

KEYNOTE ADDRESS

DOES LIFE INDEED BEGIN AT SIXTY? REVISITING THE UDHR AS A “SINGLE GARMENT OF DESTINY” IN A HYPERGLOBALIZING WORLD

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I

Allow me at the outset to express my warmest appreciation of the courage, craft, and conviction with which Danielle Goldstone and her colleagues at the *Emory International Law Review* and other students, have imagined and implemented this celebration of the 60th birthday of the Universal Declaration of Human Rights (UDHR).

As generations pass, charismatic truths of the UDHR become routine, legalized, and juridicalized. And perhaps at no time in its long history were the values and norms of the UDHR under such crises as now. It is at this juncture, then, that the dedication of the best and brightest in the contemporary young generation becomes a resource for the politics of hope. And this is the reason why I wish to applaud with you all this morning this extraordinary conference put together so beautifully by the students of the Emory Law School.

It is a great honor to be invited to this Conference. The honor is enhanced for me because I share this deliberative platform with Nobel Laureates Shirin Ebadi and President Jimmy Carter; and it is further heightened by the reunion

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with Dean David Partlett and Professor Abdullahi An-Na'im and his eminent colleagues.

Emory Law School and Emory University, a domicile of choice for some of the finest scholars in the United States, have notably nurtured a deeply pluralist understanding of human rights in the contemporary world, especially engaging the difficult focus on religious laws and traditions. As we all know, this endeavor invites the fashioning of collective ability for sustained contemplative and dialogic regard for the complexity and contradiction of the relations between religious and human rights values.

I have long wished to visit this distinguished site, which has contributed so enormously to cultures of human rights learning and education. Impertinently perhaps, I construe your invitation as according me the privilege of being an honorary citizen of this republic of learning. Thank you for this, indeed. In return, besides some scattered remarks I offer here, I pledge my best effort in assisting the enunciation of the Emory Declaration on the Universal Declaration of Human Rights (Emory Declaration).

President Jimmy Carter has richly suggested ways to commemorate the UDHR as a founding text for our collective aspirations toward a just world order. Shirin Ebadi has poignantly addressed specific histories and future itineraries of women's rights as human rights. Both these presentations suggest the importance not just of human rights reason but also of human rights passion. May I here offer some thoughts concerning the distinction between instrumental and sentimental reason, as a marker of our current predicament ushered in by the UDHR and its rather fecund normative and institutional progeny?

II

I wish to begin this presentation recalling the gifted text of Martin Luther King, Jr.—*Letter from Birmingham Jail*.¹ Dr. King wrote that for long years, “I have heard the word ‘Wait!’ It rings in the ear of every [African-American] with piercing familiarity. This ‘Wait’ has almost always meant ‘Never.’”² The struggle for human rights in his time, as also in ours, lies in converting this long “wait,” his “never,” into a rallying point for “now.” Dr. King understood

¹ Martin Luther King, Jr., *Letter from Birmingham Jail* (Apr. 16, 1963), in MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 77 (1st ed. 1964).

² *Id.* at 83.

what the great German poet Schiller wrote: “The minutes thou neglectest, as they fade / Are given back by no eternity.”³

Dr. King also wrote about the very idea and ideal of a community of human rights sentiment when he said: “We are caught in an inescapable network of mutuality, tied in a single garment of destiny.”⁴ Weaving a common fabric of destiny for all humans is what human rights are all about.

“Network of mutuality” is a theme that everyone may celebrate, including (and perhaps especially) those who practice violent social exclusion. In his own time, Martin Luther King Jr. pursued the vocation of dismantling “American apartheid.” He was labeled as an extremist. Initially discomfited, Dr. King soon began to draw ethical strength in the companionship of archetypal extremists such as Jesus of Nazareth, Saint Paul, Martin Luther, Abraham Lincoln, and Thomas Jefferson. In particular, he recalled the words of the prophet Amos: “Let justice roll down like waters and righteousness like an ever-flowing stream.”⁵

Dr. King’s lifework remains precious for us today, amidst the meltdown and bailout of what, following Karl Marx, Claus Offe presented to us as the very logic of “disorganized [global] capitalism.”⁶ The naysayers to contemporary economic globalization are often labeled by market fundamentalists as extremists. At some point in human history, a more honorable term was reserved for those who sacrificed their lives in acts of protest against structural political injustices. That term was “martyrs.” Weaving a “single garment of destiny” is an enterprise that remains insensible outside memories of acts of martyrdom. For me, this occasion also remains an act of pilgrimage. Visiting the King Center, I believe, renews our faith in struggles for emancipation and justice. Put another way, it reminds us of the truth of the maxim “justice is struggle.”

This is scarcely an occasion to ponder the complex and contradictory relationships between human rights and human justice. Even so, perhaps a few sundry observations may still be warranted. First, the classical forms of old social movements (the anti-slavery movement, the working class movement,

³ FREDERICK SCHILLER, *THE WORKS OF FREDERICK SCHILLER: VOL. IV—POEMS AND ESSAYS* 80 (The Household ed., John W. Lovell Co.) (1786).

⁴ King, *supra* note 1, at 79.

⁵ *Id.* at 92.

⁶ CLAUS OFFE, *DISORGANIZED CAPITALISM: CONTEMPORARY TRANSFORMATIONS OF WORK AND POLITICS* 1 (John Keane ed., 1985).

and the movement for equal voting rights for women, for example) assisted the birthing of contemporary human rights values, standards, and norms. These were grounded on claims to justice in some fecund ways that fully birthed what we now know as “human rights.” Second, much the same may be said concerning anti-colonial struggles, which contested and made fully incoherent the so-called Eurocentric notion, crudely summated as the Divine Right to Empires. Third, the imagery of a socialist Utopia severely interrogated the bourgeois birthmarks of modern human rights, exemplified by ownership over means of production via the categories of human freedom to own property and enter into contractual arrangements. Fourth, this in turn led to foment a critique of some horrendously perpetrated practices of the existing socialist state formations. Fifth, some new social movements—via different languages, logics, and paralogics—now very differently interrogate the ways and habits of contemporary globalization, ordering an organized amnesia of past historical wrongs. All this at least suggests an elementary global social fact: the languages of contemporary human rights entail a further conversation about the *justice of human rights*. Both Dr. King and Dr. Bhim Rao Ambedkar addressed the problematic relationships between human rights and human justice.⁷ I may only hope that the Emory Declaration continues onward bolstered by its activist and epistemic inheritance, equally resisting in that process the practices of assassination of collective memory of crusades against human *law* and human *injustice*.

With them, those involved in de-globalizing activities and movements ought surely to recall that human rights histories are made of passionate attachments to just causes; their definitions of just causes and the ways to attain them are always initially branded as “unreason.” I can do no better here than to recall (as a budding Pauline student) Dr. King’s invocation of St. Paul’s momentous utterance: “I bear in my body the marks of the Lord Jesus.”⁸ Bearing the marks of pain of the other inside you, being witness to the other’s sufferings, and having courage to struggle for justice is what the sentimental reason of human rights stands for. Liable to be condemned as unreason, from the perspectives of the reason of state, it was the same unreason of Mahatma Gandhi, Nelson Mandela, Dr. Bhim Rao Ambedkar (the Aristotle of Indian

⁷ See Henry J. Richardson, *Dr. Martin Luther King, Jr. as an International Human Rights Leader*, 52 VILL. L. REV. 471, 475–76 (2007); Upendra Baxi, *Justice as Emancipation: Babasaheb Ambedkar’s Legacy*, in CRISIS AND CHANGE IN CONTEMPORARY INDIA 122 (Upendra Baxi & Bhikhu Parekh eds., 1995); Smita Narula, *Equal by Law, Unequal by Caste: The “Untouchable” Condition in Critical Race Perspective*, 26 WIS. INT’L L.J. 255, 327–29 (2008).

⁸ King, *supra* note 1, at 92.

Dalits, as I fondly name him) and Dr. King, and their million followers, that brought down the edifices of apartheid; and Aung San Suu Kyi remains a living embodiment of hope against military rule—and not just for the Burmese people. Incidentally, this way of lumping together these illustrious names is also to suggest ways in which a future historiography of human rights may stand further enriched. It may thus derive a fuller benefit by a comparative exploration, for example, of Dr. King and Dr. Ambedkar. While both shook the foundations of a racial state, society, and civilizational ordering, Dr. King in the main addressed the unfinished agenda of a bicentennial-eve American constitutionalism, whereas Dr. Ambedkar, as a prime mover and an author of the fledgling Indian constitutionalism, sought to reverse millennial histories of the distinctively Indian caste-based apartheid. Perhaps, future Emory generations of human rights learners may essay a different comparative order of histories and ethnographies of human rights than are currently in vogue.

Moving perforce ahead, what the communities and networks of corrupt sovereigns regard as sedition and even treason, human rights and social movement activisms celebrate as praxes of emancipatory politics. Today, these indictments—as fostered by the arch-globalizers who suggest and proclaim that human rights futures are best secured by immunity and impunity of the owners of global means of production (read, the multi-national corporations (MNCs) and communities of direct foreign investors) and their normative cohorts (read, the international financial institutions, the Group of 8 (G8), the World Trade Organization (WTO), and General Agreement on Trade in Services (GATS), for example)—fully suggest that the varied imageries of the World Social Forum’s complex and contradictory motto, “other worlds are possible,”⁹ may remain either seditious, treasonous, or even both.

Those who fully pursue the programschrift of an “integrated” world economy practice, to borrow here a luminous phrase of Harold Laski, the “beatification of the status quo.”¹⁰ In contrast, the sentimental unreason of human rights struggles and movements expose the structures of human suffering and rightlessness everywhere; this remains all the more imperative in the era of hyperglobalization.

Put yet another way, the sentimental reason of human rights imagines struggles of human rights as those righting past, and even millennial or ancient,

⁹ Steve Kingstone, *World Social Forum Gets Under Way*, BBC NEWS, Jan. 27, 2005, <http://news.bbc.co.uk/2/hi/business/4208197.stm>.

¹⁰ HAROLD J. LASKI, *AUTHORITY IN THE MODERN STATE* 283 (1919).

wrongs. It reminds us that the cumulative burdens thus imposed on many peoples of the world may not ever be exhausted by words inscribed on human rights instruments. It further interrogates this contemporaneously useful normative striving by a call for a restoration of memories of past inhuman wrongs. Milan Kundera began one of his novels by saying that the struggle of men (and women) is “the struggle . . . against forgetting.”¹¹ Sentimental human rights reason remains always an appeal to intergenerational memories, a struggle always against the “assassins of memory.”¹² Of course, as we all know (thanks to critical feminist, race, postcolonial, subaltern, and now post-socialist theory), the relationships between human rights, human justice, and historical narratives remain very complex, and often contradictory as well. Even so, sentimental human rights reasoning remains far from an affair constructing mythic or fictional histories of human and social suffering.

Today, without doubt, and put here rather simply, everywhere the suffering of oppressed peoples understands by the languages of human rights just this summons: *render* the state more *ethical*, governance increasingly *just*, and power, in all its hidden habitats, progressively *accountable*. And yet, emphasizing “the inescapable network of mutuality” as the very name for emancipative human rights struggles everywhere invites the indictment of extremism (a register making some pursuit of *struggles for justice* for the otherwise history-decreed lost causes). The rest, to modify here the famed utterance of T. S. Eliot: where men and “women come and go / Talking of Michelangelo.”¹³

This is a long way of suggesting that the pursuit of human rights is not just a matter of *instrumental reason* but of the *unreason of sentimental reason*. With sincere apologies for the acronyms, I more fully develop this contrast in terms of the practical reason *of* human rights (ROHR) and the sentimental reason *for* human rights (RFHR). For the present moment, all I can say is just this: there is little future for human rights outside the enactments of unreason of the suffering peoples of the world.

¹¹ MILAN KUNDERA, *THE BOOK OF LAUGHTER AND FORGETTING* 3 (Michael Henry Heim trans., 1981).

¹² See generally PIERRE VIDAL-NAQUET, *ASSASSINS OF MEMORY* (Jeffrey Mehlman trans., 1992).

¹³ T. S. ELIOT, *The Love Song of J. Alfred Prufrock*, in *SELECTED POEMS* 11, 11 (1936).

III

At the moment of its 60th anniversary, the UDHR's visions and values stand severally undermined. This indeed happens variously. In the first place, this undermining occurs via the dreadful languages of the two "terror" wars—the wars on and of "terror." Some new recessional human rights futures thus stand now fully inscribed. Second, the UDHR remains crafted in languages and discursive habits and habitus of the distinctively human; now, variously, we all live in a "Posthuman" epoch. Today, we all remain cyborgs—half human, half artificial intelligence machines—very different, and both more and less than UDHR humans articulated via its plentiful birth-metaphor regimes. We all live under indeterminate conditions of an already occurring species mutation, in which non-biological intelligence almost supersedes the biological forms via, especially, the creation of new life forms of artificially engineered trans-human intelligence: the robots, the nanobots, new events concerning the emergent congeries of distributed intelligence, now named as "cognisphere."¹⁴ Given time constraints I may only invite your attention to Donna Haraway's *The Companion Species Manifesto*¹⁵ and N. Katherine Hayles's recent work entitled, *My Mother Was a Computer*.¹⁶

Third, we now witness a human rights paradigm shift that I prefer to describe as a movement away from the UDHR visions and values and toward what I name as trade-related, market-friendly human rights (TRMFHR). Briefly put, this simply means that MNCs and related business entities may claim the same order of human rights as embodied vulnerable humans, articulated in the birth metaphor of the UDHR (requiring today, in the context of U.S. presidential elections, contests over the Joe the Plumber, inviting some audacious hermeneutic Hegelian labors of deciphering the UDHR "Everyone"/"No One"). This way of reading the making of human rights has the advantage of uniting the values enshrined in the UDHR and those actually pursued via peoples' struggles worldwide. And this advantage need not be forfeited terrain of the rather extravagantly unproductive and philosophically random debates about the "universality" of human rights.

¹⁴ N. Katherine Hayles, *Unfinished Work: From Cyborg to Cognisphere*, 23 *THEORY, CULTURE & SOCIETY* 159–66 (2006).

¹⁵ DONNA JEANE HARAWAY, *THE COMPANION SPECIES MANIFESTO: DOGS, PEOPLE, AND SIGNIFICANT OTHERNESS* (2003).

¹⁶ N. KATHERINE HAYLES, *MY MOTHER WAS A COMPUTER: DIGITAL SUBJECTS AND LITERARY TEXTS* (2005).

IV

I wish to converse with you today merely about the human rights responsibilities of the so-called non-state actor (NSA). NSA has now become a term of art. Even so, it constitutes manifold puzzles. First, the term “non-state” must at least implicitly assume a state theory, and the covert approaches to “state” ought to at least be made ethically overt. “Non-state” is everything that it is not state in the obvious sense—NSAs lack the attribute of sovereignty (the authority to make and apply general laws binding within the territory, to punish, and to wage wars). If ever entirely accurate, this marker is losing its narrative coherence in the contemporary world precisely because many a NSA claims and exercises these very state-like powers.

Second, if an associated marker distinguishes state from NSA on the ground that it is the state that is primarily the subject of international law, and particularly of international human rights law, this claim remains now discredited, at least ever since the Nuremberg trials, which authorized punishment of German corporations for war crimes and crimes against humanity.¹⁷ Despite U.S. hostility to the International Criminal Court, and in particular the RFHR-type advocacy of inclusion of state-like (MNC) actors, the U.S. courts now stand variously asked to determine NSA liability during the conduct of the Iraq War.¹⁸ Further, one just has to read the text of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and its interpretation by the CEDAW treaty body, to understand a remarkable revolution-in-the-making: women’s rights as human rights address not merely the human rights responsibilities of all state and civil society sites of discrimination and violation, but now also directly address all forms of violence against women.¹⁹

¹⁷ See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, with annexed Charter of the International Military Tribunal, Annex, arts. 9–11, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279.

¹⁸ See, e.g., Peter Walker, *Blackwater Guards Shot Iraqis Without Provocation, Report Says*, GUARDIAN.CO.UK, Oct. 8, 2007, <http://www.guardian.co.uk/world/2007/oct/08/usa.iraq>; see also Laura A. Dickinson, *Government for Hire: Privatizing Foreign Affairs and the Problem of Accountability Under International Law*, 47 WM. & MARY. L. REV. 135, 162–63 (2005).

¹⁹ See Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; General recommendations made by the Committee on the Elimination of Discrimination against Women, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last visited June 18, 2009).

Third, when the non-state may become anti-state remains a question of utmost importance. In many parts of the world, even now, Amnesty International, Greenpeace, the First Nations people's movements, and related human rights and social movement actions (such as the militant animal rights movements) remain branded as anti-state and anti-global governance. Given time constraints, I may not here address this characterization, aside from pointing out that all these forms have considerably contributed to the de-globalizing passion servicing the RFHR.

Fourth, the ongoing fierce two "terror" wars—wars *on* and *of* "terror"—invite more sustained human rights regarding anxieties than seem possible now. On this landscape now emerge some state-like sovereign actors. There is much talk in the U.N. and academia concerning the human rights obligations in pursuit of both these wars, and I agree that international humanitarian law obligations at least should bind the states as well as insurgents.

Fifth, the category "actors" remains mainly cast in developmentalist terms, signifying partnerships between civil society and the state and forms and institutions of supranational governance. I may here only invoke Article 6 of the framework treaty—the Cotonou Agreement (regulating developmental relations between the EU and Africa, Caribbean and Pacific countries)—which describes NSAs as inclusive of "Civil Society in all its forms according to national characteristics;" "economic and social partners, including trade union organizations;" and "the private sector."²⁰ The complexity of this anodyne description may scarcely amuse Hugo Chavez and his compatriots.

V

However, it is not my purpose here to molest the NSA category, a task surely for another day. Rather, I wish to share some thoughts concerning a special species of NSA, which endangers other companion NSA species (signified at least by the cross-border practices of human rights activism and of the "new" social movements). I have in view the constellations of global capital named as MNCs and related business entities and their normative cohorts. By the latter phrase, I mean at least to signify not just some old categories (like international and regional financial institutions, and supranational networks of development aid and assistance) but also the

²⁰ Cotonou Agreement, African, Caribbean and Pacific Group of States—European Community and its Member States art. 6(1)(b), June 23, 2000, O.J. (L 317/3).

associated, but still new and difficult to decipher, empires of technoscientific reason—from human genome projects and the proliferation of new forms of artificial life and intelligence to uncertain futures of developments in nanotechnology.

These latter ones now almost irreversibly redefine the human in human rights—that is to say they deny the precious UDHR birth metaphor, which proclaims that all human beings by birth inherently possess the right to dignity and associated freedoms and rights. UDHR life may after all begin at sixty only if reinvigorated by new forms of sentimental and protestant reason, which, somehow, while respecting the human rights of scientific communities of learning, experimentation, and the liberties of experimentation, also at the same moment nudge them toward some specific orders of dignitary rights responsibilities.

This remains acutely difficult, as all of us situated within some order of the fundamentalist “right to life” movement or that of the valiant activist crusaders protesting against the “hard” regimes of intellectual property rights, know full well. At stake remains not just the integrity of the UDHR values and visions, now thus fully overrun, but also the problem of the human rights responsibilities of activisms contesting the distinct corporate monopolies’ claims over our genomic futures.

It is on this register that new forms of human rights and new social movement articulations need to proceed beyond some clearinghouse type endeavors or, put dramatically, RFHR endeavors directed toward an ethical cleansing of global corporate governance. Paradigmatically, this interlocution proceeds by posing the question concerning business ethics in some dire confrontation that suggests an extension of human rights responsibilities of MNCs and their normative cohorts.

In sum, the question here takes us far beyond the classic liberal terms formulating the question of human rights as an affair of an entire residue of sentimental reason questing for the limits of state powers. Rather, the question now directs attention toward a dire regime of an onerous MNC release from human rights responsibility, constituted by and with the politics of immunity and impunity for human rights abuse and violation. The question admits no unanimity in formulation in the face of assertions that MNCs and direct foreign investment may even contribute to the “realization” of human rights now and

for the future.²¹ Noting this, one may even think of a new “political economy” of the human rights future.

However, these studies do not quite address either the problem of human rights catastrophes (industry-caused mass disasters such as Bhopal, Ogoniland, and Agent Orange) or the low-intensity warfare (productive overall of no less aggregative catastrophic effects) on the human rights of workers or the degradation and destruction of environments. The question, I suggest, still remains: What human rights obligations may the new incarnations of globalization *owe* and *own*? A few notable advances need a fuller acknowledgement.

One answer, which suggests that the many recent avatars of global capital may not owe any such human rights obligations, remains no longer unworthy of the compliment of reasoned opposition. Such corporate governance Neaderthalism has clearly outlived its utility, though the existence of many an ignoble savage practice of primitive accumulation for its own sake, as it were, may not altogether be denied. Perhaps this remains on my part a rather massive understatement, as any attentive reader of Jane Kelsey’s magnificent work, entitled *Serving Whose Interests? The Political Economy of Trade in Services Agreements*,²² would assuredly know.

A second response suggests that while MNCs and related business entities remain inherently unchained to any internationally enunciated human rights norms and standards applicable to state entities, some of the best industry standards do require a constructive engagement with human rights standards. What this means, in effect, is just this: mighty acts of MNCs (acts of corporate free will) may luxuriously pick and choose human rights obligations consistent with—to acontextually borrow from Michel Foucault—the empires of “hyperprofit” and “infra-power.”²³ The argument is that even constituting a class of prime beneficiaries of human rights explosion, corporate governance itself may yet self-select the menu of human rights responsibilities. This voluntarist genre already contributes to a phenomenon recently acutely

²¹ See Dinah Shelton, *Protecting Human Rights in a Globalized World*, 25 B.C. INT’L & COMP. L. REV. 273, 291–93 (2002).

²² JANE KELSEY, *SERVING WHOSE INTERESTS? THE POLITICAL ECONOMY OF TRADE IN SERVICES AGREEMENTS* (2008).

²³ Michel Foucault, *Truth and Juridical Forms*, in 3 POWER: ESSENTIAL WORKS OF FOUCAULT 1954–1984, at 101 (James D. Faubion ed., Robert Hurley et al. trans., 2000).

described via the syndrome “Global Compact, Little Impact.”²⁴ This response anachronistically recycles the old and troubled liberal belief systems, in which worldview human rights were pertinent only insofar as they restricted the overweening power of the Leviathan state but let fully alone the regimes of “free” market predation, devouring for masses of people their *right to be and to remain human*, and their *having rights*.

A third response, equally voluntarist, proposes constant re-working of the languages of corporate social responsibility (CSR). There exist at least three generations of CSR languages, the latest representing MNCs as “good global citizens.”²⁵ This grand narrative claim has always been contested by human rights and social movement activists at each and every site. The third generation of CSR, after all, required a groundswell of American campus-based and valiant law student movements against sweatshop labor.²⁶ CSR remains difficult to decipher even as a human rights portfolio; going beyond sweatshop movements remains mired in the typical economist argumentation concerning the indeterminate impact of human rights regulation on prospects of livelihoods of the worst-off human beings. Loud whispers, slanderous campaigns, and strategic MNC devices such as SLAPPs (strategic lawsuits against public participation)²⁷ fully assail the practices of RFHR. De-legitimatization of human rights credentials of activist global social action movements against hyperglobalization and some supportive forms and practices of judicial activism remain high on the agenda of global cooperate governance.

A fourth response was proposed by the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Entities with Regard to Human Rights, which also addressed multinational corporate human rights *abuses*, as distinct from *violations*.²⁸ This document, of course, is a grand wish

²⁴ *Global Compact, Little Impact*, BUS. WK. ONLINE, July 12, 2004, http://www.businessweek.com/magazine/content/04_28/b3891132_mz021.htm.

²⁵ See Bennett Freeman, *A New Approach to Corporate Responsibility: The Voluntary Principles on Security and Human Rights*, 24 HASTINGS INT’L & COMP. L. REV. 423, 424 (2001) (“[W]e have witnessed the development of various initiatives attempting to craft guidance for MNCs in their quest to be recognized as good global citizens.”).

²⁶ See, e.g., Michael Stohl, Cynthia Stohl & Nikki C. Townsley, *A New Generation of Global Corporate Social Responsibility*, in THE DEBATE OVER CORPORATE SOCIAL RESPONSIBILITY 30, 40 (Steve May, George Cheney & Juliet Roper eds., 2007) (citing Nike as an example of a corporation that became the target of student movements against sweatshop labor).

²⁷ See GEORGE W. PRING & PENELOPE CANAN, SLAPPS: GETTING SUED FOR SPEAKING OUT (1996).

²⁸ U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on the Promotion & Prot. of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to*

list, which at the same moment deserves more than a “third-class funeral,” as an irate Jonathan Ruggie recently has been said to have suggested, outrageously.²⁹

Fifth, funerary politics thus needs to be grasped as an aspect of a wider paradigm shift, marking a cruel transition from the UDHR paradigm invoking the birth metaphor to what I insist on naming, even if somewhat inelegantly, a new paradigm of trade-related, market friendly human rights (TRMF). The latter suggests that new forms of global capitalism (read, hyperglobalization) best provide the techno-material conditions for the realization of human rights. It further suggests that human rights-based critiques of the MNCs and their legendary normative cohorts (to reiterate, the networks of international and regional financial institutions, global trade arrangements, such as the WTO and its regional clones, or their companion species, such as the global North’s inter-governmental development assistance programs) may after all lead to a betrayal of the UDHR values and visions. This, at the threshold, also frames some troublesome questions concerning the responsibilities of an alternate theory and practice of human rights.

VI

The sovereign concern then simply repeats Lenin’s classic question: “What is to be Done?”³⁰ Slavoj Žižek remains right in suggesting, uncannily, that most contemporary human rights languages, logics, and paralogics present a part of the problem, rather than a part of the solution.³¹ Žižek has in view, of course, many recent problematic histories of “humanitarian” intervention and the regime-change “wars.” Regardless, Žižek remains surely right (or rather radically “left”) when he narrates Marx *contra* Lenin. If the invocation of Lenin invites “an outburst of sarcastic laughter,” by the same token, he insists,

Human Rights, ¶ 11, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003) (“[Transnational corporations] shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.”).

²⁹ Karsten Nowrot, *The 2006 Interim Report of the UN Special Representative on Human Rights and Transnational Corporations: Breakthrough or Further Polarization?* 9 (Transnat’l Econ. Law Research Ctr., Policy Papers on Transnational Economic Law No. 20, 2006), available at <http://www2.jura.uni-halle.de/telc/PolicyPaper20.pdf> (“The undiplomatic language taken recourse to by Ruggie in his attempt to provide a kind of ‘third-class funeral’ for the Norms is likely to stiffen the position of several NGOs on this issue.”).

³⁰ V.I. LENIN, *WHAT IS TO BE DONE?: BURNING QUESTIONS OF OUR MOVEMENT* (Victor J. Jerome ed., Joe Fineberg & George Hanna trans., International Publishers 1969) (1902).

³¹ Slavoj Žižek, *Have Michael Hardt and Antonio Negri Rewritten the Communist Manifesto for the Twenty-First Century?*, *RETHINKING MARXISM*, Fall/Winter 2001, at 190, 192–93.

“Marx: OK, even on Wall Street, they love him today—Marx the poet of commodities, who provided perfect descriptions of capitalist dynamics; Marx of the cultural studies, who portrayed the alienation and reification of our daily lives. But Lenin: no, you can’t be serious!”³² To quote him rather extensively further:

What are we to say to this? Again, the problem resides in the implicit qualifications which can be easily discerned by “concrete analysis of the concrete situation,” as Lenin himself would have put it. “Fidelity to the democratic consensus” means acceptance of the present liberal-parliamentary consensus, which precludes any serious questioning of how this liberal-democratic order is complicitous in the phenomena it officially condemns and, of course, any serious attempt to imagine a society whose socio-political order would be different. *In short, it means: say and write whatever you want—on condition that what you do does not effectively question or disturb the predominant political consensus.* So everything is allowed, solicited even, as a critical topic: the prospects of a global ecological catastrophe, violations of human rights, sexism, homophobia, antifeminism, the growing violence not only in far-away countries but also in our megalopolises, the gap between the First and the Third Worlds, between the rich and poor, the shattering impact of the digitalization of our daily lives . . . [T]here is nothing easier today than to get international, state or corporate funds for multidisciplinary research into how to fight the new forms of ethnic, religious or sexist violence. The problem is that all this occurs against the background of “a fundamental *Denkverbot*, a prohibition on thinking.”³³

Žižek suggests that “the moment one shows any minimal sign of engaging in political projects that aim seriously to challenge the existing order, the answer is immediately: ‘Benevolent as it is, this will necessarily end in a new Gulag!’”³⁴ Further, “[t]he ideological function of constant references to the Holocaust, the Gulag, and more recent Third World catastrophes is thus to serve as the support of this *Denkverbot* by constantly reminding us how *things could have been much worse.*”³⁵ That role and function is illustrated in the conceptual state advisory: “Just look around and see for yourself what will happen if we follow your radical notions!”³⁶

³² *Id.* at 193.

³³ *Id.* (emphasis added).

³⁴ *Id.* at 194.

³⁵ REVOLUTION AT THE GATES: ŽIŽEK ON LENIN: THE 1917 WRITINGS 168 (Slavoj Žižek ed., 2004).

³⁶ *Id.*

Thus, Žižek suggests, the ways in the pervasive “rationality” of ROHR mean that “the moment one seriously questions the existing liberal consensus, one is accused of abandoning scientific objectivity for outdated ideological positions.”³⁷ However, the possibility of such an indictment, far from rendering terminally impossible any utterance of the sentimental reason of human rights, indeed seems to nourish it. Whether or not entire other worlds are possible, new worlds of human rights remain constantly proclaimed in the struggles of suffering peoples everywhere.

No more acute vindication of the instrumental ROHR may transgress the description thus so richly offered by Žižek. Yet his text, *Repeating Lenin*,³⁸ does not do full justice to Lenin, who, in a remarkable contrast to President Wilson, remains, as Bill Bowring so recently suggests,³⁹ a true progenitor of the radical principle of self-determination as well-spring for the forms of current RFHR engagements. All this, fortunately for the future of human rights, takes us also far beyond the gestational pasts of the UDHR and of its fecund normative progeny.

“Sufficient unto the day is the [narrative] evil thereof.”⁴⁰ Even so, “advancing the consensus,” in my view, may remain precious only on a Levinasan ethical worldview that accentuates each of our own radical, infinite orders of obligation toward the suffering, vulnerable other. Perhaps the best narrative auspices is provided by the Lithuanian Rabbi Israel Salanter (as cited by Levinas) who, as early as 1850, said that that the material needs of the other also constitute one’s own spiritual needs.⁴¹ Similarly, Marx said that “the classical saint of Christianity mortified *his* body for the salvation of the souls of the masses; [whereas] the modern, educated saint mortifies *the bodies of the masses*” for her own redemption.⁴²

“Advancing the consensus” of course remains a pressing task. However, it remains surely so only when it confronts, rather happily, the “unreason” of human rights against the “reason” of contemporary globalization. All the talk about human rights responsibilities of MNCs as non-state actors remains

³⁷ Žižek, *supra* note 31, at 194 (emphasis added).

³⁸ SLAVOJ ŽIŽEK, *REPEATING LENIN* (Dejan Krsic & Nebojsa Jovanovic eds., 2001).

³⁹ BILL BOWRING, *THE DEGRADATION OF THE INTERNATIONAL LEGAL ORDER?: THE REHABILITATION OF LAW AND THE POSSIBILITY OF POLITICS* 18 (2008).

⁴⁰ *Matthew* 6:34.

⁴¹ EMMANUEL LÉVINAS, *NINE TALMUDIC READINGS* 99 (Annette Aronowicz trans., 1994).

⁴² Karl Marx, *Anti-Church Movement—Demonstration in Hyde Park*, in *KARL MARX & FRIEDRICH ENGELS, ON RELIGION* 126, 127 (Russian ed. 1957).

problematic if only because governance failures remain inscribed on the body of global capital. I need not say even a word more in these depressing times of the various regimes of market meltdown and bailouts, that as the current contentions reveal, or rather expose, we all live and suffer from. These so-called non-state actors actually remain the authors of the new market fundamentalisms, the new TRMF paradigm.

What does this mean? Let me end. Celebrating the 60th anniversary of the UDHR calls for two kinds of work, as Paul Ricœur spoke of. Ricœur spoke of the work of mourning, the work of lamentation, the work of paradise lost, never to be regained.⁴³ Mourning and lamentation is a resource for the future of human rights. Ricœur further suggested, following Freud, the labors of the work of dreaming, the dream work.⁴⁴ I think this is important for the future of the UDHR.

⁴³ See PAUL RICOEUR, *HISTORY AND TRUTH* (Charles A. Kelbley trans., Northwestern Univ. Press 2007) (1955).

⁴⁴ Paul Ricoeur, *Existence and Hermeneutics*, in *THE PHILOSOPHY OF PAUL RICOEUR: AN ANTHOLOGY OF HIS WORK* 96, 99 (Charles E. Reagan & David Stewart eds., 1978).