more easily facilitated by systems of electronic data collection. Data accumulated from the observation of large numbers defines the 'normal', opening the possibility of specifying the attributes of 'acceptable' and 'unacceptable' behaviour within the values, terms and language of dominant discourses of truth. Those who violate the norms of acceptable behaviour are therefore identifiable, enabling appropriate sanctions to be applied, while those who conform are rewarded. Foucault argues that the form of disciplinary power operating within the contemporary world order emerged during the eighteenth century, noting ironically that 'the Enlightenment, which discovered the liberties, also invented the disciplines'.<sup>1</sup>

While the idea of discipline may suggest a social order rife with ideological intent and conspiracy, such a conclusion would be a mistake<sup>2</sup> Instead, the conceptualization of discipline is an attempt to understand the ways in which knowledge is accumulated, and truth and rights established as the foundation for legitimate social action. From the perspective of discipline as social knowledge, power is not located within governments or particular factions, classes, institutions or cadres, but is instead exercised in the actions of everyday life. In contrast to the pre-modern period, where the exercise of power was associated with a readily identifiable agent, who operated irregularly and intermittently, modern forms of disciplinary power operate continuously and without agency. The distinctive nature of disciplinary power is that it replaces violence and the threat of violence with more temperate modes of action associated with visibility through surveillance.<sup>3</sup> This is not to argue that we can expect violence and the threat of violence to play no further role in the contemporary world order. As Robert Cox has observed, there may still be times when disciplinary power breaks down:

To cope with the excluded and potentially disruptive, the institutions of global governance have devised instruments of global poor relief and riot control. Humanitarian assistance (the poor relief component) has become a top priority of the United Nations and a major activity of a vast range of nongovernmental

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1. See: Foucault, 1977.

2. See: Prado, 1995.

3. See: Fraser, 1995: 48-133.

agencies. Where poor relief is inadequate to prevent political destabilization, then military force (the riot control component) is evoked by the international community. Together, they help to sustain the emerging social structure of the world by minimizing the risk of chaos in the bottom layer. (Cox, 1997: 49-75)

From the perspective of disciplinary power, critics of neo-liberal notions of power have argued that the institutionalisation of discourse, which produces and promotes truth-claims, obscures and conceals the processes of domination that lie beneath normal social practice<sup>1</sup> Gill refers to the most prominent of the disciplines within the current global order as 'market discipline', which stresses economic growth and development, deregulation, the free market, the privatisation of public services and minimum government<sup>2</sup> Market discipline describes a set of normative relationships with a global reach, supported by discourses of truth, and widely accepted as 'common sense'. These relationships are manifest at both the domestic and global level, for example, in national and international economic planning, market-based solutions for environmental degradation, the move to privatise social welfare provision, and the move to privatise life itself, seen in the scramble to patent the genes of both human and non-human life forms. Surveillance is undertaken by international and regional agencies, for example, the World Trade Organization (WTO), the World Bank, the European Union (EU) and the North American Free Trade Agreement (NAFTA). Each of these is understood as the authentic voice of market discipline and each exercises systems of surveillance and data collection on a global and regional scale.

Within the remit of market discipline, as opposed to that of international law, human rights are conceptualized as the freedoms necessary to maintain and legitimate particular forms of production and exchange. These are a set of negative rights associated with liberty, security and property, which offer a moral and normative foundation for justifying actions within the current global political economy. Although the global human rights regime is said to embrace the unity of all rights, market discipline pursues only those rights necessary to sustain legitimate claims for neo-liberal freedoms. The catalogue of rights associated with market discipline therefore describes human beings as individuals and agents of a particular kind and type. For critics, the human rights regime is partial. It represents the 'Eden of the

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1. See: Ivison, 1998: 48-129.

2. See: Gill, 1995: 399-423.

innate rights of man' where free will, equality within exchange relations and property converge to create social relations characterized by selfishness, gain and private interests, rather than the pursuit of human dignity, community, and the means for conducting struggles over identity.<sup>1</sup>

Following from this, several authors have argued that human life is valued as a means to an end, rather than an end in itself.<sup>2</sup> This is seen in the greater attention given to trade, property and finance, compared to that concerned with humanitarian issues, for example, poverty, the environment and socioeconomic rights. For critics, market discipline implies 'profit for investors [is] the supreme human value, to which all else must be subordinated', so that '[h]uman life has value as far as it contributes to this end'.<sup>3</sup> The creation of authoritative international organizations provides the professionalized voice for truth-claims, performs the task of surveillance, ensures adherence to market disciplinary norms, and acts to maintain a particular set of rights and freedoms that are integral to sustaining a particular order. If human rights have any significance within the contemporary global order, they offer a set of values delimited by an assumed normative consensus that legitimates activities associated with market discipline, specifically, negative rights and those associated with property.

The low social standards characteristic of subordinating human rights to economic interests leads the disadvantaged, dispossessed, marginalized and excluded to organize politically, perhaps by creating independent trade unions and citizen groups to resist the harsher consequences of market discipline. In such cases, violence and the threat of violence is often used against those daring to voice a contrary view that challenges market disciplinary principles and the neo-liberal rationale for economic development<sup>4</sup> Since all governments take neo-liberal notions of economic growth and development as a central policy objective, the deprivations suffered by those whose environment is degraded, culture devastated, freedom to protest peacefully suppressed and traditional ties with the land forcibly severed are seen less as the victims of human rights violations and more as the generation who must bear the cost of economic progress for the good of the wider, future community<sup>5</sup> Those who continue to protest

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1. See: Marx, 2002.

2. See: Watkins, 1996.

3. See: Chomsky, 1994.

4. See: Evans, 2001.

5. See: Kotheri, 1994: 39-54; Tomasevski, 1993.

are referred to pejoratively as insular, conservative, traditionalists, clinging tenaciously to a cultural past, and resolutely denying the benefits of modernization to the next generation.

### **Market Discipline, Normalization and the Human Rights Regime**

Market discipline may now be seen as ‘counter-law’; as a guide for action that stands above international human rights regime. However, it does not follow that international law is of little consequence for market discipline. On the contrary, the regime legitimates claims that human rights are now at the centre of the new global order. International law, and international human rights law in particular, plays a central role in an emerging ‘constitutional’ global order, which seeks to normalize a common identity.<sup>1</sup> The dominance of the human rights regime, and the marginalization of the philosophical and political discourses of rights, provides a sense of ‘closure’ that discourages further investigation. Thus, while criticism is commonly found in the literature on human rights, such criticism is confined to disagreements within a framework of rights that seldom attracts critique.<sup>2</sup> In short, in as much as the politics of rights is considered at all, what passes for politics is framed within a set of rules that are incontrovertibly accepted, while the framework itself remains unquestioned.

The tension between the formal/legal human rights regime and the norms of market discipline are at their most visible within global civil society. In particular, the notion of ‘civility’ emanating from global civil society narrows the political agenda, excludes some groups from full participation, and acts as a focus for further political struggles. Stressing this point, Pasha and Blaney argue that the effort to promote particular notions of civility, for example, by attempting to universalise a particular conception of democracy or human rights, adds to the ‘sense of grievance that motivates a politics that transgresses civility’<sup>3</sup> In other words, the more vigorously global civil society promotes market discipline, and its associated human rights values, the greater the resistance, creating a ‘periodic and irresolvable problem of policing the non-civil in civil society’<sup>4</sup> Those who adhere to the norms of civility, and aspire to the ends promoted by global civil society, are included, while those who offend against the ‘normal’, perhaps through critique, reflective alternatives or a

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1. See: Gill, 1995: 399-423.

2. See: Rouse, 1994: 92-114; Taylor, 1995: 51-326.

3. See: Pasha and Blaney, 1998: 417-540.

4. See: Pasha and Blaney, 1998: 417-540.

stubborn refusal to abandon the cultural traditions of the past, are excluded. Disapproval may be registered by the agencies of global civil society in a number of ways, for example, by including aid conditionalities that emasculate government decision-making powers, by threatening intervention, by simply labelling alternative voices 'mad'<sup>1</sup> or by asserting that the excluded do not possess the moral capacity to engage fully in decision-making processes about their own best interests.<sup>2</sup>

At the forefront to the shift towards a singular notion of civility are transnational professional, business and financial organizations, which have grown in number and power under conditions of globalisation. As Wilson has noted, these groups are mindful that the 'future prosperity of transnational corporations and financial institutions depends not only upon the context of competition in the global market but also on an ability to influence the rules that govern the market. For example, in 1997 the chief executives of ten major transnational corporations met with UN leaders and high ranking government officials from several countries to discuss 'avenues for a formalization of corporate involvement in the affairs of the United Nations'.<sup>3</sup> A further example is seen in the activities of the International Chamber of Commerce, which has identified environmentalist, human rights and social protection groups as a possible threat to the further expansion of corporate activities and has moved to gain as much influence at the UN as possible to counter these forces.<sup>4</sup> The history of corporate-government relations is therefore one characterised by corporate pressure to expand corporate rights, not the rights found within the human rights regime.

### **Conclusion**

The complex tensions between the demands of human rights and those of market discipline has encouraged two opposing interpretations of the status of human rights within the current world order, one optimistic and one pessimistic. Both optimists and pessimists begin by noting significant shifts in the spatial reach and intensity of networks of social relations, including social movements, non-governmental organizations, interest groups, indigenous peoples' organizations and citizens groups, many of which are involved in the politics of identity<sup>5</sup> Although disagreement continues over

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1. See: Keeley, 1990: 83-105.

2. See: Hindess, 1992: 149-63.

3. See: Wilson, 1997: 1-27.

4. See: Millen, 2000: 225-233.

5. See: Cox, 1999; Held, 1999; Linklater, 1998; O'Brien, 2000.

the exact nature of these changes<sup>1</sup>, optimists argue that the intensity and ubiquity of social networks promises to increase the demand to secure human rights, democracy and environmental protection for all. While the old order meant arguments over sovereignty and the national interest often stood in the way of making progress on these issues, optimists argue that today such arguments are untenable. The greater interconnectedness characteristic of globalization, and increasing demands for transparency, means that the demand for human rights cannot be circumvented. The vast body of international human rights law created in the last few decades is seen by optimists as the formal expression of normative changes that place human rights near the top of the political agenda. For optimist, the new order represents 'power to the people' in as far as human rights offers the oppressed, the excluded, the victims of tyrannical governments and those engaged in the politics of identity an opportunity to gain the 'moral high ground' in the struggle for emancipation and freedom.

For pessimists, on the other hand, market discipline offers an opportunity to exercise 'power over people', by promoting particular modes of thought and practice that support market discipline. From this perspective, the freedoms described and 'normalized' by market discipline accentuate processes of inclusion and exclusion, equality and inequality, to the detriment of human rights<sup>2</sup> Pessimists feel vindicated, for instance, when a leading member of a prominent investment corporation, commenting on the possibility of human rights within the current global order, remarks that the 'great beauty of globalization is that no one is in control'<sup>3</sup> While the international regime includes a wide spectrum of rights, the values associated with market discipline remain the dominant mode of thought that guides political, social and economic action.

The discourse of rights therefore supports competing conceptions that often provide a sharp focus for deeply rooted political struggles. While the formal, institutionalized and legal regime is presented as guaranteeing protection for human rights, and offers encouragement to a growing number of non-governmental organizations, the informal, privately motivated and extra-legal normative order associated with global practice suggests that the values of market discipline take precedence.<sup>4</sup> Such is the success of human rights associated with market discipline, it is common to see claims that in

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1. See: Scholte, 1996: 43-57; Spybey, 1996.

2. See: UNDP, 1997; UNDP, 1999.

3. See: Hormats, 1998.

4. See: Stammers, 1999: 980-1008.

'virtually all regions of the world ... there is broad acceptance of the triad of human rights, free markets and democracy as desirable, attainable policy objectives'. Of course, the rights referred to here assume a particular conception of rights, defined as the freedom of the individual to invest time, capital and resources in processes of production and exchange<sup>1</sup> Political struggles over identity may be legitimated by the human rights regime, but market discipline demands toleration of all acts that further the neo-liberal project towards greater levels of economic globalization.

The human rights discourse obfuscates the distinction between legal rules and normal social practice. While on one hand the discourse appears to offer solutions for protecting human rights, on the other, the practices of market discipline continue to provide the context in which human rights are violated. Professional and intellectual commentators provide the 'authentic' voice of the discourse, although this voice has little to say about power and interests associated with the socioeconomic context in which rights are promoted. As the dominant voice, the discourse also subordinates alternative voices with an interest in exposing the causes of human rights violations. The hegemony of the human rights discourse may therefore be seen as an attempt at 'closure', rather than an attempt to protect the rights of the persecuted and excluded.<sup>2</sup>

The discussion presented here should not be understood as a wholesale rejection of either international law or human rights. Nor is it a rail against the priority given to neo-liberal notions of civil and political rights within the current world order. Instead, the intention here is to gain an insight into the ways in which power is exercised through the discourse of human rights, in an effort to promote a global culture that provides the individual with the necessary values that support the prevailing neo-liberal global order. While the literature presents human rights as a concept that empowers those threatened by state violence, the concept also offers an instrument for domination: an instrument for promoting a singular global culture. In particular, the discussion here has sought to show how the human rights regime, which provides the main focus for the dominant discourse of human rights, transmits a set of ideas associated with notions of freedom *and* a set of ideas that reflects relations of power and cultural dominance, and cannot be understood as one or the other.<sup>3</sup>

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1. See: Tetrault, 1988: 5-26.

2. See: Mahbubani, 1992: 3-12.

3. See: Foucault, 1994: 1-46.

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