Towards Spiritual Dignity, Opting Out of Neoliberalism’s Cultural Imperialism

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ABSTRACT

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by

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From the recent literature, one observes a growing discontent with neoliberalism among scholars of human dignity. New nomenclature such as “the new chronic,” 1 “wounded attachments,” 2 and “third-order suffering” 3 have become part of the conversation in how dignity is defined. Most notably, they identify the human spirit as a dimension of political action – such as human rights protection – opening the door for fresh discourse on how the human spirit could be protected via law. I explore how the law is used to protect the human spirit and how law may adapt to someday explicitly protect all souls from the ills of postmodernity.

My objective is to build a concrete understanding of how the human spirit features in human rights law. How can one fix the problem of neoliberalism’s cultural imperialism using a cultural rights approach? I ask: Why not address cultural imperialism of non-indigenous souls much like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has done for indigenous souls? That is, why not protect the whole of humanity with adequate cultural rights to spirit, and how would that look? I determine that there are clauses in UNDRIP and the Universal Declaration of Human Rights (UDHR) that would promote such a measure.

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“I give culture this meaning: exercise of thought, acquisition of general ideas, habit of connecting causes and effects...I believe that it means thinking well, whatever one thinks, and therefore acting well, whatever one does.” — Antonio Gramsci

Introduction

In Discipline & Punish: The Birth of the Prison Michel Foucault called the soul “the prison of the body.” 4 Foucault’s seminal genealogy-imaginary of European prisons awoke the 20th century West to its own cruelty to the soul, within the historical narrative of Western progress. Still significant, Foucault’s theory of the “‘micro-physics’ of the punitive power” continues to challenge Western views of control, security, sex, and institutions. 5

Humans are undoubtedly spiritual creatures that subsequently need to be spiritually free to enjoy their full capabilities. Having a spirit, a body and emotions together make us uniquely sentient beings – with dignity, freedom and deserving of equal humanity. One might distinguish between sites of external dignity and internal dignity. A person’s external dignity represents ‘bodily integrity’, whereas internal dignity is his or her ‘spiritual integrity’. The language of individual ‘dignity’ is the foundation of international human rights law, but how well has individual spiritual dignity been safeguarded by international human rights law? A growing body of literature shows that modernity – specifically the spread of neoliberalism and its soft power over individuals and groups – suffocates peoples’ spiritual dignity now more than ever before. With physical slavery made illegal by international law, the forces of postmodernity have turned to the spiritual enslavement of citizenry. Discursive effects resonate from such spiritual degradation.

5 Foucault, Discipline & Punish, 29.
This thesis finds that Foucault was correct about the modern soul. I conclude that humanity has neglected the soul, in part, because of its embrace of neoliberal policies. Foucault had a significant amount to tell us about the rise and inevitable fall of neoliberalism. Today, one hears Nobel Laureate in Economic Science Joseph Stiglitz emphatically say, “Neoliberalism is dead.” After the 2008 economic failure, the rise in:

- Imperial crimes in the form of the USA PATRIOT Act and National Defense Authorization Act, which gave the president sweeping and arbitrary power that resembles a police or neofascist state; and social crimes principally manifest in a criminal justice system that is in itself criminal (where torturers, wire tappers, and Wall Street violators of the law go free yet poor criminals, such as drug offenders, go to prison),

neoliberalism is facing its firmest criticism yet. Stiglitz finds neoliberalism economically unsustainable. In the era of Trump, America’s social bankruptcy is for all to bear witness. I analyze what neoliberalism has rendered humanity spiritually by viewing spirituality as an irreducible component of culture – knowing that together social, economic, and cultural rights are closely interrelated and interdependent.

**What is Neoliberalism?**

Neoliberalism is not just a set of economic policies. Instead, it is a philosophy that provides a narrative for individual human life and “progressively occupies economic, political, and cultural spaces.” Neoliberalism’s proponents praised it for developing a more efficient society run by a market that rendered winners and losers. “Unlike liberal economies, in which the state and markets occupied separate concerns, neoliberalism

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8 Rogers-Vaughn, Caring for Souls in a Neoliberal Age, 35.
envisioned governments taking an active role to guarantee the protection and free functioning of markets.”

Markets would be the engine – and their performance the metric – for societal wellbeing. With these put into place, we now live in a “neoliberal world.” The neoliberal revolution began intellectually in the 1970s and was first applied in the 1980s. Even after the crisis of 2008, neoliberalism has remained a “theory of everything” for many.

What does neoliberalism leave us with? The answer is: A tremendous income gap between the elites and workers on a global scale. It assembles a “global hegemony that does not look like a hegemony, one that claims to be a liberator of humankind even as it shackles the human soul.” Neoliberalism is not just an economic and political project but also a cultural project.

Friedrich Hayek – a sage and a hero to many neoliberal proponents – understood this. In The Road to Serfdom Hayek wrote on society, “This is really the crux of the matter. Economic control is not merely control of a sector of human life which can be separated from the rest; it is the control of the means for all our ends.”

William Davies observes: “A defining trait of neoliberalism is that it abandons this liberal conceit of separate economic, social and political spheres, evaluating all three according to a single economic logic.” Margaret Thatcher understood the neoliberal theology of the market better than any other politician of her time. She said that “Economics are the method; the

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9 Ibid., 36-7.
12 Rogers-Vaughn, Caring for Souls in a Neoliberal Age, 42.
object is to change the heart and soul.”

Competition and inequality are the overriding principles of neoliberal societies. Foucault observed that neoliberalism is a parting from a simple exchange capitalist economy of the market that has increased public good in the West for centuries to a capitalism of competition. Competition – not exchange – is the new principle and basic good. According to Wendy Brown, this means “inequality replaces equality.” The tenet of self-interest has created a way of looking at and treating people, too. That new human is known as homo oeconomicus. This machine-like social Darwinian is encouraged to be passionless. A culture of sadism, argues Chris Hedges, consequently dominates America.

**Social Wellbeing under Neoliberalism**

Competition and inequality are both hallmarks of neoliberalism; they are also detrimental to the human spirit. According to Bruce Rogers-Vaughn’s analysis “neoliberalism is *both* a form of hegemonic control that serves the interests of financial elites and a form of governance that adapts to local circumstances and shapes individual subjects *and* their personal relationships.” Stuart Hall writes succinctly: “neoliberalism does constitute a *hegemonic project.*” Milton Friedman famously said in the 1980s that the only social responsibility of corporations is to increase shareholder profits. His neoliberal ideology glorifies profits for the rich, which never actually trickle down to the poor. Only inequality prevails in Friedman’s America.

In *Caring for Souls in a Neoliberal Age*, Rogers-Vaughn presents a scatterplot

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17 Rogers-Vaughn, *Caring for Souls in a Neoliberal Age*, 54-5.
chart that illustrates the “statistical correlation between poor social well-being and inequality.”\textsuperscript{19} Rogers-Vaughn equates this with “the spiritual level” of the societies.\textsuperscript{20} He concludes that the higher the income inequality, the worse health and social problems are. Other researchers offer even more damning data. Michael Marmot discovered that “individuals living in highly stratified societies have worse physical, psychological, and relational health, as well as higher mortality rates.”\textsuperscript{21} Furthermore, Marmot found that individuals in every class suffer more in more unequal societies, concluding, “where individuals live on the social gradient predicts their level of health.”\textsuperscript{22} So, not only does neoliberalization lead to greater inequality, it leads to greater human suffering of all types – including spiritual.

**Perversion of the Modern Soul**

Neoliberalism thrives on the ethic and outputs of competition, yet “competition is not natural nor given,” writes neo-Foucauldian Wendy Brown.\textsuperscript{23} Foucault claims that mankind is not meant to live as competitive peoples:

> Competition is not the result of a natural interplay of appetites, instincts, behavior...the effects of competition are due only to the essence that characterizes and constitutes it...not to a pre-existing nature [but] to a formal privilege. Competition has an internal logic; it has its own structure. Its effects are only produced if this logic is respected. It is, as it were, a formal game between inequalities; it is not a natural game between individuals and behaviors.\textsuperscript{24}

\textsuperscript{19} Rogers-Vaughn, *Caring for Souls in a Neoliberal Age*, 59.
\textsuperscript{20} Ibid.
\textsuperscript{21} Ibid., 60.
\textsuperscript{22} Ibid.
\textsuperscript{23} Brown, *Undoing the Demos*, 62-3.
\textsuperscript{24} Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979* (New York: Palgrave Macmillan, 2008), 120.
Thus, the neoliberal project is one orchestrated by the neoliberal state. There are three ways in which the hegemonic neoliberal state accomplishes its goals: via convention, intervention, and even subvention.25 There is nothing natural about competition, yet mankind is subjected to the mantra and soft power of the neoliberal state.

The Weltanschauung of postmodernity has been criticized ever since Max Weber, for “it reduces the human, disenchants the world, and forecloses alternative values.”26 Because neoliberal society has crafted homo oeconomicus (a fundamentally economic creature), grooming against the idea of the human as “fundamentally political, loving, religious, ethical, social, moral, tribal, or something else,” the economization of state and its docile citizens has taken place.27

The advent of postmodernity’s homo oeconomicus and the subsequent subdual of man’s natural homo politicus identity, Wendy Brown writes, “As human capital, the subject is at once in change of itself, responsible for itself, and yet a potentially dispensable element of the whole.”28 She reminds us that Weber and Karl Marx “assume a subjective interior that is disharmonious with capitalism…[made up of] subjective personhood bound to ideals of worth, dignity, self-direction, even soulfulness.”29 Brown expresses fear that dignity and soulfulness could be extinguished by neoliberalism’s continued construction of mankind in its image.

Pastoral theologian Bonnie Miller-McLemore theorizes that humans live in something called “the living human web.”30 The living human web exists in three levels:

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26 Brown, *Undoing the Demos*, 79.
27 Ibid.
28 Ibid., 110.
29 Ibid., 111.
30 Bonnie J. Miller-McLemore, “The Living Human Web: Pastoral Theology at the Turn of the Century,” in *Through the Eyes of Women: Insights for Pastoral Care*, ed. J. Stevenson-Moessner (Minneapolis: Fortress
large collectives (institutions), smaller groups of face-to-face relations (friendships), and individuals. Political scientist William E. Connolly argues that neoliberalism engages itself in this web, disrupting vital human relationships. Neoliberalism succeeds in doing this through *marginalization* and *corruption*.

Rogers-Vaughn explains marginalization as a procedure neoliberalism reserves for restricting “the size, power, or scope of human systems within its hegemonic influence.”\(^{31}\) This eliminates competition. Corruption refers to how “neoliberal rationality transforms human systems to conform to its discourse, ideology, and agendas.”\(^{32}\) Because of marginalization and corruption, neoliberalism dominates the lives of individuals – creating a neoliberal culture of its own hegemonic creation. Within neoliberal communities, we witness the “*methodical destruction of collectives.*”\(^{33}\) Political scientists Robert Lane and Robert Putnam both correlate the erosion of communities with depression and a general loss of happiness.

One of the greatest harms committed by neoliberalism is to religion. ‘Spirituality’ is on the rise at the expense of religion. According to David Webster, “contemporary spirituality makes us stupid, selfish and unhappy.”\(^{34}\) The crumbling of organized religion is one example of how social systems are being attacked and mangled by neoliberalism. Novel forms of human misery have arisen out of the anti-institutional neoliberal society. Of course, before neoliberalism, there were far more regulations and institutions. In the wake of neoliberalism the fruits of a nation-state rot away.

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\(^{31}\) Rogers-Vaughn, *Caring for Souls in a Neoliberal Age*, 69.

\(^{32}\) Ibid.


People have left the pews in the name of individuality. Institutionalized religion itself has been replaced by a religion of the market. David Loy explains:

The discipline of economics is less a science than the theology of that religion, and its god, the Market, has become a vicious circle of ever-increasing production and consumption by pretending to offer a secular salvation. …the Market is becoming the first truly world religion, binding all corners of the globe more and more tightly into a worldview and set of values whose religious role we overlook only because we insist on seeing them as “secular.”

Out of this secular exodus has come a major change in how people see the world, as the embrace of Market religion has led to cultural destruction à la *ethnocide*, or meaning destruction. “Significance no longer inheres in things; rather, meaning and significance are a property of minds who perceive meaning internally.” This has led people to live a “buffered” existence that is “insulated and isolated in its interiority.” The danger of individual insulation is personal isolation, which can have devastating effects on the spirit.

Furthermore, abandoning religion can lead to what many theologians fear is the greatest risk to society: idolatry. Nicholas Lash concludes, “the displacement of religion…leaves our propensity for idolatry unchecked and unconstrained, with devastating consequences.” The late Edward Farley believed idolatry to be the origin of human evil. Rogers-Vaughn synthesizes Farley’s theory:

> Once we identify some mundane person, place, thing, or state of being with the “eternal horizon,” he claims, we are

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37 Ibid., 30.
then prepared to sacrifice anything—self, others, creation—to protect whatever we have made sacred. It does not matter, in this view, whether the idol is identified as “religious” or “secular.”

Neoliberal capitalism positions itself as an idol for all citizenry to worship through their transcendental appreciation of money. This proves detrimental for all – from the rich to the poor.

**Marginalization and Corruption**

As people in the neoliberal society are made docile, their human relationships as *homo oeconomicus* and *homo consumens* disintegrate. Many neoliberal leaders like, Donald Trump, assert that their policies reinforce ‘family values’, but the data show otherwise. Marriage rates have gone down. Why? Because before neoliberalism took major strides in America, ‘love’ was a bigger factor in courtship than today where (under American neoliberalism) the profit or need motive has crept into the mind of many couples.

Sociologist Jorge Arditi suggests that “to love” is “to apprehend the other directly and entirely. It means that no social or cultural object lies between the lover and the beloved, that is, that no element of the intellect plays any part in the experience of loving.” This was the type of love that made marriage a lasting reciprocal institution. Now, late capitalism has promoted new individualism to the point where marriage is a contractual commitment for reciprocated self-benefit.

These now heavily individualized agents look to the market for emotional capital. Why risk love when one can buy numbness? Numbness can be found in consumer items

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that reinforce the cultural ideas of self-reliance, individualism, and personal responsibility. Consumerism is unfulfilling, and although it may claim to bring people together, it fails to do so. Neocolonialism renders rendezvous meaningless because they are about objects and not people. The great irony of neoliberalism is then that capitalism’s guarantee that greater consumer freedom leading to liberation and finding oneself, in fact, leads to less freedom and love for all involved.

There are real repercussions for a buffered existence. Rogers-Vaughn asks: How does one manage to remain flexible in adapting to the conditions of a world where institutions and relationships that sustain the self have waned, while also creating a coherent personal narrative that enables one to cope with these very conditions? Rogers-Vaughn points out that, “The defining feature of the therapeutic self is a narrative of personal suffering.” If one cannot narrate the suffering of oneself to another, how can empathy (a key aspect asked of humans in the human rights process) develop? Extreme individualism is at odds with having a healthy self.

Neoliberalism results in the radical alteration of the self, authenticity, and suffering of people. The marginalization and privatization of suffering have left people in a new kind of paralysis called “the new chronic.” As hyper-individualized agents, neoliberal souls suffer alone. Wendy Brown has called the owned sufferings (property) of these solitary souls “wounded attachments.” Psychotherapy can help, but the deepest injuries to the spirit, according to Rogers-Vaughn, “require political as well as

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43 Rogers-Vaughn, *Caring for Souls in a Neoliberal Age*, 98.
44 Ibid., 99.
therapeutic responses.”\textsuperscript{47} Ann Cvetkovich argues that depression is how neoliberalism feels. Depression is a feeling of failure or learned helplessness, and when driven by neoliberalism, the citizen is “tired of having to become himself.”\textsuperscript{48} The citizen eventually turns to newfound addictions (i.e., opioid addiction, alcoholism, et cetera). Suicide and criminal pathologies can result from these rendered mental health statuses.

Rogers-Vaughn classifies postmodern suffering into three orders. The first is intrinsic to the human experience: illness, conflict, death, et cetera. Humankind must make sense of these issues until the end of time. Second-order suffering is: murder, violence, fraud, et cetera. These are troubles dealt with by disciplinary control. Third-order suffering is the new normal and “entails the erosion of soul.”\textsuperscript{49} Rogers-Vaughn describes third-order suffering in his own words:

> Without strong, vibrant collectives to support them, individuals are more-or-less left to their own devices to deal with distress. We might describe them as in a state of spiritual homelessness. These unfortunate souls are abandoned, left to interpret their sufferings as signs of personal failure.\textsuperscript{50}

Rogers-Vaughn expects the new chronic to mutate and compound the pain of other types of social injustice.

\textbf{“Empire”}

In 2000, Michael Hardt and Antonio Negri published their neo-Marxist vision of what neoliberalism had set forth in postmodernity. They named the book \textit{Empire}. The word ‘Empire’, intentionally capitalized throughout the book, serves as a persona for a

\textsuperscript{47} Rogers-Vaughn, \textit{Caring for Souls in a Neoliberal Age}, 101.  
\textsuperscript{49} Rogers-Vaughn, \textit{Caring for Souls in a Neoliberal Age}, 171.  
\textsuperscript{50} Ibid., 126.
faceless entity that has manifested through neoliberal thinking. Empire is the name for postmodernity. Instead of a unipolar world order dominated by the United States, Hardt and Negri argue that the very ethos and logos of neoliberalism has set into motion a hegemonic entity independent of any singular state.

Since Empire’s release, many thinkers who attempt to put many modern phenomena into a single trope have applied ‘Empire’. One book that adopts the word describes Empire as:

A particular formation of government and power and, given its pretense to be global, generates a ‘collective spirit’, an anthropological construction, that allows and approves of certain behaviours, reactions, feelings, and attitudes of the social and political actors, that shapes a certain logic and way of conceiving life, and that imposes and translates itself into values and a hegemonic Weltanschauung.51

As one can see Empire provides a garish picture to the rather opaque problem of neoliberalism.

The Empire thesis can capture the micro problems of nonmaterial damage to victims under its rein, too. Empire, as it relates to human rights, is articulated best by Costas Douzinas. He writes that a human rights violation victim is:

Someone whose dignity and worth has been violated…. Losing humanity, becoming less than human; losing individuality, becoming part of a horde, crowd or mob; losing self[-]determination, becoming enslaved; these are the results of evil, otherwise known as human rights violations.52

Hardt and Negri often write in neo-Marxist terms of the multitude, similarly but differently from Marx’s masses.

Although Hardt and Negri’s Empire trope succeeds in describing a phenomenon, its raison d’être is false – argue Paul Rabinow and Nikolas Rose. Both students of Foucault, Rabinow and Rose write in their evaluation of Empire that, “For Hardt and Negri… biopower is an encompassing, totalizing term—biopower serves to secure the dominion of a global form of domination that they term ‘Empire’.”\(^{53}\) Hardt and Negri understand Empire’s power as something extracted from the multitude – like ‘surplus value’. This neo-Marxist view of biopolitics asserts that biopolitics is at the center of all politics. This interpretation of Foucault’s biopolitics is predicated upon an essay by Foucault’s protégé Gilles Deleuze who wrote that the world had moved from being influenced by disciplinary institutions (as Foucault explained) to being “immanent in the flexible, fluid and fluctuating networks of existence itself.”\(^{54}\)

Neo-Foucauldians Rabinow and Rose object to the theory of Empire as expressed in terms of biopolitics because it fails to understand Foucault’s original usage of the term. “The concept of biopower – like that of discipline – was not trans-historical or metaphoric, but precisely grounded in historical, or genealogical, analysis.”\(^{55}\) In so far, Hardt and Negri used the term ‘biopolitics’ erroneously to express a single moment in politics that transpired (postmodernity), instead of as a continuous, analytical tool that Foucault intended.

I was able to interview theologian Gary Dorrien who has written extensively on social ethics and prefers not to use the word ‘neoliberalism’ nor ‘Empire’. The persistent status quo, he argues can reify and have its meaning tilted in one way or another if one names it. “Once you name, put a spirit on it, [then] it becomes [the] subject of predicates

\(^{54}\) Rabinow and Rose, “Biopower Today,” 198.  
\(^{55}\) Ibid., 199.
and so on….”56 Dorrien asserts, “There is something mythological” about the terms Empire, neoliberalism, Zeitgeist, and Weltanschauung.57 He says it “can be/is evocative, illustrative, even illuminating…but you can only take it with a certain grain of seriousness literally.”58 The problem of essentialism seems to haunt discourse on the status quo.

The Power of UNDRIP

Regardless of how you name or frame postmodernity, we are currently in an age of neoliberalism. It is neoliberalism’s nature to be totalizing. Neoliberalism aims for a single ideology, is fundamentalist in nature, and allows no room for debate because no one represents modern imperialism. In its commonality, neoliberalism’s whole acts as a guiltless, unconscious culprit, is an un-soulful entity (i.e., has no soul, no single identity, and cannot be a rights-holder or duty-bearer), is culturally hegemonic, and is the anti-institution (i.e., anti-United Nations, anti-state), while speaking to become the institution at any cost, while avoiding accountability. Neoliberalism is a modern form of destructive cultural imperialism that now affects all people. Neoliberalism does not discriminate. It marginalizes and corrupts the weakest but also the strongest and everyone in between.

Taking from the United Nations Declaration on the Rights of Indigenous Peoples of 2007 (UNDRIP) I select the articles and clauses that protect the indigenous human spirit from cultural imperialism and apply them to all humans because neoliberalism attacks the dignity of all peoples, not just indigenous peoples.

57 Dorrien, interview
58 Ibid.
In Chapter 1, I investigate three cases that have worked to counteract the forces of neoliberal cultural imperialism. I advise a potential remedy rooted in international human rights. In Chapter 2, I introduce the case for the existence of souls, an explanation and defense of human spirituality and flourishing. Chapter 3 is a look at civil society as it relates to cultural rights. It asks: Can civil society contribute to the application of an expedient law? Chapter 4 investigates the practical matters of introducing new rights. It asks: What negative or positive effects would result from the expansion of cultural rights? Chapter 5 showcases the natural philosophy of Henri Bergson’s open society. And finally, Chapter 6 includes a synthesis of the paper. Concepts of emergence, becoming, imminence, and world-expansion stitch together these chapters.

Chapter 1 | What Do the People Want?

Introduction

In this chapter, I investigate cultural rights in the neoliberal era. In the timespan of three cases, I identify how neoliberalism has harmed people and how human rights have progressively curbed its effects. I suggest that one can learn from the most advanced human rights instrument, UNDRIP, to create new law that meliorates neoliberalism and its cultural imperialism for all, not just indigenous peoples.

The Indigenous Rights Movement

Indigenous people have been anything but passive in the ethnocide and genocide committed against them. Broken treaties and the encroachment of colonialism on their lives have been met with resistance. First Nations are proud of their ‘sovereignty’ and have fought for their ways of life around the world – militarily in the United States,
Canada, and Mexico. But ‘the indigenous rights movement’ truly began when indigenous peoples of North America allied with the indigenous around the world. From Scandinavia, Russia, New Zealand, Australia, Guatemala, Brazil, Bolivia, Kenya, Japan, Philippians, Greenland, et cetera, indigeneity turned out to be as common as culture itself.

The quest to protect all indigenous peoples with a worldwide legal apparatus began in Geneva, Switzerland in 1982 when the Economic and Social Council (ECOSOC) “established the Working Group on Indigenous Populations with the mandate to develop a set of minimum standards that would protect indigenous peoples.” The Working Group found widespread marginalization, oppression, discrimination, and exploitation of indigenous peoples around the world. The Working Group subsequently drafted a declaration on the rights of indigenous peoples and submitted it to its parent body, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Sub-Commission submitted it to the UN Commission on Human Rights in 1994.

The Draft moved slowly through the United Nations (UN) system because of concerns by states regarding the right to “self-determination of indigenous peoples and the control over natural resources existing on indigenous peoples’ traditional lands.” But eventually, on 13 September 2007, UNDRIP was adopted by a majority of 144 states in favor, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya,

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60 Ibid.
Nigeria, Russian Federation, Samoa and Ukraine). The four countries that voted against, eventually declared their support for the Declaration, as did Colombia, Samoa and Ukraine.

UNDRIP touched every corner of the globe and was seen then and remains seen as a victory for human dignity and international justice. By assigning group rights to indigenous peoples, the 46-article Declaration gave many indigenous peoples a lifeline. More specifically, it gave: access rights, autonomy rights, border-crossing rights, child welfare rights, citizenship and civic participation rights, compensation, consultation & free, prior, and informed consent, culture and language rights, disability rights, economic development rights, education, elders rights, environmental rights, equality, protection from forced assimilation, fundamental freedoms, freedom from genocide, health rights, housing rights, human rights, the right to indigenous identity, membership and citizenship rights, individual rights, right to intellectual property, labor and employment rights, land, territories and resources rights, non-discrimination rights, rights to their own legal systems, natural resources rights, women’s rights, the right to exist, social welfare rights, rights to compensation, et cetera.

Because of their subjection to what James C. Scott calls the “symbolic manipulation, struggle, and conflict” of living on the margin, many indigenous peoples suffer tremendously from social stress. They come to understand colonization so well because they have felt colonization’s marginalization. A true neo-Foucauldian anthropologist, Scott records that those who live on the margin are disciplined and

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61 Ibid.
punished. Furthermore, indigenous peoples collect information and are subsequently empowered with knowledge of colonialism through their experiences. They keep their oral histories as a genealogy of their people and of how their lifeworlds came to be impacted by colonial power – both hard and soft. Subsequently, indigenous peoples represent a tremendous asset to the rest of humanity. Through UNDRIP and indigenous-specific bodies at the UN, as the UN Permanent Forum on Indigenous Issues, indigenous peoples inform humanity to the perils of neocolonialism to human dignity. Respectively, I find it appropriate to refer to UNDRIP as an *anti-colonial* document.

**Finding Rights for All in UNDRIP**

UNDRIP’s Preamble says, “All peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind” and that “Indigenous peoples are equal to all other peoples.”64 It also champions indigenous peoples for organizing to “bring to an end all forms of discrimination and oppression wherever they occur.”65 Furthermore, article 2 of UNDRIP states, “Indigenous peoples and individuals are free and equal to all other peoples and individuals.”66

I argue that the UNDRIP Preamble supports the idea of human equality and a single human community. Bringing an end to all forms of oppression should also include protection against all forms of cultural oppression. In so far, human spirituality should be protected, as it is indubitably an aspect of culture.

Article 8 stipulates, “Indigenous peoples and individuals have the right not to be

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65 Ibid.
66 Ibid.
subjected to forced assimilation or destruction of their culture.”  

Moreover, “States shall provide effective mechanisms for prevention of and redress for: Any action which has the aim or effect of depriving them of…their cultural values, and any form of forced assimilation or integration.”

In the ways I described above, neoliberalism is a real threat to all culture. Neoliberalism is a totalizing refinement with no meaning attached to it, which defeats the purpose of culture – a meaning-giving schema. Cultural destruction has been seen before as ethnocide. Indigenous peoples know it well, and I believe UNDRIP could be read as a warning to the greater world community of imperialism’s often subtle coup. As I have described, neoliberalism is a form of cultural imperialism that forces assimilation and integration through singularizing people.

Article 11 states “Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures.” Article 23 shapes perhaps the most applicable piece of UNDRIP, stating, “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them.”

Article 11 specifically refers to safeguarding culture. Putting culture into the hands of its people and giving rights-bearers the duty to protect their culture is something that the rest of society could incorporate in order to preserve and defend their culture.

67 Ibid.
68 Ibid.
69 Ibid.
70 Ibid.
Article 23 addresses development. In particular, it states that indigenous peoples have a say in how development affects them. This is the crux of neoliberalism: When can we draw the line as a society and say “No more”?

**Universal Declaration of Human Rights**

The Declaration provides in article 27.1 the first instance of universal protection of the right to participate in cultural life. Article 27.2 also says, “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

I find article 27.2 has enormous potential against neoliberalism. Article 28 of the UDHR states that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

I interpret that articles 27 and 28 of the UDHR can both serve as protection against neoliberalism. If neoliberalism is morally degrading and neoliberal legal construction can be construed as a kind scientific production, article 27 could help serve to meliorate neoliberalism. I assert here that man-made law is a kind of technology – something that is often thought of as the application of scientific knowledge. I postulate that man-made law is therefore the application of scientific knowledge. In many cases, it is the science of how to regulate human behavior. In fact, when Foucault writes about biopolitics, he describes “techniques for achieving the subjugation of bodies and the control of populations.”

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72 Ibid.

Unfortunately, many states have declarations and reservations against Article 27, such as Belgium, China, France, Great Britain, India, Mexico, the Netherlands, Pakistan, Russia, Sweden, et cetera.\(^74\) Article 28, if understood to have jurisdiction over modern global neoliberal imperialism, could make neocolonialism a central international concern. Perhaps these UDHR articles could protect cultural rights to spirit by meliorating neoliberalism, too.

**1981: Sandra Lovelace v. Canada**

In *Sandra Lovelace v. Canada*, we recall that the Human Rights Committee invoked Article 27, ruling in favor of Mrs. Lovelace who was a native excommunicate from her tribal land for marrying a non-Indian male. Her tribe’s decision resulted in Mrs. Lovelace being separated from her community and family as well as from her culture. The decision was as per the Indian Act of 1876 between Canada and First Nations, which by its very existence was a colonial imposition because it defined the contours for what qualifies as Indian. The Committee found that a major disregarded loss to losing Indian status is “the cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbors, and the loss of identity.”\(^75\) The Committee’s ruling states,

> Accordingly, the Human Rights Committee, acting under article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts of the present case, which establish that Sandra Lovelace has been denied the legal right to reside on the Tobique Reserve, disclose a breach by Canada of article 27

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As S. James Anaya remarks, “The Lovelace case emphasizes the rights of the individual.”\textsuperscript{77} Her case was an example of a person confronted by imperialism’s coloniality. Lovelace fought for her individual psyche to be saved by invoking the word “culture.” Culture is defined by UNESCO as the “set of distinctive spiritual, material, intellectual, and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”\textsuperscript{78} This frames the spiritual as part of a group right, which, at the same time, has profound significance for the individual, for his or her human rights.

\textbf{Coloniality}

As a Kahnawake Mohawk and anthropologist, Audra Simpson has a unique understanding of coloniality. In Simpson’s “On Ethnographic Refusal: Indigeneity, ‘Voice’ and Colonial Citizenship” she argues, “To speak of Indigeneity is to speak of colonialism and anthropology, as these are means through which Indigenous people have been known and sometimes are still known.”\textsuperscript{79} She reasons that:

Like “race” in other contexts, “culture” was (and still is in some quarters) the conceptual and necessarily essentialised space that stood in for complicated bodily and exchange-based relationships that enabled and marked colonial situations in Empire: warfare, commerce, sex, trade, missionisation. “Culture” described the difference that was found in these places and marked the ontological end-game of each exchange: a difference that had been contained into neat, ethnically-defined territorial spaces that now needed

\textsuperscript{76} Ibid.
\textsuperscript{78} UNESCO, “Universal Declaration on Cultural Diversity.” (2001)
to be made sense of, to be ordered, ranked, to be governed, to be possessed.\textsuperscript{80}

The very notion of culture has imperialism locked into it. Invading nations have colonized the very identity of indigenous peoples through blood quantum.

Under the fallacious, race-ranking 18\textsuperscript{th} century anthropology of Immanuel Kant, the West came to know the indigenous as not fully human yet in some cases holding the capacity for salvation.\textsuperscript{81} Like for dogs or horses, it became rudimentary census law for indigenous peoples to be subjected to blood quantum. Blood quantum is a method of governmentality whereby an indigenous person must prove his or her indigeneity. As Foucault tells us, governmentality always stipulates that information about the right-holder is transmitted to another authority (i.e., the ruling government). In the case of proving one’s indigeneity, blood quantum is used by governments to deplete – if not wipeout – the ownership of indigenous land rights.

Returning to Simpson’s article, Simpson puts forth the idea that the death of an indigenous culture is precisely what I described earlier: the end of cultural difference. Ethnocide appears to be the ultimate goal of invading and conquering nations. Assimilation is demanded of indigenous peoples. Simpson’s answer to that is to be unapologetically native through refusal.

Simpson describes institutions like blood quantum as “bizarre logics of recognition and residues of history structured and still structure (in part) the bodies and persons and personalities and cousins and friends and enemies that comprise my version

of Kahnawake.”  

82 Tragically for indigenous peoples the colonality, or residue of colonialism, is part of daily life. Resistance is found in asserting oneself, such as claiming indigeneity and saying: “No, I will not be erased.”

I have described neoliberalism as culturally imperialistic. The *Sandra Lovelace v. Canada* illustrates the strife of a woman faced with colonality that pitted her against members of her own tribe. Similarly to how Simpson describes blood quantum status on her reservation, it was ‘purity’ that made an Indian and Indian in the minds of Indians – the result of which stems from Canada’s Indian Act. The ruling in *Sandra Lovelace v. Canada* of 1981 marked the beginning of a movement that was sensible to the colonality factor.

1997: *Hopu & Bessert v. France*

The second case I wish to mention, *Hopu & Bessert v. France*, came 16 years after the Lovelace ruling. Recall, the Tahitian people whose burial ground was threatened with demolition over the building of a luxury hotel complex. They saw this violation as an affront to their families, as the authors considered the “relationship” to their ancestors to be an “essential element of their identity and to play an important role in their family.”  

83 Also, recall that France had reservations against Article 27 of the International Covenant on Civil and Political Rights  

84 that were sustained by the Human Rights Committee.

This case was unique in that it was a cultural rights case that did not involve, or

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84 (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
could not invoke culture due to the reservation of France to Article 27. Instead, the Committee appealed for the right to family, “that they consider the relationship to their ancestors to be an essential element of their identity and to play an important role in their family life.”\textsuperscript{85} Although there is no UN definition of ‘family’, the Committee recognized that different cultures have different concepts of family (i.e., nuclear, communal, ancestral) and ruled in favor of the Native Tahitians. But again, we see a member state defying the right to culture in its semi-autonomous territory, French Polynesia, and disregarding local indigenous courts. \textit{Hopu & Bessert v. France} is an example of cultural exceptions in the international sphere, but it is also a reminder that the indigenous movement had gained the compassion of the UN.

\textbf{2017: Te Awa Tupua (Whanganui River Claims Settlement) Bill}

The New Zealand Te Awa Tupua (Whanganui River Claims Settlement) Bill of 2017 is an example of granting personhood and of honoring cultural rights. A river in New Zealand was granted personal legal status in order to protect it from corporations who enjoy similar rights and to put the land in the trust of local Māori communities who see a metaphysical tie to the river. Chris Finlayson, New Zealand Minister for Treaty of Waitangi Negotiations, admitted, “I know the initial inclination of some people will say it's pretty strange to give a natural resource a legal personality.” Finlayson says, according to the BBC. “But it’s no stranger than family trusts, or companies or

\textsuperscript{85} Hopu and Bessert v. France, at para. 5.
incorporated societies.”\textsuperscript{86} This case exhibits a deliberate attempt to legally sidestep imperialist neoliberalism.

The Whanganui River Claims Settlement is also markedly different from the two other cases. The Anthropocene is “a nature so shot through with human impact that it is no longer nature at all, but a human-managed global ecosystem or a ‘new Earth’\textsuperscript{87} where humanity is directly producing nature in myriad ways.”\textsuperscript{88} Political scientist Rafi Youatt argues that the problem at the root of the Anthropocene is that it “conceptually insists on a world that has no political outside, to match a nature that it has now subsumed.”\textsuperscript{89} He argues that granting ‘rights for nature’ do not solve the problem of extreme environmental damage. Rather, “place- and culture-specific persons—that intersect land-use conflict, indigenous politics, and international environmental politics” by motions like the Whanganui River Claims Settlement do a better job.\textsuperscript{90}

Youatt identifies psychological (biological), ethical (moral), and legal (fictitious) personhood.\textsuperscript{91} He notes that these are rooted in notions that are “deeply culturally and historically marked.”\textsuperscript{92} Legal personhood can be given to natural persons (e.g., individual humans) and legal personalities (e.g., corporations). What counts is who gets a legal persona, that is, who is accepted by law as a person. As Foucault would insist we ask: Who is doing the talking? Under ‘rights for nature’, are people speaking for Nature; is


\textsuperscript{89} Youatt, “Personhood and the Rights of Nature,” 42.

\textsuperscript{90} Ibid., 43.

\textsuperscript{91} Ibid.

\textsuperscript{92} Ibid., 44.
Nature even able to speak in court? Being voiceless is to be vulnerable in lawfare.

The view known as ‘iwi-Whanganui’, which preceded the Settlement, involves both human and non-human agency. Marisol de la Cadena concludes from her work with Quechua communities in Peru that human persons and items of nature ought not distinguish themselves in the first place. This is a challenge to the paradigm ontology of Western modernity, which culminates in perspectivism. Perspectivism is the view of animals, spirits, and other nonhuman persons as humans, who see us as nonhuman.93 Once again the indigenous population has given the world valuable knowledge from the fringes of society. Who are we to ‘other’ nature?

The Māori people that reside along the Whanganui River feel a deep connection to it. They take pride and enjoy the mana whenua (rights to the land) as stewards.94 Ordained by their deity, the local Māori have a duty to tend to their land, as do other Māori communities to their life-giving sources. Youatt ends his paper with the suggestion that International Relations “might begin to understand environmental governance more politically, involving multiple kinds of collective persons who may not be fully transparent to one another.”95 Again, indigenous knowledge, conceptions, and ways of life can inform the greater society on how to best protect and govern in the face of the Anthropocene.

Recap

95 Ibid., 52.
Sandra Lovelace v. Canada, Hopu & Bessert v. France, and the Whanganui River Claims Settlement are three cases that illustrate how over the span of the neoliberal era, humanity’s reaction has been to cling to the soulful in existence in the hope of maintaining meaning. Put simply: the soulful is worth saving, and spirituality is a lifeline. Theologians Joerg Rieger and Kwok Pui-lan have called this phenomenon of resistance “theological surplus” – which springs out of the dialectic between the human ideologies of transcendent spirituality and the oppressive status quo.\(^\text{96}\) Furthermore, one sees a reoccurring theme that the indigenous experience of cultural imperialistic colonialism can inform those threatened by neoliberalism’s cultural imperialism. The two look remarkably similar. It seems pertinent for one to consider applying indigenous peoples’ rights and knowledges to the rest of humanity’s predicaments. Humanity can learn from itself in the endeavor of meliorating neoliberalism.

Chapter 2 | Brain Science, Philosophy of Mind, and the Spiritual

Introduction

This chapter introduces the case for the existence of souls, an explanation and defense of human spirituality, and human flourishing.

The Soul

Lenn E. Goodman and D. Gregory Caramenico write that souls are “active beings, as natural to us as the skin that marks a boundary between our bodies and their environment.”\(^\text{97}\) Our souls are what give us our dignity. Souls give us our capabilities, as


one must remember, “we are not complex machines.”\textsuperscript{98} Instead, souls make us persons “capable of building relationships with one another and of modifying our surroundings physically, socially, intellectually, and culturally.”\textsuperscript{99} One sees the links between existing rights and the spiritual.

René Descartes tried to explain dualism of the body and the self-evident soul.\textsuperscript{100} It took until 1949 when Gilbert Ryle coined the phrase “the ghost in the machine” to describe body-mind dualism as a ghastly hoax.\textsuperscript{101} In Ryle’s opinion, it is wrong to see the mind as a ghost in the body. Ryle, perhaps prophetically, said that the mind and body are one. His argument has prevailed in most circles to this day.

The soul or psyche is a trope for the “totality of the human mind, with its conscious and unconscious realms.”\textsuperscript{102} A soul is the name for “all that makes persons as such distinctive – our cognitive and affective, active, and creative, appetitive and moral capabilities.”\textsuperscript{103} Although psychology is the study of behavior, Goodman and Caramenico invite us to consider: “It is persons who exhibit self, agency, consciousness, and personal identity.”\textsuperscript{104} A soul, it is now widely believed, “understands and undertakes and proclaims a personality.”\textsuperscript{105} Souls can also influence the brain and, in the case of plasticity, even change the brain’s makeup.

Souls are, in part, made – self-made – not born. That is, souls develop. Freedom, spontaneity, and creativity confirm claims of ‘souls’. Neuroscience and cognitive

\textsuperscript{98} Goodman and Caramenico, \textit{Coming to Mind}, 2.
\textsuperscript{99} Ibid.
\textsuperscript{100} Ibid., 10-14.
\textsuperscript{101} See Gilbert Ryle, \textit{The Concept of Mind} (Chicago: University of Chicago Press, 1949)
\textsuperscript{103} Goodman and Caramenico, \textit{Coming to Mind}, 4.
\textsuperscript{105} Goodman and Caramenico, \textit{Coming to Mind}, 8.
psychology help vindicate the belief in souls through the study of perception, consciousness, memory, agency, creativity, et cetera. For example, “self-understanding and reflection are attributes of the psyche, not processes of the brain.” True brain science seeks to investigate the interactions between the layered interface of brain and mind.

The study of agency for example, clearly shows that freedom needs self-determination, and self-determination is freedom. Souls, Albert Bandura’s work suggests, are not given but grown. That is, they develop. He writes:

The sensory, motor, and cerebral systems are tools people use to accomplish the tasks and goals that people use to give meaning to their lives. Through their interactional acts, people shape the functional structure of their neurobiological systems. By regulating their own motivation and the activities they pursue, they produce the experiences that form the neurobiological substrate of symbolic, psycho-motor, and other skills. Should people experience any loss or decline of their bodily systems, they devise alternative ways of engaging and managing the world around them.

The body does not break, but finds a way to keep going through its soular agency.

Bandura’s work on agency found:

Four components critical in effective action: (1) framing goals and the plans conducive to achieving them, (2) forethought, anticipating future scenarios so as to weigh opinions before pursuing a course of action (purposive action, then, does not magically reverse the causal order, as if goals somehow drew effects out of the future), (3) “self-reactiveness,” active regulation of one’s actions (for “one cannot simply sit back and wait for the appropriate performances to appear”), and (4) self-reflectiveness, adjusting plans and even goals to changing circumstances,

106 Ibid., 15.
107 Ibid., 198.
including new social dynamics.\textsuperscript{109, 110} Bandura rejects the reductionist conception of the human because he sees the soul at work in experiments of effective action (agency). For most philosophers of mind and psychologists the soul’s existence is both unproven nevertheless undeniable.

Goodman and Caramenico argue that souls take root in acts of moral appropriation. Hundreds of studies confirm the central importance of autonomy in healthy human living. “Integrated or intrinsic motives, for example, are found to foster flexible, heuristic and creative activity. Heteronomy impedes it. Autonomy in relationships, not surprisingly, promotes mutual satisfaction and stability.” \textsuperscript{111} Furthermore, autonomy in relationships supports mutual reliance.\textsuperscript{112} These studies underline the “psychosocial basis for the moral imperative to treat others…with the dignity of subjects rather than try to manipulate them as objects.”\textsuperscript{113} Souls are thus achieved and not given. Their development requires support, as without this care and nourishment, “identities can be stunted or destroyed.”\textsuperscript{114}

Neuroscientists are finding that brainwork cannot be adequately described electrochemically, because the actions of the person far outweigh the powers of its parts. Goodman and Caramenico write, “That’s why persons show life and sensibility, consciousness and agency when the atom cannot.”\textsuperscript{115} Embodiment enables a soul to arise from the workings of a brain.

\textsuperscript{111} Ibid., 202.
\textsuperscript{114} Ibid.
\textsuperscript{115} Ibid., 206.
Brain plasticity, for example, can heal the brain. This process of changing the structure of the brain is not understood to be an effect of normal brain activity. What we are seeing here, according to Goodman and Caramenico, is “top-down rehabilitation working the brain and working with it, to rebuild it.”\textsuperscript{116} The authors assert, “There’s a person at work here, not just a brain.”\textsuperscript{117} Take for example meditation, playing music, sport, or repetitive craftsmanship. These involve “active engagement of the mind reaching out for control and guidance of the body.”\textsuperscript{118} Certainly, we are more than just mechanistic bodies, or as Michael Gazzaniga puts it: “We are people, not brains.”\textsuperscript{119}

**Revisiting the Tahitian Burial**

As Goodman and Caramenico write:

> The insistent interest in separate souls is usually an entry trap to talk about death. But human flourishing links up more naturally with life. The intimate nexus of souls with bodies grounds our case for the soul. It is through our embodiment that we live as individuals and members of a community.\textsuperscript{120}

There are researchers in the scientific community who argue that ‘soul’ is a term marred by its association with individual animal bodies. As members of the panpsychism movement, they state that a “vital materiality” runs between human and non-human matter.\textsuperscript{121} Panpsychism is the meta-theory that all things have a level of individual consciousness – even stones. Panpsychists argue that the mirage of complexity and capabilities of ‘living’ organisms is what distracts us from the worldview that even the

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\textsuperscript{116} Ibid., 209.
\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid.
\textsuperscript{120} Goodman and Caramenico, *Coming to Mind*, 4-5.
\textsuperscript{121} See Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham: Duke University Press, 2010)
‘lifeless’ things have a soul. One ought not declare what has a soul and what does not have a soul simply by how radically one’s fascination is spurred by the object in question. Panpsychism is a theory that not only recognizes the vibrancy in all matter but also sees all things as interconnected and interwoven in reality.

Regardless of where one stands in the debate on where a soul begins and ends, all can agree that a human burial ground is a place of reverence. It is a place where one honors the human dignity of deceased members who lived a life with varying degrees of humanity. And as Gilles Deleuze noted about Foucault’s writings, there is “a certain vitalism” wherein life is “the capacity to resist force” – meaning that death marks the end of resistance and capabilities, or ‘the soul’ as we came to know it. 122 Whether souls live on or not after death is purely irrelevant to a humanistic understanding of souls, though to understand homo religious in tandem with modern neuroscience is to understand the meaning of the burial ground and the ruling of the Human Rights Committee.

The burial ground is a place to care for the psyche of the living. Robert A. Emmons writes, “Spiritual emotions such as gratitude, awe and reverence, love and hope are likely to be generated when people perceive sacredness in various aspects of their lives.” 123 They are known as positive emotions because of their affects; positive emotions “appear to enlarge the cognitive context, an effect recently linked to increases in brain dopamine levels.” 124 They also “broaden people’s mindsets” and “build and replenish critical personal and social resources, such as resilience, optimism, and social support.” 125

It is fitting that the lagoon next to the burial ground is also a fishing area. Just as

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125 Ibid.
the fish nourish the natives’ bodies, the presence of the burial ground nourishes the psyches of each generation. Nature is a nurturer and a reflection of dignity for the ‘living’. Meaning is easily found in the burial ground case. *Hopu and Bessert v. France* is an often-overlooked example of egregious cultural rights violation to spirit.

**The Soulful Life**

Although I have spoken about neoliberalism as a threat to a soulful life, I have not described the soulful life in detail. The soulful life is a life that maximizes freedom. Freedom is not absolute in life, as life is a continual power struggle. Free will is not entirely given, but it exists to varying degrees for different people. Yes, capabilities are important, but much of life is also spiritual. I will illustrate that they are interconnected together with our emotions, too.

Theologian Philip Clayton writes, “At its deepest, religion speaks the language of feeling and interiority; it valorizes the individual and the unique; it grasps the person only in her communion with the Whole, just as it intuits the Whole in each one of its parts.”\(^{126}\) This generates the possibility of positive emotions. Yet, when spurred by love one can actually lose one’s freewill, such as being in a state of rapture, ecstatic babbling or erotic passion without law’s tethers. Loving is both an activity and an experience. Consequently, one can venture into uncharted territories while loving – by becoming, and subsequently lose agency. I argue that a person must be free to attain positive emotions, but ideally, not excessively free. Together with this claim, I wish to introduce Paul A. Kottman’s book *Love As Human Freedom*.

In his book, Kottman perceives “love as a fundamental form of human self-
education.”¹²⁷ That is, loving is how we make sense of the world. He argues that “love is also one way we teach ourselves that we are free and rational – capable of leading lives for which we are at least provisionally answerable and whose possibilities we open for ourselves, while taking on board all the accidents and misfortunes of life in the world.”¹²⁸ Kottman’s book is a genealogy of love, beginning with our ancestors’ love for the dead to abortion and modern birth control. For example, Kottman’s genealogy of love highlights the Atlantic slave trade, which was intelligible to people living under the Kantian anthropology but fell to a new regime of love once abolitionism became tenable.¹²⁹ He considers moral progress stitched into the process of finding freedom through loving. Recall from Goodman and Caramenico, “self-understanding and reflection are attributes of the psyche, not processes of the brain.” Loving is therefore thought to be a soular activity, as interpreted through Kottman. Then, loving is by its very nature a humane exercise. Learning is an erotic process in itself, as Kottman writes, “Desire for understanding is manifestly erotic.”¹³⁰ Or as Allen Ginsberg once said, “the best teaching is done in bed.”

Clayton and Kottman are not alone in their advocacy for human flourishing. Martha C. Nussbaum and Amartya Sen have advocated for human flourishing in their respective capabilities approaches.¹³¹ ¹³² According to Kottman, one becomes freer by loving. According to Clayton, one becomes inspired and guided by love. I made note of

¹²⁸ Kottman, Love As Human Freedom, 5-6.
¹²⁹ Ibid., 18.
¹³⁰ Ibid., 56.
extreme freedom – stating that it can lead to loss in free will. Kottman never addresses extreme freedom as good reason for tethering the soul, yet it seems paramount in the genealogy of love. Yes, human loving is effected by understands and laws, but humanity also writes laws in the face of its own freedom.

For example, Augustine of Hippo refrained from sexual intercourse because he saw it as fundamentally *sinful*, that is, it is separation from God. The formerly unchaste Augustine had converted. Chasing erotic delight instead of the rapture of contemplation no longer interested Augustine. Of course, a broader interpretation of God as ‘love’ and ‘union’ provide a different understanding. For example, many Sufis approach Allah as a lover. Again, new regimes of love come and go. For example, Isaac from the *Hebrew Bible* called his god “Fear.” Perhaps, one sees Kottman’s progression argument here: Loving has developed humankind, and the human has developed loving. Regardless, one can reasonably say that people who love more garnish greater capabilities. Love unbound would lead to greater humanity.

I was fortunate enough to have interviewed philosopher Akeel Bilgrami on the subject of human flourishing. I asked him: What do you make of the human flourishing argument? His response was:

> My view is that human flourishing should be seen not in terms of material prosperity…but should be seen as living an un-alienated life…. I feel that the idea of an un-alienated life is even more important than notions and ideas like liberty and equality. I think liberty and equality should be seen as a way of achieving an un-alienated life, otherwise liberty and equality are just social engineering.  

He calls an un-alienated society and an un-alienated life a “deeper ideal” than liberty and

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133 Genesis 31:42
equality.\textsuperscript{135}

Dorrien has a differing opinion. He said, “I think love is the whole point of spiritual life… it is freeing you from your bondage to your selfishness and the values of a commercial society that is constantly trying to make you just nothing but a consumer.”\textsuperscript{136} It is through this practice that we become freed through “outward free moral care.”\textsuperscript{137}

Freedom, says Dorrien, is the “desire and capacity to do the good.”\textsuperscript{138}

On the topic of self-determination – which is interrelated to cultural rights – chief drafter of the UDHR John Humphrey passionately wrote:

The proposition (to begin by using a perfectly neutral word) that every people should freely determine its own political status and freely pursue its economic, social and cultural development has long been one of which poets have sung and for which patriots have been ready to lay down their lives.\textsuperscript{139}

This, I think captures the mystery and beauty that darkness and love evoke in humankind’s quest for what it calls ‘freedom’.

**Recap**

As one grows increasingly aware of the science behind the mind, one begins to see the connections between our bodies’ health, development, freedom, self-determination, and what we call our ‘souls’.\textsuperscript{140} Humans may not be completely free, but they have free will. Every docile life is subject to discipline and punishment from birth.

\textsuperscript{135} Bilgrami, interview

\textsuperscript{136} Dorrien, interview

\textsuperscript{137} Ibid.

\textsuperscript{138} Ibid.


through being, which renders a shaped life with a fashioned soul. In a sense, we are all in a battle to be free and to love (and perhaps even to be loved) – perhaps the most foundational way to maintain and generate freedom. As Clayton quotes Shakespeare’s Sonnet 116, “Love is to the star to every wandering bark, Whose worth’s unknown, through his height be taken.” Scholars agree that given a choice, a healthy soul (driven by desires such as love) pursues the soulful life, for to have the soul in chains is to counteract human flourishing – a positive theme at the heart of human rights theory.

Chapter 3 | Civil Society and Cultural Rights

Introduction

Consensus is important for the social change I, and others, envision. The last chapter was filled with information on the soul/psyche (something that is hardly a legal concept today) and even brains – which have underdeveloped consideration under international human rights law.141 I assert that public opinion is central to any development of the law since the rule of law does not become thick at a local or international level until legitimacy is established among the people. Spirituality is something that we are all invested in. So, let us survey the topic of civil society.

A Secular Soul

Legal scholar Michael J. Perry argues that there cannot be a secular notion of the sacred.142 Sacredness, he says, is inherently religious. In the wake of rulings like Sandra Lovelace v. Canada, Hopu & Bessert v. France, and the Whanganui River Claims

142 See Michael J. Perry, Religion in Politics: Constitutional and Moral Perspectives (New York: Oxford University Press, 1997)
Settlement, I tend to disagree with Perry. Instead, I favor Ronald Dworkin’s assessment that sacredness can be a secular or deeply philosophical belief.\textsuperscript{143} Agnostics, atheists, deists, and theists are all spiritual. Certainly, they tend to be born into this world as spiritual beings, not religious beings. Most profoundly, all humans can believe in a \textit{humanistic} rendering of the soul.

The humanistic rendering of the human soul – utilizable to the humanistic yet metaphysical language of the UDHR – is not necessarily concerned with the afterlife or lives previously lived. International human rights law has always been, and can only be concerned with present living humans.

Furthermore, I believe that law is a human construct that can be perceived as either glorifying or defiling something sacred – like God’s will, revered time, space, sound, or matter. This does not mean that all must adhere to a faith, nor is there one faith in the law. Instead, it means that law is by nature pluralistic and inherently secular. States may purport to apply a divine law, but ultimately they are applying a human interpretation of the received law. Contrary to Perry’s claim that there can be no secular notion of the sacred, I argue that the law itself is secular. Law merely serves to augment certain behaviors and norms. The three cases I highlighted demonstrate that sacredness can be a secular or deeply philosophical belief.

\textit{Sandra Lovelace v. Canada} is an example of protecting dignity to maintain the ideals expressed by Jeremy Waldron. Waldron writes, “the modern notion of human dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly

accorded to nobility.”144 The court’s ruling salvaged Mrs. Lovelace’s dignity because she had lost a basic rank. Lovelace’s status dropped to the point where her culture was compromised. There is nothing religious about the ruling – only a philosophical argument that all people ought to be treated with dignity – a human construct in its own right. The same goes for Hopu & Bessert v. France and the Whanganui River Claims Settlement.

**Foucault in Iran**

Many forces have squeezed civil society thin over the past few years and therefore the power of the people. Authoritarian neoliberal political encroachment, rising corporate power, and organizational failures have weakened political movements. Non-governmental organizations, various social movements, and religious movements remain routes to change.

Running parallel to the shrinking of civil society is the disenchantment of the postmodern world. Modernity, as Weber predicted, has fallen into a state of accelerated modernism and diminished spirituality. So is true for postmodernity today. Late in his life, Foucault had taken up the issues of civil society, protesting, and revolution. This included his famous correspondence from Iran during the Islamic Revolution.

Foucault was fascinated by what he called a *political spirituality* among the Iranian revolutionaries. He noted an “absolutely collective will” among the people of Tehran.145 Foucault describes “an absence of fear and an intensity of courage, or rather, the intensity that people were capable of when danger, though still not removed, had

already been transcended.”¹⁴⁶ The people had a clear vision for what they wanted Iran to become without having the notion of progress. Foucault saw the Revolution as proof that it is possible to transcend “the spiritless world modernity has instituted.”¹⁴⁷ Political spirituality is then “a force that asserts itself in a continuous enchantment of history.”¹⁴⁸ This means that political spirituality is an alternative to historical determinism. The Iranian revolutionaries had proven to Foucault that Kant’s concept of enlightenment was wrong.

Foucault praised the Revolution for bringing the spiritual to politics, but chiefly for the one-dimensional path with which the revolutionaries moved. There was no preconceived notion of what was going to be done. It was a swift process of not looking forward towards modernity or backwards to a bygone Islamic state. Instead, the revolutionaries expressed negation, shouting “The Shah Must Go!”¹⁴⁹ The Iranian revolutionaries typified what Foucault envisioned as homo politicus. Foucault’s vision of the Iranian people is of a society overcoming the plights of modernity with political action fueled by a pure political spirit.

**A Public Philosophy?**

What is the best method for ameliorating neoliberalism for all? Brown writes that altering higher education would help,¹⁵⁰ while Hardt and Negri theorize that the multitude

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¹⁴⁶ Foucault, “Iran,” 257.
¹⁴⁹ Ibid., 283.
can counter global hegemony.\textsuperscript{151} I contend that amending higher education can only go so far in achieving this goal. It may be a positive transformative motion, but imagine the many people who do not have the opportunity to attain a higher education. They would likely be only passively be affected by the motion. What about a public philosophy? Can it revitalize civil society and re-enchant our world?

Before any heroic revolution like Hardt and Negri’s, or even the Islamic Revolution according to Foucault, there needs to be a general consensus from a social movement for it to remain lasting. This is developed through civil society. I asked Bilgrami: What is the best method to solve the spiritual deficit we face in neoliberal society? He answered: “I do not think we will get anywhere within neoliberalism, we have to transcend it.”\textsuperscript{152} He explained, that this is accomplished through a movement, not by law. He continues:

I do not think you can get the state to do anything without forcing them to do it through movements. The state is very much behind neoliberalism. And unless there are movements out in the streets, I do not believe you will be able to combat neoliberalism.\textsuperscript{153}

Bilgrami favors social and political movements that engage in what he calls “the old wisdom of organizing” of Marx, Mahatma Gandhi, et cetera.\textsuperscript{154} Bilgrami admits his own pessimism, but says, “You need a lot of imagination to get people mobilized…. It is a very difficult issue.”\textsuperscript{155} Pessimism, he says, is not the way to bring neoliberalism to a terminus.

\textsuperscript{152} Akeel Bilgrami, “An Interview with Dr. Akeel Bilgrami,” interview by Alexander Sieber, January 30, 2018, audio, 21:00.
\textsuperscript{153} Bilgrami, interview
\textsuperscript{154} Ibid.
\textsuperscript{155} Ibid.
Dorrien feels similarly to Bilgrami on how to combat neoliberalism. Dorrien says, “I do not think we can do much of anything individually…. I do believe in solidarity politics.” That is, Dorrien believes in creating structures that are not complicit in the neoliberal consumer paradigm. An advocate in his own right, Dorrien explains:

I do think a decision to be involved in that kind of work, and then sustaining the hope the drive that keeps you in it starts with something personal before political or even spiritual. You are speaking to personal hopes and fears…capacities for being able to imagine a different world…holding onto it, not giving up.

Dorrien also points out what he calls “the hope problem.” When asking how one sustains hope for liberation from neoliberalism, “The ones that stay in it tend to have some kind of religious wellspring in their lives. They do not think that their success is what justifies the work. They really are faithful to something. And then their hope is continually renewed by spiritual practices.”

Dorrien firmly believes in community organizing and dialogue. He said, against pure politics:

I do not think that that sustains, I think [there is] something evasive about that, and it does not sustain the best kind of human rights activism, it does not sustain the best kind of theory…. I think that to keep this going, for human rights theory and politics and organizing to get to the next phase; you have to allow people to discuss and debate and therefore risk what gets risked when you join in a conversation about what is truly valuable to you.

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156 Dorrien, interview
157 Ibid.
158 Ibid.
159 Ibid.
160 Ibid.
He also believes in a political response. “Politics is unavoidable work. It is constitutive in the struggle for justice.”\textsuperscript{161} He explained that justice movements are a “layered thing.”\textsuperscript{162}

I contend that law gives society something concrete to organize towards and is the highest form of norm, so abridging law is perhaps what we should be working towards. Since neoliberalism has been critiqued ad nauseam with no fundamental critique to show for it, now may be the time to discuss how to ameliorate neoliberalism for everyone through law. In the meantime, a public philosophy – for the reasons expressed by Bilgrami and Dorrien – remains essential.

The premise of public philosophy is that there is no initially proposed solution to timely issues. Instead, there is, albeit ideally, dialogue engaging all parts of society. In a neoliberal world, we have even within a single nation pronounced division between rich and poor. This leads one to ignorance and a lack of empathy for one’s fellow citizen. And as Brown tells her readers, ideally the public needs to be both interested and informed.\textsuperscript{163} I think dialogue is vital in establishing and maintaining true community, but I also believe that my legal remedy should be considered, since public philosophy may be a healthy yet too slow of a practice to resolve the ills created by neoliberalism.

I liken the present situation to a triage procedure. In the operating room one must make an evasive measure when required or else one loses the patient. Society can be lost to fascism, autocracy and other forms of authoritarianism. As Douzinas explains:

\begin{quote}
If the formal freedom of legal rights has been accompanied closely by domination, formal equality has been shadowed by various types of oppression such as economic exploitation, social marginalization and cultural worthlessness…. When daily survival is the order of the
\end{quote}

\textsuperscript{161} Ibid.
\textsuperscript{162} Ibid.
\textsuperscript{163} See Brown, Undoing the Demos.
day, all aspirations for social improvement or cultural expression are extinguished. The oppressed cannot enjoy or even aspire to a fulfilled life which would allow their personality to flourish and be recognized in its complex integrity.\textsuperscript{164}

The reality of most neoliberal society is that people are simply too disempowered or voiceless to engage in a fruitful public philosophy. If spaces for public dialogue and contemplation were available, very few citizenries would even show up. For example, if a significant portion of household members work over 40 hours a week in addition to having children, a fair and meaningful public philosophy cannot take place. This is precisely how modern capitalism undermines civic involvement. For example, voter turnout is abysmal in the United States not just because of voter disillusionment. In fact, voting is, according to Hannah Arendt, one of the last remaining powers that citizens have the illusion of holding. It is instead that America’s public is so economized that it simply does not vote.

I argue that one ought not dispose of the idea of a legal measure being the end goal of a movement. Although it may not completely unhinge neoliberalism, a cultural rights movement could be a viable goal. That was how UNDRIP was started. It can be done again.

Recap

As I asserted, a soul can be discussed in purely secular terms. I also illustrated why a law is always secular, despite assertions made to the contrary. Also, I introduce Weber’s critique of modern humankind’s disenchantment. Citing Foucault’s correspondence from Tehran, I show how politics can make life enriching. Not only can

\begin{flushright}
\textsuperscript{164} Douzinas, \textit{Human Rights and Empire}, 41.
\end{flushright}
the pursuit of politics give meaning in an authentic cultural sense, but also their pursuit can provide us the end to overcome postmodernity. I also argue that society would benefit from public philosophy, yet public philosophy’s slow course may not answer the dire needs of a world inflicted with neoliberalism. I contend that a legal measure is crucial to meliorate global neoliberalism.

Chapter 4 | Adding Rights and Governmentality

Introduction

Foucault tells us that life is inherently political. To remain or become free requires a political life. Humans are inherently political but not necessarily able. As I have described: freedom needs self-determination, and self-determination is freedom. Thus, the spirit of a person is a requirement for self-determination. This is why so many indigenous peoples who have been denied self-determination describe themselves as “broken.”165 The will of those persons is literally taken away with the spirit of a person and the culture of a group.

In this chapter I take a closer look at governmentality and how adding rights can be both good and bad for the people who benefit from the new law. In other words, I look at how greater cultural rights protection may empower people while simultaneously subjecting them to disempowerment.

Every Society…

Every society must choose its intellectuals. When reading classical political theory texts this maxim comes into reprieve. In Machiavelli’s medieval work The Prince

and in Carl Schmitt’s more contemporary writing *Political Theology*, one sees society’s intellectual par-excellence as a single person. In his book *Leviathan*, Thomas Hobbes conceives of an apparatus that would bind peoples together by social contract. In many ways, governmentality entails trusting the state with the morals of its government. In representative government, such as the one described hypothetically in Plato’s *The Republic*, those with *dignitas* – the uniquely Roman understanding of dignity – rule as intellectuals; they were thought to be the most learned and free men. Plato dreamed that every man and woman existed in a class society, in which people had no electoral power over the selection of the state’s intellectuals.

Government, writes Mitchell Dean, is “intensely moral in that it seeks to engage with how both the ‘governed’ and ‘governors’ regulate themselves.” Government involves not just “how we exercise authority over others, or how we govern abstract entities such as states and populations, but also how we govern ourselves.” How we do so is subject to moral questions. For this reason Dean says, “government is an intensely moral activity.”

Governmentality not only affects imaginary entities like ‘the state’, it also crafts the practices that “try to shape, sculpt, mobilize and work through the choices, desires, aspirations, needs, wants and lifestyles of individuals and groups.” As one can imagine, the power of governmentality could be used for good or evil. It can lead to the negation of freedom, or the protection of souls. Adolf Hitler’s adage, “thinking exists

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168 Ibid., 19.
169 Ibid., 20.
only by virtue of giving or executing orders”170 show governmentality’s ability to serve totalitarian regimes, whereas the UN’s stated objective is far more benevolent.171 The question for this thesis is now: What kind of consequence would claiming right to spirit have in terms of governmentality?

**Governmentality’s Dark Side**

Human rights are international agreements between nations that require a duty-bearer (such as the government) and a rights-holder (in this case an individual of the citizenry or a collective). Negative rights say what the government may not do to a citizen. Positive rights are what the government owes one. Cultural rights are positive rights and negative rights. Above all, rights maintain freedom, peace, and security. This is the classical relationship of government and its people in terms of governmentality.

In this day and age governmentality carries with it costs. That is, adding additional rights will have a potential drawback to the rights-holder. Whenever you set up a system of government, you are simultaneously setting up an information-gathering system that collects information from the population to the government. Any ‘information’ a government requires of its people, such as blood quantum or racial identification, is of human construction and can be intentionally or unintentionally used against citizenry. It depends on the regime, but racial identification is an example of what can happen when government asserts its power over individuals in the process of governing whereby the citizens are subject to either benign purpose or invidious purpose.

There is another more inherent Continental philosophical criticism of rights

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expansion. At one point in his studies, Foucault theorized a tradeoff between freedom and rights holding – what Douzinas calls *Foucault’s law*. Douzinas writes, “In a strange and paradoxical twist, postmodern societies follow what one could call ‘Foucault’s law’: the more rights we have the more insecure and unfree we feel.”¹⁷² This comes from a lengthy Freudian analysis that humankind makes rights because it desires to be loved, and that such desire can never be quenched. This could be true for rights that are not based on true human dignity. So what is the basis for cultural rights?

Waldron summarizes Dworkin’s thesis in *Taking Rights Seriously* succinctly. He writes that Dworkin argues:

> Anyone making a case of any sort in law makes it in the tones and language of rights, in the mode of entitlement rather than request or lobbying. A party in law does not phrase his argument in terms of its being a *rather good idea* to require a defendant or respondent to pay such and such a sum of money; he stands on his rights and in recognizing this standing the law accords him the dignity of a right-bearer.¹⁷³

Dworkin is saying that a law – such as the cultural right to spiritual dignity – must stand on dignity and not just a normative claim. In Chapter 1 I discussed the legal prescient of a right to spirit based on a concept of dignity that existing human rights norms define.

**The Promise of Governmentality**

> “Rights are tools and strategies for defining the meaning and powers of humanity.”¹⁷⁴ Martin Heidegger thought one’s highest dignity is one’s capacity to open new worlds and possibilities through what he called *world disclosure*. According to Heideggerians Hubert Dreyfus and Charles Spinoza, “Our nature is to be world

¹⁷³ Waldron, *Dignity, Rank, and Rights*, 51.
disclosers. That is, by means of our equipment and coordinated practices we human beings open coherent, distinct contexts or worlds in which we perceive, feel, act, and think.”

World disclosure refers to a process, which occurs at two different levels. He refers to:

The disclosure of an already interpreted, symbolically structured world; the world, that is, within which we always already find ourselves. At another level, it refers as much to the disclosure of new horizons of meaning as to the disclosure of previously hidden or unthematized dimensions of meaning.

I argue that human rights work effectively as a transformative, world-building process.

According to Ben Golder’s *Foucault and the Politics of Rights*, Foucault thought of rights as a political tool, but like phenomenologists explain, every tool has a cost and a benefit. In Foucault’s words, “My point is not that everything is bad, but that everything is dangerous.” Foucault also argues that there is such a thing as a relational right. He explains: “The relational right is the right to gain recognition in an institutional sense for the relations of one individual to another individual, which is not necessarily connected to the emergence of a group.” Foucault’s relational right is a right of recognition between individuals that leads to greater understanding of equal humanity by bringing people closer together in a transformative, emergent way. This is how empathy is grown among humans. Cultural understanding improves under a high disclosure regime.

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Golder makes clear that for Foucault, human rights are groundless, but he sees in Foucault’s work an appreciation for rights that he calls “democratic potential,” or “a source of political promise and open-ended possibility.”¹⁷⁹ To Foucault, rights have a form; they are both emancipatory and regulatory. So rights can be at once liberating, but through institutionalization, become the vehicle for enslavement back to another persecutory construct. Rights are tools of struggle to Foucault – one that becomes unpredictable, un-circumscribed, or uncontrolled once implemented. For example, being protected for being a woman, does some harm in that it frames the individual according to its sexuality. Liberation is not guaranteed. Freedom is the necessary precondition of power, but everywhere there is power, there is domination, and in this complex, there is constant change. This means that any liberal institution (i.e., the human rights regime) immediately ceases to be liberal. Foucault makes the bold claim that “it can never be inherent in the structure of things to guarantee the exercise of freedom. The guarantee of freedom is freedom…Freedom is a ceaseless work without any guarantee.”¹⁸⁰ Brown and other neo-Foucauldians have expounded this political worldview. The question remains: What kind of potential would extending cultural rights from UNDRIP to the rest of humanity hold?

Recap

Government is one way of commanding and ensuring morality in society. Governmentality can be a force for good or evil. Government protects all human rights, but under the wrong administration, governmentality can become malevolent. I make the case that there are also significant positive aspects to granting new human rights.

¹⁸⁰ Golder, *Foucault and the Politics of Rights*, 112.
Foucault argues that in a life of constant struggle one must have a relational right. Only then can there be an emancipatory aspect to rights. The human right to spirit benefits from this right to dignity, as without it there may be perpetual chaos, including slavery.

Chapter 5 | Rebuilding Community with Individuality?

Introduction

In this chapter, I bridge the themes of world disclosure, emergence, imminence, and world-building from previous chapters to foretell what may become of humankind with a stronger cultural right to spirituality. I do so by introducing Alexandre Lefebvre’s recent interpretive work on philosopher Henri Bergson’s theory of the open society.

Deleuze on Human Rights

Deleuze said that human rights introduce transcendence into political thought and practice. He saw this as a serious shortcoming. Deleuze defines transcendence as “the immanence of one term to another.”¹⁸¹ Immanence is always produced by transcendence, and transcendence is totalizing to any and all life. For Deleuze, a human right inhibits movement and becoming, because it works with a fixed kind of subject.

Lefebvre defines a human rights abuse as “the human being stripped of all his or her (or rather, its) particular qualities.”¹⁸² He writes that:

> By peeling away a specific set of qualities, we reach a general human core. Conversely, by adding a specific set of qualities to this core, we reach an embodied individual. In this scheme, the subject of human rights is at once general (sharing with all others a common core humanity) and

particular (individuated by a set of attributes).\textsuperscript{183}

Referring to Deleuze’s precepts, Lefebvre writes that, “A theory of human rights faithful to immanence must, therefore, address the problem of how to see and protect human universality beyond the transcendent generality of the subject.”\textsuperscript{184} Lefebvre turns his attention to Bergson’s philosophy of human rights, which closely resembles Deleuze’s full immanence view of human rights.

**Bergson on Human Rights**

Bergson was a French philosopher who applied insights from Western science, especially biological evolutionary theory, to moral philosophy. According to Clinton Curle, Bergson had a profound influence on John Humphrey – a main drafter of the UDHR. Curle writes, “John Humphrey kept a journal of his private thoughts during his early tenure at the United Nations. From these journals, it is apparent that he came to view the Universal Declaration in terms of Bergson’s book *The Two Sources of Morality and Religion.*”\textsuperscript{185} Bergson’s early contribution to the idea of universal human rights came before Foucault’s, and I believe it is worth mentioning because Bergson enables us to have a macro vision of human rights. Contrary to Michael Ignatieff’s\textsuperscript{186} or John Rawls’\textsuperscript{187} view that “human rights are purely a political instrument designed to protect individuals and attempts to identify a foundation for them are divisive, violent, and ultimately ineffective,”\textsuperscript{188} Bergson provides a scientific theory of human rights.

\textsuperscript{183} Lefebvre, “Human Rights in Deleuze and Bergson’s Later Philosophy.”
\textsuperscript{184} Ibid.
\textsuperscript{188} Lefebvre, “Human Rights in Deleuze and Bergson's Later Philosophy.”
Bergson’s theory of human rights is unique because it recognizes biological life. As Lefebvre explains Bergson’s understanding, “Human rights are not simply in the business of protecting life; they are an expression of life.”\(^{189}\) Bergson sees biology, or life, as having two tendencies: closure and openness. That is to say, humans and their societies can be (in varying degrees) closed or open.

Contrary to most evolutionary theories, Bergson believes that “morality is a product of evolution and not a check on it.”\(^{190}\) In fact, he holds that “we are naturally sociable, cooperative, and other-regarding beings.”\(^{191}\) Such is humankind’s ‘open morality’. Bergson reasons that there is an evolutionary advantage to openess. Moral qualities such as empathy, cooperation, reciprocity, and solidarity are therefore not extrinsic to our evolved nature, but a product of it.\(^ {192}\) Bergson asserts that humankind is naturally good.

‘Closed morality’ is then something that “leads to an especially noxious form of moralism and hypocrisy: in refusing to acknowledge the problem of closed morality directly and sincerely, we tend to issue moral and political promises that will not be kept in moments of crisis.”\(^{193}\) Closed morality can lead to persecution and an unjust status quo. Closed morality is inferior to open morality. Bergson’s supports human rights to overcome humankind’s dark-sided, closed morality, which means creating an open society.

The closed-minded morality of a closed society threatens to disenchant and

\(^{189}\) Ibid.
\(^{192}\) Ibid., 203.
\(^{193}\) Ibid., 204.
enclose all human beings – not just the citizens of the closed society. Because of imminence and the emergence between societies, other societies are also affected by the closed society. Although there are positive aspects to the closed society, Bergson says that such a society crowds out joyful affects and passions – losing potential for society and individuals alike, as it pits the people against its society. Such crowding out can lead only to self-centeredness and self-preservation. As Bergson writes, “At once individual and social, the soul here moves round in a circle. It is closed.”¹⁹⁴ In the close society, things stagnate and become mundane.

Bergson says that a consequence of a closed society is an ineffective and moralistic human rights institution. When in a time of crisis, the closed society buckles and fails to honor its promises. Bergson believed that persons of all peoples and societies are harmed or trapped by closed societies where people are “self-satisfied…greedy in spirit and flabby in mind, who wants to have his ethical cake and eat it too.”¹⁹⁵ Just think of the inscription on the Statue of Liberty¹⁹⁶ and America’s closed history of immigration policies starting with Asians during the Yellow Scare, Jews during the Second World War, “Hispanics”¹⁹⁷ on several occasions, and now Muslims. That stagnant nation is guilty of being closed in mind and deed.

An open society, on the other hand, can generate joy and love. Bergson’s idea is not new. Adam Smith spoke about rippling circles of sympathy. Richard Rorty wrote on

¹⁹⁶ “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me, I lift my lamp beside the golden door!”
concentric circles of relations of people like us to people not like us.\textsuperscript{198} And more recently, Lynn Hunt has written on a cascading logic of human rights that will eventually cover all of humanity.\textsuperscript{199}

**Bergson and Joy**

Bergson draws from Christianity and Romanticism when he writes on joy. Adam Potkay explains the difference:

This paradox characterizes discourses of joy both in their religious modes – “entering into the joy of God” is losing oneself and/or exalting oneself – and in their Romantic remodeling: losing oneself in nature and the current of humanity may be the same as projecting oneself there. The paradox of joy involves the nexus of loss and restoration, self-dispersion and perfect concentration, we so often find in human utterances about joy.\textsuperscript{200}

Bergson sees a qualitative difference between pleasure and joy. Joy is the perceiving and then partaking in “reality invented before our eyes”\textsuperscript{201} – a reprieve from everyday life. Pleasure is found in a different setting. Pleasure is manifest from science, whereas joy is found in philosophy.

Bergson asserts that joy, self-knowledge, and self-creation are strongly linked. As free biological entities, humans participate in the “creation of self by the self, the enlargement of personality by an effort that can draw much from little, something from nothing, and add unceasingly to the riches that already exist in the world.”\textsuperscript{202} Bergson praises self-creation as a way of overcoming a closed moral regime.

\textsuperscript{200} Adam Potkay, *The Story of Joy: From the Bible to Late Romanticism* (Cambridge: Cambridge University Press, 2007), 16.
\textsuperscript{201} Lefebvre, “Bergson, Human Rights, and Joy,” 211.
Bergson is also a believer in benevolence and charity, that is, “abundance, muchness, overflowing, and dispersion” – much like Hunt’s description of human rights. Bergson attributes these qualities to humankind’s natural drive.

**Bergson and Love**

The attitude of a closed soul is very different from that of an open soul. The open soul, we are reminded, has repercussions that spread to all existence. There are thus such things as ‘open love’ and ‘closed love’. Open love is like the pure marital love described by Arditi, whereas closed love is tied up with attachment to objects. Closed love sharply resembles the love of modern hyper-individualized people who endure third-order suffering. Love to Bergson is then “a mood or disposition of exaltation and welcome.”

According to Bergson’s theory, human rights work negatively, as they “protect against the ravages of closed love. They codify and enforce love. Positively, they can initiate us into the form of life Bergson calls love. The intimation of love by human rights may serve as an introduction to it.” Is this the kind of reinvigoration society has been aimlessly looking for since Weber’s critique? Indeed, Bergson saw potential in human rights to be a crystallized and actualized doctrine and institution of love. He believed human rights carried with them evangelical inertia that could bring all of humanity and life to openness. The ideology of human rights – thought Bergson – could be open and eternal.

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204 That love is “to apprehend the other directly and entirely. It means that no social or cultural object lies between the lover and the beloved, that is, that no element of the intellect plays any part in the experience of loving.”
205 Ibid., 214.
206 Lefebvre, “Human Rights in Deleuze and Bergson's Later Philosophy.”
Relating Human Rights and Joy

Joy is a superior to pleasure to Bergson because of his philosophic biology. Pleasure, explains Lefebvre, “is only a contrivance devised by nature to preserve life…. But joy always announces that life has succeeded, gained ground, conquered…. The richer the creation, the deeper the joy.” Joy spurs us, and to Bergson, joy is a sign that our human destiny is being reached. Lefebvre says that the destiny of human rights is an “ongoing and unforeseeable creativity.” Insofar, Bergson has a virtually limitless human rights utopia in mind – one far more optimistic than Samuel Moyn’s.

Finally, the joyful creation of the self by the self is becoming oneself. Joy is found in beginnings and creations. Human rights are then “works of love” that serve to pledge others under the open regime with the end goal of recruiting all human beings into love. Human rights work is both an individualistic emancipator and a society builder. Bergson writes:

*Humanity groans, half crushed beneath the weight of its own progress. It does not sufficiently realize that its future is in its own hands. It is up to humanity to see if first of all it wants to keep on living. It is then up to it to ask whether it wants merely to live, or whether in addition it wants to make the necessary effort required for fulfilling, even on our refractory planet, the essential function of the universe, which is a machine for making gods.*

Pessimism haunts modernity’s *Zeitgeist* or Weltanschauung. Heidegger of course famously distrusted technology, and Schmitt rejected human rights altogether. It is fascinating to read Bergson because of his optimism. He foresaw a world immersed in a natural politics moving towards utopia. The authors of *Empire* struggle to see such a

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209 Ibid., 220.
thing anymore – as do critical theorists. Postmodernism foresaw the use of alternative facts in an everyday fight for objective truth. Perhaps international lawmakers should be reading Bergson – a person I believe would support crafting more human rights, because they would mean a greater civil society, lead to justified governmentality, and be bathed in untold spirituality. This would all result, according to Bergson, in a building of world community through a healthy relational individuality.

Recap

Bergson’s theory of human rights illustrates how an open society can create a transformative world-building action for citizens and a fuller society. Through immanence, humankind can transform its world by applying substantive human rights law. The open society envisioned by Bergson requires human rights law to spur humanity towards a kind of love and joy that would otherwise not be possible. Through charitableness – a kind of evangelical action – emergence and becoming spread joy and love. Perhaps, my measure can spur the kind of spiritual awakening that gets modernity out of dejection.

Chapter 6 | Concluding Remarks

In this thesis, I asserted – based off of the preamble to UNDRIP – that there is a single human community, and that all forms of oppression – including cultural and spiritual oppression – should be safeguarded by human rights. UNDRIP is the most advanced human rights instrument to affirm a people the right to preserve, develop and control manifestations of its culture. My postulate of a single world community, together with the affirmation to preserve, develop and, express and control one’s own culture,
suggests that this right should be universal. Article 15.1.a of the International Covenant on Economic, Social and Cultural Rights vindicates this, as it states, “The States Parties to the present Covenant recognize the right of everyone: To take part in cultural life.”211 This basic right could help prevent peoples’ cultures from being swallowed up by global neoliberal capitalism.

Furthermore, UNDRIP grants indigenous peoples the right to determine their development, including active involvement in the development and determination of health, housing and other economic and social programs affecting them. If society is thought to be one, then these rights should apply to all people, as is stated in article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights. Moreover, if people on the ground have the right to decide on an economic order, humanity could motion to back out of neoliberal capitalism.

Although there is no direct reference to ‘neoliberalism’ or ‘Empire’, the United Nations Sustainable Development Goals target many of the destructive effects of late capitalism such as inequality, poverty, poor health and social injustice. Making these targets does not modify the neoliberal paradigm; they only serve— in a soft legal manner – as a challenge to its effects. The Sustainable Development Goals have their merit. They avoid the essentialism problem of naming the problem of postmodernity, but the Goals only answers the question of economic and social rights as well as the problems of governance and democracy.

In this thesis, I have persistently followed the trail to cultural justice – paying special attention to spirituality. I believe we must be spiritually free in addition to being economically and socially free because the three are interconnected. As the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights states, “all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity.”\textsuperscript{212} That is the core of classical human rights theory.

If postmodernity is haunted by disenchantment in such a way that spirituality is nullified under neoliberalism, then who is to say that a treaty protecting culture in the manner I have spelled out in this conclusion cannot rejuvenate and kick-start society out of its disenchantment? Society could be given a lifeline to shake its Weltanschauung, which has allowed for such cruel treatment of people of any caste or class. A new Zeitgeist of optimism could result from such a change. Human rights may achieve this by working from above and below. That is, by treaty and then by pure imminence from person to person.

I must humbly state here my pessimism that such a treaty will take any committed effect anytime soon. States must firstly realize and embrace their populations’ role of equal global citizen and be willing to become duty-bearers in such a way that their people control their own culture. Yet, as Bilgrami noted, states tend to favor neoliberalism no matter how dead it is ideologically. For example, one would be hard-pressed to find Trump’s America commit to de-monopolizing, environmentalism, respecting indigenous treaties, or global peace. Unfortunately, Kant’s dream of perpetual global peace is a tricky one to realize when the world’s leading nations are engaged and heavily invested

in some form of conflict (i.e., the war on terror, the war on drugs, the war on immigration). In a world of perpetual warfare, peace itself seems to have changed meanings. To put it in figurative terms: if two parties blow in opposite directions on a teetering cradle and it does not fall, that is not peace. States in peacetime can still be in utter turmoil attempting to weather tensions (e.g., Kashmir, the Korean peninsula).

Today, the world is in a precarious condition. With irreversible climate change looming, we must realize our ethical role as global citizens. We must create long-term goals for our people and planet. This is all tied back into the politics of neoliberalism. Behind neoliberalism’s proliferation is its defective logic. The authors of *Beyond the Spirit of Empire* call it the

> Sacrificial logic of Empire: the demand to bathe itself continually in blood in the name of perpetual peace. The demands for blood in the name of peace and justice are understandable only by appealing to a notion of transcendence, whether to a god that demands sacrifices in exchange for salvation or to the sovereignty of the nation-state/Leviathan.²¹³

Neoliberalism disseminates a utopian vision with an unrealizable horizon, and that is dangerous – not just those who espouse or think it, but to anyone living under its reign.

Despite my pessimism, I see reason in applying cultural rights against neoliberalism. Bergson sounds radically utopian – and he is – but recall how utopian the Chicago School was in their creation of a neoliberal *dystopia*. Subversive efforts can alter the course of human destiny. Neoliberalism has created pockets of wealth explosions around the world (e.g., China, Japan, Singapore and South Korea) but at a stiff cost to the human spirit. Whether it is denying human rights in the name of efficiency, or turning Earth into a legal person to restore meaning to lives, legal subversion is a considerable

tool for change.

For transformation in the direction of rights, dialogue is essential. Paulo Freire believed several elements are necessary for dialogue to be possible: love for the world and its people, humility, and “an intense faith in humankind, faith in the power to make and remake, to create and re-create, faith in their vocation to be more fully human.”

Neoliberalism undermines the very foundation of dialogue – which it also dominates.

On the other hand, there are plenty of states that have seen neoliberalism and want to go another way. Climate change mars most of the world now. Many smaller, weaker states are willing to go a different route now that climate change is already affecting them. 174 states are currently committed to the Paris Agreement. Nations like Denmark, Germany, and the Netherlands are producing innovative clean energy solutions. I assume many will soon follow. Such thinking is much more constructive and rational than the neoliberal counterpart.

In Warren Montag’s synthesis of Louis Althusser and Foucault, he writes:

> The dilemma we face is not how to secure greater rights and guarantees of our independence and autonomy, how to prevent the dominant ideology from infiltrating the sanctuary of our interiority, or how to transcend that which dominates us in order to negate through thought the existing state of affairs and imagine its utopian contrary. Our dilemma is rather how to increase our power, how to diminish the forces that individuate and separate us and thus prevent us from uniting with others in order to act and to think more effectively and with greater strength for our liberation.

Today, perhaps more so than when Arendt wrote about the Second World War, the world is in need of greater global unity. Postmodernity has shown that neoliberalism has a

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totalizing effect on nearly everything. That is not the kind of unity I am calling for. Having a single community is less of a romantic idea than it is becoming a practical reality of postmodernity. The question is: How do we create an environment where open societies reign? I see the prudence in treating all humans as legal equals, which is consistent with human rights doctrine. That is one place to start.

Montag’s vision interpreted through the works of Althusser and Foucault can inform human rights policy. In a more open society, hyper-individualized citizenry’s separation can be overcome with unity. That starts with making more fully articulated cultural rights available to all human beings. Cultural rights are not the only rights that matter, but by all means, expansion of cultural rights to include all humans is a liberatory argument worth considering.
Bibliography


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SIEBER: TOWARDS SPIRITUAL DIGNITY


