THE RELATIVITY OF HUMAN RIGHTS IN THE NEW ERA OF SOCIETY BASED ON CONTRACTS BETWEEN EQUALS

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ABSTRACT

In a society based on equal rights for all, the right to life is the first human right. It signifies nothing if only the right not to be killed by another human being. The right to private ownership can’t exist before the state and can limit others’ right to life. Contracts among independent individuals constitute the liberal model of a society. To discover its feasibility and societal advantage, we test it against social-anthropological reality. Humans are all born helpless; their first relations are intergenerational and not "contractual". During upbringing various value orders, as well as inherited fortunes are undeservedly and unequally but unavoidably transmitted by family ties. In a realization-focused perspective, the Western normative societal model doesn't necessarily defy societal models of other contemporary civilizations. A truly universal human rights system must include rights and their ranking and be accepted by all major spheres of coexisting civilizations.

Keywords: Human Rights, Equality, Convention, International law.

The liberal societal model based on the individualistic value-order was developed by the Western Enlightenment – in the XVIIth century by Locke and Pufendorf and in the XVIIth by Rousseau and Kant – in opposition to the authority of the aristocracy and clergy. This model recognizes an order based only on the equal right to life of all individuals and on their freely concluded – market-like – contracts and commitments. In this manner man is born into a society where social discrimination will not hurt equal opportunity for anyone. Of course, the society has nothing to say about biologically inherited abilities. It is concerned only with treating people differently according to social criteria such as nobility, but also, in principle, to inherited capital wealth. The secularist doctrine postulates that this reasoning agrees with natural human rationality, and therefore the rights methodically deduced from these principles are inalienable, in line with the requirements of natural law.

Historically, authors often stated falsely that the concept of human rights was first formulated in the English Magna Carta of 1215. In reality, the Carta’s human rights concern not all human beings but only individuals according to their social function or rank. The recognition of the nobles’ prerogatives was the issue.
Now in our time, when mankind has at its disposal the technical means – in communication and transport – to construct a unified world civilization, it is very timely to study the universal validity and the applicability of the societal model offered by the West. The institutional appearance of this doctrine is the U.N.’s Universal Declaration of Human Rights (UDHR) in 1948, when the winning powers needed to give a moral backing to their success. This catalogue of rights draws upon the French Declaration of Human and Civil Rights of 1789. In 1966 the U.N. produced two binding international treaties. First we examine how declared human rights conform to the basic liberal principles, then how the rights are in agreement among themselves. Where agreement is absent, we look for meta-principles that establish an order of precedence. As noted, John Locke didn’t give guidance on this question, since the believers in natural law presuppose an accord among them. However, general experience doesn’t confirm a general harmony. For paradigmatical reasons we give a high priority to the study of the relation between the right to life – to man’s existence – and to private property (including transmission of capital fortune by inheritance).

After this normative reasoning we compare the principles resulting from these ideas with the real conditions of mankind in order to see their practical relevancy. Again, for paradigmatical reasons among the anthropological conditions, we lay particular emphasis on the implications of the fact that the human being – in contrast to some animal species - is not born as an independent self-made man but as a helpless “unweaned baby,” dependent on a preexisting civilization context. (The biblical Adam is the sole exception.) Indeed, obviously before men can constitute their society by free contract, all are exposed to the assistance and spiritual influence of adults. As a species capable of speaking, men will become members of a society by learning their mother tongue. So before the adolescent can contract freely, the educators of the little fellows give them a world outlook for coexistence and cooperation with their parents, siblings, neighbours, fellow citizens, with men in general, with other animals, and with the whole of animate and inanimate nature.

Two fundamental issues arise: 1) under these circumstances is it possible to base all human relations exclusively on free contracting among equals and 2) is the unearned inheritance of capital fortune compatible with the equality of all newborn individuals and their equal opportunity? Willy-nilly, the Western worldview originating and outlined in the Enlightenment is only one of the existing world conceptions (even as the West, in occupied territories like Afghanistan, offers to assume the children’s education, putting them in school at a young age in order to form them in their Western libertarian likeness). Namely, the neoliberal globalism considers the value order of other civilizations on the premise that its own value order is rational and all others are archaic. It postulates its own value order as paradigmatic for the future and that, in the course of time, it will eclipse the others’. Yet, the pragmatic value of Western humanism for the prospective society can be evaluated only by answering the question of whether it fits well with the inescapable condition of man.

For example, in the eyes of those in the West who were socialized in an extreme anthropo- and self-centered spirit, all living beings that have neither soul nor the faculty of speech can be considered as simple means. For an ego-centered world view this handling of the external environment as a means can also extend to other human beings as well as to all of society. According to John Locke, an individual perceives himself by introspection and relates first to his environment by taking possession of property; consequently private property precedes the society. Now if we consider an individual born and raised in a Hindu nest, his first idea will not be to transform his environment by economic activity, as a Westerner will do, but to look for how he might adapt himself to the universe. (The Hindu and the Buddhist will consider our rediscovery of the legal status of animals as an improvised rehearsal of eternal principles.)

According to our working plan we examine first the doctrinal base of the human rights system; then we study the case of the right to private property and that of the right to life; how these rights are in harmony with the UDHR; then with the two binding international treaties; and finally their relative ranking. We evaluate the societal implication of the extension of private property to the right to inherited capital. In the end, we discuss the question whether, on
the pragmatic level, the liberal individualistic societal model necessarily meets the development of the helpless newborn human being better than the value order of other civilizations.

THE SOCIETAL MODEL OF EQUALITY AMONG INDIVIDUALS

Now we are developing briefly the basic normative requirements derived from the enlightened societal model that disregards divine revelation. We abstract from the consideration that this model is perhaps unreal from an anthropo-social viewpoint. Rawls, in his classic work\textsuperscript{10} with reference to Locke, Rousseau and Kant, elaborated his general theory - “justice as fairness” - and as “ideal-regarding principle”. It supposes a “hypothetical” “well-defined (!?) Initial situation” in which “independent” and not “heteronymous” (cf., Kant) individuals make contracts\textsuperscript{11}. (It is strictly speaking an exchange or commutative justice theory derived from the market situation extended to the constitution of the whole society\textsuperscript{12} and the state. Looking now again at the newborn human being’s initial situation, - and the saying “We are born into history that is well under way” – it is clear that the whole society with all its connections could not be reconstructed exclusively by exchanging contracts.)

(a) The first epistemological definition of the individual as an \textit{ego} is self-consciousness. Independently, whether a \textit{Self} comes from a homozygote twin or is a true unique individual, he is exclusively the concrete location of perceptions and feelings. This prime “vécu” can be perceived only personally, subjectively from the interior existence. Even Max Weber’s pioneering “verstehende” sociology could reconstitute someone else’s inner mental processes only indirectly by analogy involving all its epistemological uncertainty. This is the individual’s - the subject’s - inevitable primacy.

(b) Each person, their plurality, everybody has the right to life, to existence, to living, to subsistence. This right has an ontological primacy; it is a substantial \textit{sine qua non} condition for any other human attributes or disposing powers. (Aristotle speaks about the being and his property.) We can say that if this right contradicts any other right – for example the right to private capital or property or its inheritability - it should always enjoy a priority.

Let us explore an issue of definition and terminology that involves serious implications. If we will be truly precise in the formulation of the right to life, we should say “living human being’s right to existence.” This expression is a ponderous one but not without purpose. As opposed to the elegant expression “right to life”, it grasps the substance of the concept in its entirety. The right to life without a careful interpretation will be seen in an incomplete manner; namely, as with other rights – such as private property – it will be understood in a passive, defensive manner, simply as a right not to be killed, tortured, or illegally executed. However, unlike the nature of inanimate substances, life is a process. The right to life makes no sense without involving how life will be sustained. (If the \textit{Rechtsstaat} left through indifference some people to die of starvation, the right to life in this state is not respected.) The fundamental point here is the complete definition of the right to life. We can add special human dimensions to the right to life, the right to existence proper to living beings endowed with the faculty of speech. Since the right to livelihood is an inseparable part of the right to life, we will use alternately the term right to “life”, to “living”, to “existence” or “subsistence” as the context requires.

Contrary to slavery and vassalage, the liberal bourgeois view proclaimed the individual’s “liberty” and “self-determination”.\textsuperscript{13} According to the U.S. Declaration of Independence of 1776 it is self-evident that (a) all men are created equal, (b) have the right to life, (c) to freedom and (d) to the pursuit of happiness. Johannes Kaspar Schmidt, alias Max Stirner, in his \textit{Der Einzelne und seine Eigentum} (1844) examined this issue thoroughly. The liberal position from the outset relates the individual’s independent existence to private property, which includes the individual himself as well as the necessary environment for his subsistence.\textsuperscript{14}
(c) The equal right is an essential foundation of the liberal model. By definition, all individuals have the same rights; inversely, if a right cannot be provided to everybody, it becomes a privilege and can’t be a “natural” subjective right due to everyone. The principle of equality puts limits on the spontaneous “self-evident” private possession of the individual’s environment. Indeed, the possession of natural resources, which are available only in limited quantities, is mortgaged by everyone’s right to access a source of livelihood. This universal prerogative - like the absolute (land) rent – presents all private properties as mortgaged. The disposition of national resources - as Clifford Hugh Douglas stated in 1919 – should be viewed as shares or dividends belonging to everyone.

According to the liberal societal model the individual’s equal and independent existence enjoys – at least conceptually – a natural priority. This is the posited initial principle of the constitution. The state or other social formations exist only as a function of the freely contracted obligations of responsible individuals, and consequently they dispose only on definite, transferred competency. (According to Rawls, man gives up some of his prerogatives – except the inalienable human rights - for security and some economic advantages.) In this perspective the state can’t be considered as a given fact. In its nature the state constitution isn’t different from a market contract or agreement.

(d) The social philosophers who conceived the capitalist society were concerned especially with the prior right to private property – transferable by inheritance – and in relation to the state. Although the respect for private property has a biblical basis, these philosophers eliminated from their vision the divine creation, and were therefore obliged to look for other rational justifications for the natural right to property. Among the thinkers of the Enlightenment there is no consensus concerning that question of whether we can or cannot speak about rights in general before the existence of the state. The issue remains open how to distinguish in a secularized perspective between a moral requirement and a right without enforcement by a state.

The individual right to property in its abstract general form appears to provide privacy and an external condition for sustaining oneself. (My house is my castle.) It should be immediately stated that according to equal rights, the private property necessary for privacy should concern only such objects that could be guaranteed for everybody. (Compare a household farm plot with capital in money.)

One of the founders of Anglo-American common law (and constitutionalism), John Locke – and Samuel Pufendorf too – presupposes such natural rights exist before the state and enjoy precedence in relation to the state. The emphasis goes immediately to the “natural” possession of the environment by the property right and not to each person’s right to existence.

As Locke postulates the individual right to property as a natural right, he doesn’t do it by considering the other’s possible claims in a context of distributive justice. He considers only the right of an individual to possess, master, make use of his non-human environment. The initial situation is well illustrated in Daniel Defoe’s fiction, Robinson Crusoe. By the way, Rousseau recommends the reading of this work in his Émile.

On closer scrutiny Locke’s conceptualization shows that he extrapolated the general right to all kinds of private property from a particular historical situation, namely at the frontier of English colonization. In the American Wild West, the immigrants found fallow land. Since these lands were unlimited, boundless and available, the immigrant became the owner of an “abundance of land” which had no market value by its rarity. The lot became valuable when he weeded it. The right to the fruit of his work became inseparable from the land and he fenced off this lot from the land of native Indians. In reality, the right concerned effectively the fruits of his labor. From this particular legal situation Locke, on one hand, generalized the right to private property to all accumulated, “intangible” goods like capital, and on the other hand, he introduced tacitly the right to property by inheritance (even if it is for the heir an “effortless wealth”). The arbitrary nature of this right is characterized well by Robert Dahl.
Ownership transferred by inheritance reveals a lot about the liberal interpretation of individual right to property; namely, on one hand, this “money-making” is not preceded by an individual effort, and on the other hand, some individual already in statu nascenti becomes proprietor of such a fortune that he can live his whole life without working. By this “freedom” the heirs have the advantage of a good start.22

Let us see, after condemning racial, sexual and many other forms of discrimination, how the late John Rawls categorizes the differences of inherited wealth. In his already quoted work, entitled modestly *A Theory of Justice*, he states that the inequality of inheritance is no more unjust than that of intelligence. The range of discrimination resulting from succession compared with that of nature could be acceptable for a submissive religious man but not for a secular free-thinker, since one discrimination is natural and the other social and man-made.

In order to avoid a shocking effect of this categorization Rawls adds reluctantly the remark that the inheritance could possibly be an object of social control. He says this control is not necessary “provided that the resulting inequalities are to the advantage of the less fortunate and compatible with liberty and fair equality of opportunity.”23 It is clear that assuming these conditions is not obvious. Rawls doesn’t explain precisely how “equality of opportunity” can be realized. He says also vaguely that the basic institutions of the society are in danger, if the difference in wealth goes beyond some limits24 (cf., concentration of capital).

In sum, following the previous reasoning, we can state that the legitimacy of the individual right to property is not on the same level of preeminence as everybody’s equal right to existence. The right to private “possession” is deduced from the fact that a man should master nature. Private ownership is pragmatically justified by the hypothesis that postulates that comparatively it provides the best exploitation of natural resources and a result that will be useful for everybody.25

RANKING OF THE RIGHT TO EXISTENCE AND THE RIGHT TO PRIVATE PROPERTY

Even if an ideal-typical liberal conception of society based solely on contracts between self-created, adult and responsible individuals are unhistorical and do not match human reality, we can still think about it. Now we call to account the consequent application of the liberal principles in international legislation. Namely, the charter of the U.N. refers to these principles. The Preamble to this constitution was the first in history to use the term “human rights”. Based on this charter The Universal Declaration of Human Rights (UDHR)26 was elaborated in 1948. Mary Ann Gledon, a law professor at Harvard University, describes how four thinkers, René Cassin, the Lebanese, and Charles Malik (both specialists in the Israeli-Palestinian issue), the American educated, Chinese native Peng-Chun Chang, and Eleanor Roosevelt, president of the commission - composed the right catalogue in the shadow of the commotion of the Second World War.

The UDHR adopted by the U.N. General Assembly in 10. December 1948 enumerates 30 basic human rights. Its survey shows that this catalogue – despite its lofty worded title – is not exhaustive and doesn’t bear the marks of axiomatic composition. It reflects without a doubt the value order of the victorious Anglo-Saxon powers, while the Vienna Declaration of 1993 embodies a more “plural grounding”27, the plurality of the value order of the diverse (Co)existing civilizations. Despite this fact the system of universal human rights is represented as being unified and indivisible, and therefore there remains no place for ranking them. The U.N. “unity resolution” in 1966 and all further U.N. declarations - like the just mentioned Vienna Declaration and Programme of Action - confirm the unity, equivalence and inseparability of human rights. This position doesn’t leave space for the rights’ ranking; however in the
international “legislation” and in the requirement of the application we find de facto inequalities, priorities and neglects.

It is striking that the various international human rights watch organizations – emanating from the West - are primarily preoccupied with respect for free speech – and right to freedom - and less with the poverty-stricken indigent living conditions. When in 1998 Mary Robinson, then president of the U.N.’s human rights commission, exposed that in spite of a permanent solemn confirmation of the equivalence of human rights, the respect for economic and social rights are less strictly called to account. The liberal vice-president of the European Parliament, Berthal Haarder, wrote in the New York Times24 that despite the unity declaration of Vienna all human rights do not have equal importance, since for example contrary to political rights the respect for the right to work could not be strictly required. Glendon also says in her already mentioned book that in the affluent West we tend to concentrate criticism on the rights we don’t violate, - such as torture and slavery, - but we don’t say much about freedom from hunger and deprivation. As we will see later, at the same time, the right to life is interpreted in a narrow manner and separated from the right to subsistence, yet the U.N. International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR) in the second point of its article 11.2 recognizes the right to be “free from hunger”29 as a basic human right.

The human rights workshops supported by the U. N. and held in New York and Hong Kong also expressed the opinion that from the liberal viewpoint political rights are overemphasized over the right to have an adequate standard of living (ICESCR 11.1), and the right to life, according to human decency, is not adequately monitored. Although the issue here is “who will live and who will die”, the international human rights watch organizations, Amnesty International and Freedom House, neglect this aspect of human rights and have a “misguided priority”30.

In the Preamble of the UDHR the U. N. States that the “equal and inalienable human rights” are due to “all members of the human family”. The two first articles prescribe brotherhood and equality without discrimination, while the third article declares, beside the right to liberty and security, the right to life. The §17 declares in general terms everyone’s "right to own property alone as well as in association with others.” Let us look now more deeply into these articles.

According to the exposed basic principles of liberal doctrine (a) every human being has (b) the right to existence. This is so strongly a prime ontological principle that the right to private property can only be considered later mainly as a means to achieve the right to life; otherwise it can curtail somebody’s right to life.

If we compare how these two rights could be exercised, for the right to private property it is enough to declare passively the free exclusive right to the disposal.31 In the West according to mainly prevailing Roman law and British Common Law, the property right is provided by the fact that the state – by force, if necessary —should prevent every hindrance to its free disposal. In the UDHR the right to life is also associated with the idea that it is enough to hinder any violent extinguishing of life. However, if we compare the right to property and that in life we can observe their fundamental difference. While well-protected property is enduring, life expires by itself in time, even without violent intervention. For an effective right to life it is not enough to restate the biblical principle “not to kill”.

The right to life does not exist without the guarantee of the means to its continuous subsistence. For this very reason Article 22 mentions the right to "social security", the § 23 the right to work and the § 25 the right to adequate “standard of living”. When the supposed exclusive private ownership of land or other means of production excludes others from exercising their right to livelihood, to work, - we can say - the entitlement to life has priority over the right to private property.

The UDHR of 1948 is an authoritative, benchmark document, but it is not a legally binding instrument. It can’t be called an International Human Rights Law32. In the following decade the U.N. began to construct a legally binding international covenant. But meanwhile it became clear that because of the divergent interests and views of the different states belonging to various spheres of civilization there was not a spontaneous unanimity in the Assembly. The Western powers tried to limit the treaty to handle the political rights, while the former colonies
and the socialist states tried to extend the treaty to the conditions of living. Therefore in 1966 the accepted international covenants resulted from a compromise: on the one hand, the U. N. declared in the “unity resolution” the inseparability of the rights; on the other hand, the rights were not included in one but in two covenants - a political and civil, and another economic, social and cultural. Both have been accepted by the U.N. Assembly (2200A[xxi]) December 16; however it remained open that some countries accepted and ratified only one of the two covenants. There is also a difference in the formulation of the two covenants: the International Covenant on Civil and Political Rights (ICCPR) is expressed in mandatory terms, while the rights of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – often called second generation rights - are formulated in conditional terms as simple aspirations which should be realized if the resources are available. Characteristically the U.S. didn’t ratify the ICESCR. We can infer that the Western powers with the U.S. first in line indirectly ranked the basic human rights.

We examine now how the necessary rights of existence are present in the first and in the second covenant. Both covenants laid down in the first article of the first part two basic principles: (§ 1.1) All people’s right to self-determination as well as (§ 1.2) the people’s right to free disposal of their natural wealth; and that “in no case may a people be deprived of its own means of subsistence.” The same principles are confirmed in § 47 of the ICCPR and in § 25 of the ICESCR. These principles are essential for the effective exercise and enforcement of the citizen’s right to life. The peoples’ declared right to the natural wealth existing in the country’s sovereign territory provides a kind of absolute land rent to secure the citizen’s subsistence. This is in line with the previously mentioned idea of Clifford Hugh Douglas about a dividend for every citizen derived from the use of natural resources. This prerogative has priority over the right to private property. (Note that the “right to own property” declared in the article 17 of the UDHR has not been repeated in either of the two international covenants of 1966.) This is a cardinal point, since it actualizes the requirement for the right to subsistence.

The ICCPR reproduces in article 6 that of § 3 of the UDHR concerning the right to life, while article 6 of the ICESCR states the right to work derived from the right to earn a living. Article 11 goes further since it posits the right to life in general, which also includes that of the disabled.

We can state that the two legally binding international Covenants give priority to the citizens’ right to subsistence (consequently their right to necessary access to the means of production) over the right to private property or capital equipment goods. We also can state that when the various human rights watch organizations are primarily concerned about the political rights and the freedom of the press and not the right to subsistence, they don’t act in the spirit of the two international covenants of human rights but to please the Western powers and the capital owners.

The right to life in a broad sense means the “entitlement” to living. It includes all the have-nots. It embraces the right to life, the right to work, as well as an annuity for every disabled citizen derived from the use of the national wealth, and the right to work as a minimal expression of right to life. Historically the recognition of the right to work goes back to the International Labor Organization (I.L.O.) founded by the League of Nations. To counterbalance the constitution of the Communist International in Moscow in March 1919, the I.L.O. formulated the right to work in a manner that is compatible with private property as the means of production. By the way, the I.L.O. was the only specialized organization that survived the League and became in 1946 the first specialized organization of the U.N. The I.L.O.’s inspiration is present in the two international human rights covenants and in the Charter of the U.N. in § 55, which promotes the full employment.

In the legislation of Western countries, the comprehensive right to private property compared to the right to work is expressed as a priority. The I.L.O.’s studies show that in the present societal framework full employment cannot be realized by the labor market and self-employment alone. The state or other non-profit agencies must fulfill the labor demand. While the Soviet Union realized ‘grosso modo’ full employment, it involved grave consequences. Not only all private property as a means of production was suppressed but the free choice of
workplace, and in general the self-determination of individuals. Individual autonomy became almost an unknown concept.

The two international human rights covenants that originated from the Western world of thought claim universal validity. However, following their adoption in 1966, in a pragmatic way, other spheres of civilization conceived their own human rights declarations, which integrated the value orders of their own traditions alongside the sole application of the individualist contractarian societal model. They try to put individual rights in relation to social obligations. Since man is born helpless without self-determination his rights are necessarily embedded in the rights of the family and other collectives. It seems necessary to involve communitarian aspects in the human rights conception against the West’s dazzling individualism.

It is not without interest to remind the reader of article 23. of the ICCPR, which states: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Again, respect for the stipulation of this article doesn’t much interest the Western human rights watch organizations. Today Islam is especially preoccupied with the unique role of marriage and family in man’s procreating and sexual life.

Let’s now examine some regional human rights declarations. Within the Western sphere of civilization in 1950, - and before 1966, - the Council of Europe concluded a covenant about fundamental human rights that allows, - optionally and among others, - an individual to bring a case to the European Court against his own government. We also can add that the first complementary protocol of the treaty recognizes in the most general terms the right to private property, while the European Social charter, promulgated in 1965, mentions the right to work in a facultative and diluted form.

When the Organization of the American States (O.A.S.) was formed in April 1948 in Bogotá, the American Declaration concerning Human Rights and Obligations was attached to the Charter. This declaration is not a legally binding document. In 1969 the American Human Rights treaty was established (c.f. ICCPR); in 1988, a complementary protocol about the economic, social and cultural rights (cf., ICESCR), and in 1990, a protocol suppressing capital punishment. The most important member of the O.A.S., the U.S., didn’t ratify the three treaties, nor did the ICESCR. The commission to provide respect for human rights has only an educator and advisor function.

Outside the Western sphere of civilization, the Organization of African Unity - today it is called the African Union and includes 53 member states - drafted in 1979 and adopted in 1981 the African Charter on Human and Peoples’ Rights. This charter recognizes the individual’s right to migrate (§ 12), but it doesn’t conceive of the individual’s right apart from its rootedness in the collective. The second chapter posits the individual’s social obligations. It doesn’t rank political and social-economic rights but attaches particular attention to the latter. Respect for the prescription of the African human rights charter is not guaranteed by a continent-wide court, but only by the consensus of the states. Fundamentally, the cause of human rights remains an internal affair of the states. By the way, we can raise the question: beside the common burden of European colonization and the physical-geographical unity, what characteristics are held in common between northern-African Arab Algeria and the South Africa converted to Christianity?

And what about Asian human rights? Two decades ago, there was a lot of talk about it. Interestingly an important initiative came from one specific region. The former prime minister of Singapore, Lee Kuan Yew, the erudite Singaporean diplomat of Indian origin, Kishore Mahbubani, as well as the former Malaysian Prime Minister Mahathir Muhammad encouraged the idea. Indeed, the Malaysian Confederation, after two years of existence, broke up in 1965 chiefly on an ethnic basis. However the problem remained that half of the population of the new Islamic Republic of Malaysia continued to be not Muslim but Chinese and Hindu. It served the interest of the unity of these states to popularize the idea of a uniform Asian value order and a human rights system derived from it. Meanwhile, the West accused its propagandists of using the idea to cover up the authoritarian nature of these political regimes. As a matter of fact, Asian values and human rights are a false concern. It is a debate without cause, since it is objectless. Asia as a point of reference for a civilization that is non-existent. The geographical entity cut
out since ancient times from Eurasia is not based on some civilization uniformity. It covers roughly the artificial concept of ‘East’, which became a metaphor for designing one of the hunting grounds of Western colonization. Concerning guiding ideas, Asia are composed of Hindu, Buddhist, Confucian and Muslim thoughts, which have no unified common ground in contrast to Western Christianity.

Nevertheless, in the last decades some Asian regional organizations have been established: in 1967 the Association of Southeast Asian Nations (ASEAN); in 1985 the South Asian Association for Regional Cooperation (SAARC). While in 1981 the CCASG brought together the Arab States of the Persian/Arab - Gulf. And in 2002 the sole comprehensive Asian organization, the Asian Cooperation Dialogue (ACD), came into being.

The objectives of these organizations are in general the promotion of economic development and the achievement of a position from which they can negotiate with the West on equal terms. Their charters don’t have a special chapter about human rights but the rights issue is embedded in the system of objectives of economic, social and cultural progress. Because of their cultural diversity, the member states don’t meddle in the internal affairs of other states, and, except in uncommon cases, respect for human rights remains the states’ internal affair.

The Western human rights watch organizations, swarming out of New York, are particularly preoccupied with eliminating the hindrance to the diffusion of the global media, and often criticize the non-Western regional organizations that are more concerned with economic human rights than with the individual’s political rights and basic freedom.

We will discuss shortly in the last part of our study the “universal” and “regional” aspects of human rights in a broader realization-focused basis. Note that unfortunately the regionalist praxis of the U. N. It doesn’t help to approach the human rights issue in a larger less Western-centred way. Indeed, the U. N.’s regional divisions don’t reflect spheres of civilization that could eventually be characterized by some deep-rooted doctrinal traditions like Hindu, universalist Chinese, Arabo-Muslim as well as Western. The groupings follow mainly physical-geographical ones, and even, from time to time, recent political divisions like the so-called East-European group of former Soviet satellite countries. These divisions also have no direct denominative civilization content.

The anti-racist treaty, the so-called treaty of emancipation, of 20 December 1965 constitutes an exception (2106/A XX). In its 4-8 articles the U. N. states that the composition of the supervisory authority should be composed in such a way that different civilizations and legal systems are represented in a proportional manner. In this case it is not the physical-geographical division that is the base of equitable (universal) representation.

Let us now return to the specific subject of the present study, surveying how the two international covenants follow the contract-based model concerning the right to life and the right to property.

- The U.N.’s so-called Universal Declaration of Human Rights (UDHR) of 1948 expresses everyone’s right to life (§ 3) and to own property (§ 17) in general.
- The exercise of these two rights makes necessary the fulfilment of very different conditions. The right to property needs only protection, while life without active constant nurture wastes away. Indeed, the § 25 of the UDHR enumerates elements necessary for the livelihood.
- Yet, the UDHR is not a legally binding document. The two U.N. international covenants of 1966, one, the ICCPR concerning political and civil human rights and the other, the ICESCR protecting economic, social human, and cultural rights, are legally binding. Though accepted simultaneously, the division of the rights into two documents reveals that the Western powers tried to formulate the first group in a more compulsory manner than the second one. The division also provided the possibility of ratifying not both but selectively one of the covenants. As a matter of fact, the U.S. didn’t ratify the second covenant and so, despite the declared unity of human rights, they became the subject of ranking.

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• The ICCPR in its Article 6 expresses the right to life in a restrictive manner with the command “do not kill!”

• It is only the ICESCR that in its Article 6 recognizes the right to life and in this framework the right to work.

• Both international covenants recognize in the common part (I. part § 1.2) the right of all peoples to free disposal of their natural wealth and resources. This right is repeated in the § 47 of ICCPR and in the § 25 of the ICESCR.

• The public property of natural resources could be charged as a kind of absolute (land) rent to cover the basic need of the population (people’s dividend).

• The right to private property cannot be without limit. This is reinforced by the fact that neither of the two legally binding international human rights covenants (ICCPR and ICESCR) repeats the right to private ownership, declared in the 17. § of the UDHR.

• The “marble tablet” of human rights is not an axiomatically consistent and exhaustive system. Therefore it could be completed. Indeed, it has been first by the convention against racism (ICERD), in 1981 by the convention again discrimination of women (CADA), in 1984 against torture (CAT), in 1989 for the protection of children (CRC) and in 1990 for the protection of migrants (ICRMW). However, not one of these additions reinforced specially the basic non-peremptory right to life.

• Everybody’s equal right to life is a sine qua non principle of the individualistic liberal doctrine. This right could be institutionalized, on the one hand, by the people’s mentioned prerogative to the natural resources, and on the other hand, by the limitation of the right to private ownership of capital goods by the others’ right to work, more exactly to the sources of livelihood.

• Finally, by virtue of the unity of human rights, it is inadmissible that the Western human rights watch organizations concentrate their attention arbitrarily and selectively with respect to some rights concerning the freedom of the press and other rather elite concerns, while they abstain from unmasking situations where the right to private capital goods hinders others’ right to life, since in the individualistic liberal model each one’s equal right to existence as a basic ontological principle should have a prior claim.

THE MONOLITHIC PERSPECTIVE OF PRIVATE OWNERSHIP

We have just finished studying how the fundamental liberal norms are reflected in the international human rights covenants. The Western Enlightenment considered as a fundamental achievement of the societal model composed of contracts among equals, the “restoration” of the individual to himself by emancipating him from slavery and vassalage. This accomplishment also included the individual’s right to private ownership of his (physical) surroundings without mediation by the family, church or other social institution. The right had been declared “natural” or “normal” (Locke) and added the pragmatic consideration that natural resources are used best in this way.

Now we look at how this historical achievement is working out in today’s society. First we raise two simple questions:

• In today’s society who are the major owners of the largest part of private properties?
• What are the principal objects of properties?
In light of the answer, we will examine how the monolithic concept of property resolves into component parts in order to see how this right could be limited as a function of everyone’s priority right to life.

The ideal subject of the liberal owner is the self-interested pioneer entrepreneur – Robinson Crusoe. His private ownership provides not only the conditions of his freedom but ensure the best use of goods. The American constitution (which follows the Locke’s line), apart from the state, which is constituted by the individuals’ contracts for service, recognizes individuals only as legal entities. Today, what is behind the legal concept of the “individual” who has the sacrosanct right to private ownership? In 1800 individuals as a legal abstraction were 80 percent individual producers, while in 2006 only 7.3 percent are still truly individual producers. In accordance with these circumstances, in 2004 corporations “as individuals” produced 83.5 percent of national income, while the truly individual proprietors only 5.2 percent. (It is consistent with this picture that 80 percent of American citizens have no inheritance.)

The perversion of the “exemplary” American legal system is that most of the capital owners are no longer pioneers breaking up fallow land but are now corporations. Corporations (not inaptly called in French sociétés anonymes) are personified legal persons, “individuals,” who are freed from all kind of social servitude. The most important object of private ownership is no more the immobile inherited home, the family cottage with its symbolic value, but the intangible capital of stock exchanges, or even derivatives of the less visible private exchange or Second Market. While the pioneer entrepreneur taking possession of uncultivated land today has become – at least in the U.S and the West in general – a rare exception, based on this prototype and by tacitly extending the circle of individuals to the corporations — by this misleading terminology — the latter enjoy all the individual’s “human rights.” With the tacit transfer of the individual proprietor’s right to corporations, neo-liberalism safeguards the interests of global capital owners who can pursue international financial speculation independent of productive processes. The most celebrated defenders of the absolute right to property forms the so-called Mont Pelerin Society in Switzerland, including the late Friedrich A. von Hayek, Ludwig E. von Mises, W. Röpke and today Milton Friedman. We discuss here, of course, only the human rights aspect of the neo-liberalism. It is possible that the liberal ideal is only a utopia, but in this case it should be open and clearly stated, and point to those who profit from the ethical nihilism and cynicism of its loose interpretation and application; the acceptance of the neo-liberal outlook has a negative effect on the ordinary citizen’s respect for the law and on social solidarity.

We discuss now the right to private property from the viewpoint of the characteristics of its objects. The American constitution has been tailored to the individual independent small owner-producer. Although the constitution of 1789 hasn’t changed, the main objects of property have changed. Property can be classed by its purpose and use-value. When demand exceeds supply, anything has a trade-in value. By market transfer, all property can be expressed in monetary value. Objects can be exchanged by this equivalence and the size of someone’s fortune evaluated.

A first group constitutes the object of personal use, mobile and immobile. This is the kind of private ownership – personal effects - to which personal attachment or affection is sometimes related. As an example of this, the sacrosanct respect for private property is hammered into the heads of children during their socialization. If the exclusive and free disposal of private property could be limited only in this category of objects, neither the liberal nor any other doctrine would take issue. (Perhaps the familial or individual right of inheritance could constitute an object of discord. We will discuss this subject later on.)

The means of production constitutes yet a very different group. Of course, some objects are childishly associated with spade and hoe. In reality in this group we find very expensive objects. Often they enjoy exclusivity not only by their price. We can evoke the trade names that are protected as a brand. Sometimes a whole geographical locality or region is privately appropriated as a registered trademark and even the inhabitants of the region can’t put their own products into circulation under their place-name. It is clear that this right of private property could not be handled as a condition of everybody’s freedom.
In a third category we find natural resources. The unlimited private ownership of natural wealth could not be considered as a basic individual human right, since all international human rights covenants stated without ambiguity the peoples’ collective prerogative to freely dispose of it. Of course, this doesn’t exclude the possibility that some aspect of this ownership right could be temporarily transferred into private hands. The objects enumerated above represent a monetary value beyond their physical identity. Today this value is expressed generally by a “government letter of credit” or banknotes. If it is possible to attach a price tag to any object, on the other hand, in our age the largest part of capital assets in the global economy can’t be visibly associated with physical objects, but only with a financial state. This is composed of various pledges, orders, agreements-for-sale, liabilities to pay, derivatives transferable worldwide instantly by electronic means from one kind of currency to others or to drawing rights. The private property of these corporate “liquidities” is the essence of today’s global capitalism. When under the pretext of defending personal freedom and facilitating initiative, the ultraliberal school argues for the absolute right to individual private ownership, in fact, in today’s global economy, it militates mainly for the unlimited wandering of financial speculation.

Neo-liberalism posits the right to private ownership in a monolithic form. We now analyze the **monolithic concept** of private ownership by its components. This refined approach allows us to identify with more precision which aspect of the private ownership right can prejudice other more fundamental human rights such as the right of others to make a living.

In general terms, property means the right to be in possession of value, and private property can’t exist without the exclusion of others. According to the Roman legal tradition private property has three aspects: (a) **usufruct**, (b) **fructus** and (c) **abusus**. The owner can use the object, lease its usufruct and convey his right to others by sale or donation, or in virtue of abusus even simply destroys it (the case of pure exclusion). It is a completely absurd idea that an absolute (unrestricted) right to private property of anything and all its aspects could exist. Fortunately the two international human rights covenants don’t posit the right to private ownership; but the constitution and laws of numerous countries “enshrine” it without qualification. The right to private property and the limitation of its practice could be judged only in the context of its aspects and in the light of the objects’ classification. A general, exclusive and absolute private property right could not be formed that applies uniformly to homestead, non-home real estate, immovable property and to variable movable, or intangible properties such as negotiable financial instruments, stocks, bonds, capital shares and other assets.

As already indicated, the exclusive use of personal property - if it doesn’t concern a socially indispensable object - cannot be truly limited. As the Common Law states, its dispossession is “free simple absolute”. Indeed, this kind of property interferes rarely with others’ right to life and work. Only this kind of private property can be considered an external condition for a free personal and family life. Without going into detail, it is clear that the fructification of the means of production as private property or its transfer to possible annihilation could be the object of the limitation on others’ right to life.

We should qualify, by the somewhat abused word “speculation,” disposals, transfers and other movements of financial capital that look for profit often unrelated to the trade of useful goods. And yet on a global level these operations account for an ever greater part of the transaction. These transactions on the stock market and other secondary private markets can usually be recognized by their rapidity, volatility and short duration. Contrary to appearance, most of these transactions can’t be characterized as ingenious anticipation that is necessary to accelerate the market’s adaptation; in fact most of the time it operates by a self-fulfilling prophecy, taking profits to the detriment of central banks and states (bonds). Because the concentration of global capital advances in relation to the yet fragmented state powers, the specific survey and limitation of determined property sectors is a very timely task. If its rapid spread is not contained, it can endanger the sovereignty of (indebted) states, and even more the entire national economies of small countries. As mentioned, these manipulations could be recognized among others by their speed, short-term, entangled and chaotic nature and therefore could be limited by appropriate international legislation.
The transfer of ownership (the *abusus* in Roman law) and the intergenerational accumulation of wealth by inheritance deserve special attention. Some capital, inherited by newborn children without personal merit creates discrimination that reduces the liberal principle of equal chance to nothing. Indeed, this free transmission of fortune allows some to live without effort, while others are perhaps even deprived of the possibility of work. The general effect of this practice on the societal system as a whole will be discussed in the following chapter.

The theoretical debate about the right to private property as a human right in general, shelters vested interests. As mentioned, contrary to the non-binding UDHR, the two binding international human rights covenants don’t mention the right to private ownership; however the constitutions and laws of many states do. We have here dissected the issue by its subject, objects and characteristics, and arrived at the conclusion that a general monolithic right to private property extended uniformly to all three aspects of ownership, to any proprietors (physical individuals and global corporations) and to any kind of property (family cottage or natural wealth) is incompatible with the most basic principle of liberal society based on everybody’s equal right to existence. As earlier mentioned, if the justification of the right to private ownership is to provide personal freedom for everybody, this justification covers without reserve only the personal belongings.

**THE MODERN PLUTOCRATIC PERSPECTIVE**

The contemporary Western societal model is based on individuals and their equal rights. This means that the society should eliminate all of the newborn’s “use-values” that are produced not by nature but by the society. Reputed family names and all other social circumstances created by the society should not compromise the newborn’s equal chance. Still the absolute interpretation of the right to ownership of private fortune is extended to its inheritability and other forms of transfer. Some infants could also be the heir-apparent of capital wealth. But not everybody! If we include in the private ownership of capital the hereditary right, the equality of the individual is impaired by the society at the very moment of birth.

From a secular viewpoint, contrary to Rawls position, the inheritance of fortune could not be grouped with the “fatality” of inherited gift or intelligence. From the viewpoint of liberal doctrine, the fundamental hereditary right to fortune belongs to the same category as do inherited names or title by descent, since all these are not given by nature but by social decision. These are all differences attached to the person by the society, undeservedly at birth. Family and forename are relatively individual designations, but in an emancipated society it should not have more importance than a social security number, which also unequivocally identifies an individual but in a neutral, impartial manner.

The enlightened legal system took aim at the suppression of the blue-blooded nobility, of “dynasticism”, of all distinction independent from personal accomplishment. To repeat, from the viewpoint of the social equality of individuals, the inheritance of fortune should be classed with the inherited pedigree of nobility and not with differences in native talent. The point relating to matters of principle is that contrary to a viewpoint of fairness, if the liberal doctrine will truly exclude *indiscriminately* all kinds of socially induced privileged situations due to birth, and therefore suppress that of nobility but not that of inherited fortune, equal rights are not served, since the new human rights system makes an *exception*, an econocratic one. The inheritance of a fortune encroaches upon the liberal value order. By admission of this exceptional social difference at birth, the new system becomes susceptible to dynastic tendencies, this time to a plutocratic one, where the specifically economic discrimination of the newborns violates the ground principle of the equal rights of liberal justice — the individual’s *Ebenbürtigkeit* (Beckert).

Before we characterize an era by a definite societal phenomenon calling it plutocratic dynasticism and studying its effects and consequences, we should learn (a) what is the proportion of the inherited part of the private fortunes in a society, (b) how is the inherited wealth distributed within the population, and finally (c) what is the distribution of private wealth in general within the modern “democratic” society.
Studies of the “caste-system” related to inheritance of fortune in the bourgeois society are sparse and the subject has been approached in various ways.

(a) The difference between total national wealth and the inherited one characterizes economic growth as well as the intergenerational distribution in general (consumption versus accumulation). We examine here only the issue from the viewpoint of the individual having an equal start in life. According to Kotlikoff’s estimate in the U.S. 80 percent of the wealth comes from inheritance, while according to Modigliani’s different model of calculation it is only 20 p. c. Kesseler Masson’s model gives 35-40 percent. Indeed, the estimation is difficult since the gifts, the *inter vivos* transfer, should be counted too.

(b) Concerning the distribution of the inherited fortune, the largest part of the population has not inherited capital wealth. In the last years 4/5 of the U.S. population inherited no wealth. According to Luc Arrondel in 1987 in France 51 percent of the inherited wealth went to 10 percent of the population; and within that group 1 percent profited from 19 percent of the inherited fortune.

(c) The economies of our societies are characterized by large differences in fortune. According to the report of 2007 of the U.S. Census Bureau in 2006 1 percent of the households held 190 times more fortune than the average wealth of all households. In 1981 this gap was only 125 times. These disparities are higher than those within the income distribution, even if between 1981 and now the personal income difference also increased. (The U.S. Census data for 2010 shows the highest income gap on record.) For that matter, the difference in the U.S. is higher than in Europe, except for Great Britain and the present American legislation favours the increase of the gap.

We can conclude that individuals exercise their right to life in our Western society in two fundamentally different manners: one will live from his capital gain by “negotiating” a good return, and the other, by far the largest part, should find a place of employment in order to make a livelihood. This is the basic initial situation for the Rawls social contract. This is the division of labour and the accepted public order. Contrary to the privileged classes of the Ancient Regime, the capital holders now dispose of their fortune, formally and freely, without explicit personal legal obligation corresponding to their economic situation. This tendency became even stronger by the freedom of the speculator to create artificial shortages of various global commodities for profit. Since capitalist proprietors neither individually nor collectively are legally responsible for the shortage of workplaces, the right to work can’t be recognized as a paramount human right. We have seen that the relative number of self-employed is constantly diminishing, the difference between the two classes is not fading, nor is the passage between them smoother; therefore the situation could only be corrected by reforming the succession of property rights (cf., land reforms).

To identify a plutocratic dynastic republic, it is not only important to count the proportion of inherited fortune and the cross-section of wealth distribution, but also the permanency of dynasties from generation to generation - whether they experience significant changes, class mobility with relative rises and “come-downs”.

Charles Kerwin observed with his collaborators that 36 percent of the descendants of the families, which constitute the 20 percent richest in the society, could be found in the next generation in the same class, and that 36 percent of 20 percent of descendents of the poorest families also remain in the group where their parents were. Within the other social strata vertical intergenerational mobility is also very limited.

By the multigenerational reproduction of the functional social division between those detaining the capital goods by means of inheritance and those who look for work as a source of livelihood, the plutocratic dynasticism became a cardinal institution of the bourgeois society. The feudal system was characterized by inherited titles with rights and obligations attached. The new system guaranteed pro forma the self-determination of man and we call it progress.
The political characteristic of the new system is that the class living from capital gain and investment—called the business class, largely the corporate establishment—as representative of the Economy has the right to be specially consulted by the State before any important decision. On the other hand, willy-nilly in the representative democracy the business-class can preselect the eligible, since without financial support there are no viable candidates; and the fact that—following the suffragist movement (Sen 363)—in more and more countries, where the women and even adolescents have the right to vote, there has been no change in this basic state of affairs.

As a matter of fact, the development of the new bourgeois human rights order protects progressively all newborns from all discrimination by origin; however it makes a fundamental exception. The declaration of the right to private capital with the right to its transfer by inheritance institutionalizes inequality according to plutocratic descent, and the intergenerational strengthening of this process makes it the cardinal institution of the society.

In our bourgeois society this “exemption”, privilege is not even considered a disgrace, since the so-called “old money” will be on display and is the object of envy. The virtuous pride in it is expressed by the naming of plutocratic dynasties. Family foundations replace the aristocratic houses, - the Carnegies, the Eszterházy’s— and in the succeeding generations of ultrarich families, descendants add to their name a Roman numeral, e.g., Ford III, J. Paul Getty III. Since 1887 the Social Register enumerates the American elite. In 1976 the plutocrat Malcolm Forbes unified all the local Social Registers. Of course, some families die out, even if countered by admission of the female lineage, but 92 percent of the names registered in 1940 were also present in the list of 1977 and 87 percent of the original names in 1995. Half of them use the Roman numeral in their name. In 1915 a U.S. congressional report called the plutocratic system “industrial feudalism” and the new ruling class is discreetly called the Business.

Jens Beckert formulated clearly how the present Western human rights practice at this point deviates from the societal model based strictly on individuals with equal chance. Beckert also describes the varieties of legal forms of intergenerational transfer of fortunes—by inheritance or will—in the Anglo-Saxon, French and German legal systems. However in the plutocratic dynasties the combination of the right of corporations, foundations and trusts provides an intergenerational unity of the class living essentially from capital gain.

As exposed, the presently applied human rights system, in which the right to private ownership can counter the equal right of others to physical existence, can’t be considered as a consequent embodiment of the enlightenment’s model society based on the equal right of everybody. However, some try to justify on a pragmatic basis the usefulness of the institution of dynastic inheritance. They consider that entrepreneurial ability can be somehow inherited. Joseph Schumpeter’s arguments are well known. To imagine that the investor-entrepreneur’s capacity also runs in the blood of his descendents is a capitalist version of the eugenics of blue-bloodedness inspired to some extent by Darwin.

This kind of genetic hypothesis is only ideologically founded. Multigenerational successes are not based on inherited quality but on socialization, on social pedagogical transmission: the helpless individual born in a wealthy family receives a different education and different know-how. He learns what matters, what issues the parents consider to be of vital importance to the family: it is not the quest for employment but for profitable investment (Jean-Paul Sartre tells us in his autobiographical work Les mots [1964] that first he learned words from the family bookshelf and only afterward identified the designated objects themselves.)

Further, the infants of wealthy families also inherit different networks of connections.

After studying the normative consistency of the liberal (ideal-typical) societal model applied to human rights, we now consider another level: whether this system is at all compatible with anthropo-social reality. In order to enlarge our perspective let us refer briefly to two concepts of Indian jurisprudence. The classical legal theorist Manu developed a consequence-independent, ideal-typical, rule-bound arrangement of justice (somewhat like Rawls), in Sanskrit called nītī that is distinguished in the Indian legal tradition from the nyāya, which is a realization-focused perspective and which considers the comprehensive outcome. In the next section we will examine the issue of the relativity of human rights in the nyāya-like perspective.
The constitutional recognition of private property as a fundamental human right – including the inheritance of capital wealth – is at variance with the liberal social order, which is based on everybody’s equal right to existence. However we can observe that in various historical epochs and civilizations some progenitors succeed – by diverse hidden or open ways and means – to provide favours to their descendants.

Usually historians look in two directions for appropriate examples: in the old European feudal system and in so-called archaic “civilizations” like the Hindu caste-system or the Muslim emirates. However a more objective impartial examination of the facts shows that we can find cases of transmission of political power and social influence attributable to blood relationship of descent other than in countries with explicitly hereditary dynastic systems like Saudi-Arabia, Jordan, the Moroccan Kingdom or the Arab emirates. We can observe signs of it in republics like Syria, or even in the Westminster-type “rotating” representative democratic systems. In these systems, for example, the publicly recognizable nature of a family name gives close relatives a great advantage for election. This can be observed not only in India concerning the Ghandi family, but also in the U.S. concerning the Bushes. Examples can be multiplied in other representative democracies; as Adam Bellow notes, even revolutionaries who reversed unjust political systems often made from their descendents a – hereditary – successor. As we already noted, the economist Joseph Schumpeter imagined a kind of inherited entrepreneurial ability, while the also quoted Dawkins explained the continuation of dynasties by the biological inheritance of genes. Contradicting this biological explanation is the fact that widows of influential politicians in very different lands have sometimes “inherited” political positions like Christina Kirchner in Argentina, Corazon Aquino in the Philippines, or W.R.D. Bandaranaike’s widow in Sri Lanka.

We will here discuss the subject in more general terms than these single historical cases. We look for an answer to a comprehensive question: in the light of the empirical human sciences is there any chance that the historically unprecedented promise of the individualistic liberal doctrine is within our reach, namely that all social discrimination given by birth will be progressively suppressed? To answer this question we should establish an overall realistic conception of all human societies and their components. Undoubtedly, general experience shows some characteristics common to the human race. All individuals come into the world not fully grown, but as helpless infants, dependent on their parents or other caregivers. Self-made, without nurturance newborns can’t reach the majority. This fact is often neglected but is of great consequence. Then the question arises instantaneously: how to implement an environment of equal treatment of newborns without tearing them from their families by putting them in orphanage or janissary-like educational systems? (By the way, perhaps in the near future, this will be the case in the modern Western society, where compulsory schooling begins at an ever-earlier age.) Marx and especially Engels express great interest in this question.

The institutions of upbringing form the first social ties of the little ones. Consequently, if it happens in the framework of the family, the first ties are related to the blood relationship. Beyond the period of “suckling”, the formation of habits during the long socialization process with the mother tongue brings with it a whole cultural background and world outlook.

Whatever the parents’ motivation, whether self-centred love or altruism in the upbringing of their children, they hope to be compensated in their old age. The newborn receives services without synchronous reciprocation. This initial situation can’t be denied in the liberal ideology. Living together under the same roof creates intense affective ties, even if they can turn negative. The landed property – family cottage, mansion or castle – symbolizes the parental home. By the way, the special literature about the right of inheritance concentrates largely on this problem. In different countries and in different epochs the experts tried to solve the problem of inequality between generations and individuals of different descents by various systems of taxation.

Yet, in our era of financial globalism, the problem of the family’s immovable property is only a small tip of the iceberg. The truly big capital in money is reshaped in the form of stock certificates and financial participations hardly fixed to a place. Their proprietors cannot at any
moment identify their fortune intangible material objects. We should now add to this picture that a donation or gift is a main means of nourishing intimate relations. It is obvious that the most clever tax-collector can’t catch all the intergenerational transfers, even large ones, especially if they happen through an intermediary or by offshore trusts and foundations. (We can also include the donation of gems, jewellery and other small but highly valuable objects hidden in a safe. See Salter’s quoted volume.)

The socialization process comprises the relation within the larger network of extended family. In the unavoidable circumstances of becoming an adult - beside the habit formation – an intergenerational formation of acquaintanceship also belongs.

In the Ancient Regime and in other civilizations the distinction by birth has been formally recognized and accepted. Today’s republics, based on the individual’s equal human rights, postulate that socially generated discrimination by birth could be suppressed by further refinement, patching and enlargement of the catalogue of human rights. The completeness of the bourgeois human rights list remained silent about the discriminative consequences of intergenerational transmission of capital fortune (which could be freely used, without subordinating its use to the common good) by way of succession or will.

Among the advantages given by birth, the “nominal” one – nobility – could be eliminated by a stroke of the pen, but the advantages coming from the parents’ financial condition could in fact not be abolished because of man’s helpless birth and the following necessary socialization process. If this is the case, could the liberal Western human rights construct preserve its unique, supreme, universal stature?

WESTERN INDIVIDUALISTIC AND COMPARATIVE PERSPECTIVE

Summing up what has been said; Western liberalism - following Locke and Rousseau – deduces the constitution of the society and of the state exclusively from the contracts concluded among equal partners. So for a large number of individual authors, the individual with his natural human rights exists – at least conceptually – before the state. The U.N.’s Universal Declaration of Human Rights (UDHR) in 1948 has fundamentally evolved from the liberal doctrine. It posits everyone’s right to life (§3) and even the right to work and livelihood (§22ff), but also in general terms the right to private property (§17). However, for international law, only the International Covenant on Civil and Political Rights (ICCPR) and that on Economic, Social and Cultural Rights (ICESCR) concluded in 1966 are binding. The U.N. General Assembly (2200A[XXI]) as well as the Declaration of Vienna in 1993 states the inseparability of all human rights. Since no contradiction among them is presupposed, meta-principles for ranking them have not been established. However, the fact that the ICCPR and ICESCR are distinct documents and could be ratified separately allows an implicit ranking of human rights. You can’t escape the fact that the Western states consider only the ICCPR as completely obligatory and so all ratified it even if with some reservations. Amartya Sen states that economic and social rights, which are excluded from the “inner sanctum of human rights” as so-called “second generation’ rights, should be applied only if some conditions could be realized.71 We also observed that the Western inspired Human Rights Watch organization as well as Amnesty International and the New York based Freedom House keep their eyes only on the application of the ICCPR.

The UDHR declared the right to property without restriction on intergenerational transfer. If the International Covenants of 1966 didn’t confirm this right, the constitutions of most Western states did. Then again, in the spirit of a liberal worldview, everyone has an equal right to life – “debited” on the people’s prerogatives for natural wealth and resources (ICCPR §1.1.2 and § V.47). This right of everybody should rank before all other rights since existence itself is an ontological sine qua condition for the exercise of any other rights. According to fundamental liberal reasoning, about equal rights for everyone if this right of living conflicts with the right to private property, the latter should be subordinated to the first.

If subordination of private ownership to everybody’s right to life does not come about, certain newborns become proprietors of inherited fortune that guarantees their whole existence - perhaps without other personal merit, - while the existence of others is only guaranteed if they
find a job and can join the workforce. Because this difference is induced by the society, the equality of chance cannot materialize.

This being granted, in the realization-focused perspective, we should confront the ideal-typical individualistic liberal societal model with empirical anthropological reality. As already evoked, it is a basic biological fact that the human being – even if conceived in a test tube – comes helplessly to light not so differently from the kangaroo as we sometimes imagine. Therefore, initially, a unilateral, social-anthropological “insertion” proceeds, always necessarily and without exception, man’s emancipation, his introduction as an adult to the already established society where he can freely contract later on. The socialization process usually happens in the framework of family, generates multigenerational intertwining, and so makes the intergenerational transfer of fortune, by gift or inheritance, natural. The complete extinction of the differentiated inborn transfer of wealth could be realized only by fostering all newborns as orphans. This would necessitate the forcible shattering of natural family ties and privacy.

Again, if we accept human birth with family fostering as natural and unavoidable, we must acknowledge that there are profound implications for the value of the prescription of liberal norms.

In this case, we can’t impute a prototypical exclusive role of the contract among adult individuals, derived basically from the situation of market the exchange transactions in all human relations. Since everyone is born helpless, other social relations should be accepted as constitutive ones that are not based on mutual free will and individual choice with all its implications; this is the fundamentally unequal relationship between the helpless infant and his parents. Yet, if we accept that by force of the human way of nurturing, it is, in reality, impossible to hinder intergenerational transfer of family wealth; and if the right to this transfer is not limited to a determined range of personal goods (including the home), but is formulated in a comprehensive monolithic manner, — in opposition to the suppression of the inherited caste-system or nobility titles — the “dynastic discrimination” is not eliminated completely. It happens only that by maintaining intergenerational private property transfer to the newborn without merit, the system of discrimination now becomes concentrated on the difference in fortune. In this way the liberal doctrine, after the liberation of slaves and serfs, becomes, in fact, a subtle apology for the inborn prerogatives of the capitalist class. By the intergenerational transfer of capital wealth within a community, from generation to generation, the society becomes primarily characterized by a plutocratic form of dynasticism. While our society bears many important societal traits (the Information society and so on), it is for this very reason that it could be called essentially a capitalist society.

The inequity of inheritance without merit and the ensuing social disequilibria, as well as the loss in economic efficiency due to the spread of developing plutocratic dynasticism, can only be corrected by repeated property reforms like the agrarian reforms. However, contemporary post-industrial finance is organized on a worldwide scale and operates transnationally, scattered and unobserved. And the states, the various jurisdictions; even the largest like the U.S.A., China, India or Russia – are organized on a smaller geographical level. For the time being – since we can only dream about a world state - no efficient political oversight and control of the global accumulation of speculative capital is possible. If man’s social biological conditions are at such a fundamental point, that in light of this constraint the individualist liberal contract-based model seems unachievable. It can’t be a universal role model and therefore loses its unmatched global attraction. So in a realization-focused comparative perspective, on the pragmatic real-type level, the Western model should enter into competition with conceptions of other coexisting civilizations. It is possible that according to the criteria of societal improvement, other concepts, which recognize the unavoidable social entanglement of helpless-born man, perform better than our Western one. Indeed, Joanne R. Bauer and D. A. Bell insist that the fundamental purpose of the human rights regime is the promotion and protection of vital human interests, the better.73

We are now at the realization-focused level, what Sen called in Sanskrit - in opposition to the ideal arrangement-centred perspective - nyaya.74 As we discussed elsewhere, the society is not only held together (a) by market contracts coming from the division of work necessary
for collective self-preservation, but also (b) by the instinct to propagate the species and (c) the shared scriptural Tradition, transmitted first by the mother tongue.

In reality, the development of the helpless-born human being brings about a multigenerational social fabric that in turn leads to a system of human rights in which the family should be recognized as an important subject. Indeed, Article 23.1 of the ICCPR states that “the family is a natural and fundamental group” 76. Today’s Western civilization insists on the individual’s right to free choice of a partner (§23.2). However, for some other contemporary civilizations the founding of a family is not exclusively a matter of two partners (for reproduction) but also of the predecessors, the whole “legating” family. Western liberals are shocked by this community based proceeding. However, if we compare globally the durability of the family institution and the stability of the families, we can observe that the bonds based essentially on instantaneous sensual sympathy, the attraction of two youths, is much more exposed to erosion over time and to divorce than alliances built on a larger socio-anthropological, multi-generational – and therefore often more multidimensional (!) – consensus.

By evoking the existence of rankings of human rights other than those of the West, we should not go too far in suggesting that the West should follow some other civilization’s norm system. We will say only that, because of the unavoidable social-anthropological embeddedness of the newborn human being in his initial position, the applied individualistic liberal model doesn’t suppress inborn social discrimination per se. It contributes only to bringing the dynastic plutocracy into an exceptional position. Therefore, from the realization-focused perspective, the Western liberal-capitalist system as historical achievement is very relative and, considering the total outcome, it remains in competition with the system of norms applied in other coexisting civilizations. The realistic reading of the alternative achievements of different human rights frees us from the Western-centred parochial bias 77.

Today, many authors state that if we will develop a truly universal system of the enumeration and ranking of fundamental human rights, we should take into consideration the “Eastern” and/or the “Asian” value order. We mention here again Daniel A. Bell who teaches now at the Chinese Tsinghua University. 78 According to him, if we consider the societal well-being indexes (among others the number of divorces, the life expectancy) of some non-Western, perhaps authoritarian societal systems, they show more compatibility with the specific characteristics of the human being and of mankind; therefore these systems could produce an even more satisfactory outcome for individuals than the strictly individualistic Western model 79.

Paradoxically, if authors reduce the inter-civilizational pluralism to a dichotomy between the West and a non-western amalgam called East, the approach itself becomes European-centred. It deprives precisely the particular non-western civilizations of their very identity. It is a further pitfall to speak about an “Asian” value-order as it refers to a Western, colonial-inspired geographical denomination and doesn’t encompass a homogeneous sphere of civilizations.

In general terms, 80 we can state that the human rights system can be only truly universal if, alongside the individualistic Western norm system, we also consider in an impartial manner the principles and practices, as well as the legacy of the Arabo-Muslim, Bharati and Chinese spheres of civilization, since they have preserved their autonomy and identity throughout a great past.

CONCLUSION

In 1966 the United Nations General Assembly declared the “unity of human rights”. However, some human rights could be in conflict with others. Each person’s right to life is the first human right, ontologically a sine qua non for any other rights such as political or proprietary. Therefore, in case of conflict, the right to life has priority. Because of the nature of life itself, in comparison to other rights – e.g., Property right, – the definition of right to life should be broader than the simple prohibition of killing (or of torturing) as a negative obligation (Article 6 of the International Covenant on Civil and Political Rights.) Indeed, the right to life is inseparable from the right to livelihood (including “the right to work”, set forth in
article 6 of Covenant on the International Covenant on Economic, Social and Cultural Rights). However many Western states did not ratify this second International Covenant; and compared to the political rights the UN High Commissioner for Human Rights as well as the various human rights watch organizations follow the governments respect for the right to livelihood with only grudging attention.

The UN Universal Declaration of Human Rights of 1948 is based on an ideal-typical normative model – liberal and individualistic - of a society constituted essentially by the marketplace-like contracts among independent individuals. Yet, to discover the feasibility of this model and its comprehensive outcome for everybody’s well-being, we should test it against the social-anthropological reality of the human race. Society cannot be mapped entirely by contractual relations, since human beings are all born helpless and their first relations are intergenerational and not “contractual”.

According to the major civilization spheres – such as the Arabo-Muslim, Bharati, Chinese, or Western – the upbringing of man is realized in diverse institutional settings (types of family or other care giving organizations) and various value orders are transmitted by socialization. Different civilization rank individual and collective rights differently and in a realization-focused perspective, the Western normative societal model does not necessarily defy the societal models of other contemporary civilizations. Concerning the universal historical progress to equal opportunity of man by human rights, after abolition of the legal privileges derived from birth and the heritability of offices, the inheritance of fortune became and remains in modern Western society the central institution of social privilege that is based not on effort, but on birth.

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2 Already in 1792, Jeremy Bentham, the founder of utilitarianism in his Anarchical Fallacies Being an Examination of the Declaration of Rights Issued during the French Revolution dismisses all such claims as artificially elevated nonsense. Bentham writes: “right, the substantive right, is the child of law; from real laws come real rights; but from imaginary laws, from ‘law of nature’, come only imaginary rights.” The Works of Jeremy Bentham Williams Tait, Edinburgh, vol. II, (republished in 1843), 523.
3 Indeed, contrary to Sen’s argument (Sen Amartya: The Idea of Justice, Penguin Books, London, 2010, 361–4) for clarity of terminology ethical right and obligations should be clearly distinguished from substantive right enforced by law.
8 Durkheim sanctifies the individual with soul (Beckert 117). Sen (192): „unique dominance of single-minded pursuit of our own goals.”
9 Beckert 71, 28 and 57.
10 For Gautama Buddha (see Sutta Nipata) humanity is enormously more powerful than other species, and - like mothers toward their children - because of this asymmetry of power we have some particular responsibilities toward them (Sen 205).
13 In this context the expression habeas corpus is very often used. However, this right instituted in 1679 in the English law meant only that the arrested individual has the right to appear before the judge in person.
14 Oliver Wendell Holmes Jr. in his Common Law (1881) opposes the individual right of property to the familial and ecclesiastical rights. (John E. Welsh: Max Stirner’s Dialectical Egoism: a New Interpretation. Lanham MD, Lexington Books, 2010.)
16 In A. Lalonde’s Vocabulaire technique et critique de la philosophie (PUF, Paris, 9 ed., 1962, 253.) Robespierre and Mirabeau don’t recognize the private property as a natural right existing before the society. (Mirabeau: “positive laws that made property possible in the first place.”) Rousseau and Montesquieu (Spirit of the Law: 1748) deduce the private property from the social contract. Hegel does the same by references to Fichte (Foundations of Natural Rights. According to the Wissenschaftslehre. Cambridge UP, Cambridge, 2000 [1796]). See Beckert 57, 27, 71 and 302.
18 For Locke “property was a natural law that precedes all social institutions… individual right of property arises from human appropriation of nature.” The natural law justifying private property includes the inheritance. Locke exercised a predominant influence on the Fundamental Constitution of Carolinas” of 1671. (See Beckert 71, 28 and 177.)
22 In a competitive society the equality before the law is expressed by equal opportunity. (Becket 28). We can already mention that in the U.S., for example, 17 percent of households have no fortune (only debt), and only 20 percent inherited something. It is also to observe that if somebody has a great fortune, the larger part of it came from inheritance (McNamee 59ff; 60; Becket 28, 71, 275, 278 and 14-15.)
23 Rawls 278, 14-15.
25 "This goes back to Aristotle (1261b34), who states that a private owner makes the best use of things.
29 Sen 47.
30 Curt Goering 16-17, in D. A. Bell and J.M. Coicaud (eds): The Ethics in Action: The Ethical Challenges of International Human Rights of Nongovernmental Organizations. Cambridge UP, Cambridge, 2007, 8, 13, 16-21. In the same volume see Gilmore Metz’s article (8). Coicaud notes that today the international non-governmental organizations (INGO) are stronger than the trade unions.
31 C. Scott: The Interdependence and Permeability of Human Rights Norms: Toward a Partial Fusion of International Covenants on Human Rights. In: Osgood Law Journal. Vol. 27, 1989. Maunee Cranston (Are There Human Rights? In Daedalus, Fall 1983, 13) “political and civil rights are not difficult to institute. For the most part, they require… leave a man alone.” (Sen 382.) Marie-Dembour (What are Human Rights? Four Schools of Thought. In: Human Rights Quarterly February 2010, 1-20, p.2-3) wrote: For the natural school of human rights “only negative obligations can be absolute, for positive obligations (e.g., to provide education) are never as clear-cut as a simple prohibition to do something.”
32 Brownlie, 350-539.
34 Among the workers’ rights the trade union’s one is yet somehow watched by these organizations (ICESCR §8 and Brownlie 539), since it also has a political dimension (ICCPR §22.1). It is to note that the trade unions lost in some countries their original mission. They organize the state employees who enjoy a relatively stable situation instead of the workers in the private economy. See for example in France.
37 The first article states: “to accept…responsibilities for the achievement and maintenance of as high and stable employment as possible, with a view to attainment of full employment.” The second articles states: “… to protect… the right of the worker to earn his living…”
Realizing Property Rights

average and interconnectedness of the human rights in 1966, when the right to work arose, the neo-...


David Harvey in his A Brief History of Neoliberalism (Oxford UP, Oxford, 2005, 21) uses the term "juridical trick".

Without contesting the absolute property right of corporations, the human rights system could obviously not be the object even of 'wishful thinking'. (Samuel Moje: The Last Utopia: Human Rights in History. The Belcamp Press of Harvard UP, Cambridge, 2010.)

F. Bastiat (Economic Harmonies. W. Hayden Poyres, 1850) stated that "in our relations with one another, we are not owners of the utility of things, but of their value, and value is the appraisal made of reciprocal services."

It is to note that in the U.N. debate about the human rights in 1966, when the right to work arose, the neo-liberals tried to link it to the right to free international trade as a possible source to work. However, since international trade is practiced more by companies than by individuals, it is not mentioned as a human right.

During the Great Depression in his speech of June 19 in 1935 President Roosevelt distinguished the defensible private property necessary for the security of individuals and families in opposition to inherited capital wealth (Becket 189-90, McNamee 59).

The 8. article of ICESCR prescribes the right to form trade unions, to strike and in an implicit manner other limitations on the use of the ownership as a means of production (Brownlie 539).

10. To form an opinion of the size, leverage and interconnectedness of the global banking (and also nonbanking) financial institutions, and consequently their systemic significance, we must consider that for example in Switzerland the two largest bank's assets exceed four times the country’s G.D.P. And even in the U.S. the banks' assets total about 82 percent of the country’s G.D.P., while eight of the ten largest banks are now - "offshore", viz., outside the country. (Steven M. David: Finding just-right rules for 'too big to fail'. In: International Herald Tribune, 16.02.2011.)

A. Outlaw: inter vivos transfer (McNamee 64).

A theist, a believer in a Creator could assimilate natural fortune to social one, but Rawls (212) represents an ideological neutral position and from the viewpoint of secular justice this is unacceptable.

The data comes from McNamee (259 and 68) and from Beckert (15 and 300[10]).


McNamee 174.


Becket 11


Becket 18, 177 and 180. McNamee 70-1.

Becket (14): “Once legal privileges derived from birth and the heritability of offices were abolished, the inheritance of property was and is the central (!) institution of social privilege in modern societies that is based not on effort, but on birth.” Beckert goes on (300[9]): “The reason one must speak of purely social privilege is that while different degrees of intelligence and physical attractiveness also bestow advantages that are independent of effort and achievement, these are largely the result of nature.” This is a snappy retort to Rawls who refuses to make a fundamental distinction between inherited intelligence and inherited fortune. (Cf., Beckert 11, 315[41].)


Bellow enjoys the advantage of his father's literary Nobel-prize certainly helped him to become aware of the existence of advantage by birth. About the intergenerational transmission of fortune and influence in general see also Frank K. Salter’s volume (Risky Transactions: Trust, Kinship and Ethnicity. Berg Hahn books, Oxford, 2002).

70 Beckert 186-225. McNamee 251.
71 Sen 380-6. For the “feasibility critique” see also Onora O’Neill op. cit.
72 Beckert 14, 300, and 180.
73 In Bauer J. R. and D. A. Bell op. cit. Bell B. and D. A. state: the right regime’s “essential purpose is: to promote and protect vital human interests”. (p.3). See in ibid Onuma Yauaki, 123.
74 Sen 20-2 and 82.
75 G. Ankerl 2000 vol. I, 53. In the Bharatiya (Hindu) philosophy we find the concept of Trivarga. The society is “cemented” by artha (mode of livelihood/production), by kama (procreative relations) and by dharma (Holy scriptural tradition). Cf., Jon Elster: The Cement of Society. Cambridge UP, Cambridge, 1989. (See also in Ibn Khaldun’s Muqaddimah asabiyya, social cohesion.)
76 The group right, the “We” becomes a bearer of human rights like the “self” in individualistic human rights. Bauer and Bell 23.
77 Sen in his quoted work underlines repeatedly the necessity to read social philosophical issues through the anthropological way, accepting the “eyes of the rest of mankind”. Adam Smith: Lectures on Jurisprudence. Liberty Press, Indianapolis IN, 1982, 104. Sen XIV, 70, 80, 127 and 404.
79 Onuma Yasuaki 114.
80 See Guy Ankerl’s already quoted Coexisting Contemporary Civilizations (149, 257, 382ff).