

What’s wrong with “rights”?

GRAIN

Peoples’ rights have long featured prominently in GRAIN’s analyses, deliberations and documents, as well as in those of our partners. As private companies – especially huge transnationals – have extended their control (and ownership) over wider and wider areas of life, peoples and communities around the world have seen how their chance of maintaining a decent and sovereign way of life, with their own values and norms and with respect for the human beings and the environment around them, is vanishing. Actions that were previously considered natural and taken for granted – such as keeping, reproducing and sharing seeds and animals, accessing water, copying a song, sharing information, reproducing medicines, borrowing books without charge from a library, and copying software – are no longer permitted but are becoming criminalised, all in the name of property rights. In this context, the concept of peoples’ rights has become a defensive tool, one to be used as part of the ethical, political and cultural struggles for justice and dignity.

But recently a cruel paradox has emerged: the very concept of rights is being used to impose and expand neoliberalism. Social organisations and NGOs that have attempted to advance certain rights have ended up causing confusion and divisions, and even harming the very interests and welfare of those claiming the rights. Rights regimes have forced many peoples, especially indigenous peoples, to define according to alien values some fundamental aspects of their identity and way of life, such as their

art, their medicinal and agricultural knowledge, their tenure systems and so on. These harmful effects are occurring even when the organisations involved are unquestionably committed to the well-being of those they represent.

From GRAIN’s perspective, this process has been especially harmful when it has affected the way people collectively enjoy and manage local natural resources and biodiversity, using knowledge acquired over millennia. We have seen the aggressive expansion of private property over territories and ecosystems, including components as essential as water and air, all carried out in the name of the “right” of local communities to use local natural resources and biodiversity. We seem to be facing a tragic contradiction: the fight for rights – a component common to the struggles of peoples around the world – is being used by states, corporations and international organisations to worsen the conditions of the people involved.

GRAIN believes that we urgently need to reflect on these processes. We need to search for new concepts and ways of thinking that might help us to defend from corporate control the ways of life that people themselves have defined. We see this not as a theoretical exercise, but as a compelling political necessity. The debate needs to be as wide, collective and diverse as possible. Most of all, the debate should take place locally, as close as possible to the actual conditions people face and to the cultural and political strengths people possess.




To encourage this wider debate, GRAIN invited a group of people around the world to reflect on their concepts of rights and how they affect people's lives and welfare. We raised the same issues with people from Asia, Africa and Latin America. These are some of the questions we put to them: What, if anything, is wrong with "rights"? Do the problems stem from the fact that its intimate corollary – obligations and responsibilities (but see Radha D'Souza's contribution for a different view even of this point) – has been erased from the debate and our thinking? Or is it because "rights" have been equated with "property"? Or is it because there has been a decades-long attempt to standardise rights? How do we distinguish legitimate rights from illegitimate ones? And how do we socialise rights when most rights regimes and approaches today almost inevitably seem to favour individual rights, even if this is not always fully apparent? What sort of processes and approaches are required to keep biodiversity and knowledge outside the realm of "property rights"? How can collective goods – including public goods – be protected against exploitation by corporations? How can we build forms of social control that do not entail ownership? What are the traditional norms, customary practices or laws that in your community or country or region illustrate another way of viewing the world and defining relationships?

In the following pages we share with you the responses we received from over a dozen panellists from different countries, cultures and contexts. Our contributors have very different perspectives and experiences but they are all profoundly critical of current formal rights regimes. They all identify the expansion of private property and capital as a major source of disruption of the forms of life and coexistence that peoples and communities around the world have built over centuries, saying that this invasion is threatening or destroying their social and cultural relationships, their food sovereignty, their forms of education and their sources of welfare. One way or another, most panellists see the source of all the most serious problems to be the wide physical, cultural, political and social distance of local communities from the people who write legal definitions of rights. They also say that the imposition of formal education and health systems, cultural erosion, and the lack of reflection and discussion around ethical issues are, directly or indirectly, contributing to the increased inequity and the loss of sovereignty and dignity. All in all, the picture that emerges is that the evolution of rights regimes around the world have been clearly harmful to communities. The struggle for rights has not yielded a positive balance.

No clear picture emerges as to the way forward. The views of our panellists vary from those highly sceptical about the prospect of continuing to walk along the old road of appealing to governmental and state processes to those who still believe that it is possible to reform the formal rights systems. Very little was said by our panellists on the linkage between rights and responsibilities, or about the fundamental difference between rights and property, or how collective resources could be protected.

However, two promising lines of discussion seem to have emerged. The first concerns the need to shorten distances – physical, cultural and social – between those who define rules and regulations and those who live under them. In other words, increasing numbers of people, communities and organisations are seeing the need to bring the struggle for rights and dignity as close as possible, turning themselves – and not international or state bodies – into the main agents for building and defining the norms for coexistence, including individual and collective rights and obligations.

The second line of discussion concerns collective rights. Although no clear concept emerged as to how, precisely, they could be defined, several of our panellists mention these rights as a central component of their struggles. One says that a fundamental characteristic of collective rights is that people are not mere beneficiaries of these rights but have the capacity to decide how these rights should be exercised. Interpreted in this way, collective rights could be a way in which people and communities construct, in a supportive, reflective and deliberate way, the norms by which they will live together, without being obliged to make these norms comply with standards established, mainly in the interest of capital, in the centres of power.

GRAIN presents the points of view of its panellists as a catalyst for discussion. We agree with some of the observations made and disagree with others. It is evident that key issues – the link between rights and responsibilities, the precise nature of collective rights, the multiple links between the effective exercise of rights and the concrete conditions of everyday life, and others – need further discussion. It is in this spirit that GRAIN supports the call for a long and thorough debate that deals with the fundamental questions, such as values and ethics, and that strengthens the processes of autonomy. If the voices we present in this issue of Seedling contribute to this process, GRAIN will be fully satisfied. 





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C.R. BIJOY

The dominant discourse on "rights" has seen a distinct shift since the 1990s, in which "rights" have been quietly reinterpreted to mean "right of access" to a set of precisely identifiable and realisable forms of services, which necessarily requires that the citizen be reduced to a mere consumer in the emerging high-growth market. These services are packaged to conform to the market norms of a "product". This shift is accompanied by, and is partly a result of: first, a separation of the concept of human rights from the law, so that the law becomes the focus of the concept rather than vice versa; and, second, a separation of human rights and the law from the state and politics.

One result of these separations is that the law acquires a certain autonomy and mythic status. This serves to de-legitimise peoples' struggles as historically the valid source of both the concept of human rights and the laws that the courts must enforce. Instead, the courts' decisions are self-legitimised. Just as the state is no longer managed by the democratic aspirations of a nation's people, so the courts are today expected to be amenable to the dictates of the market. The redefinition of "rights", therefore, comes along with the restructuring of the state and the subjugation of democracy by capital.

How has this transition come about? It is linked to changes in the global economy. Beginning in the 1970s, there was a shift from a world economy dominated by industrial capital to one dominated by finance capital. With the over-accumulation of capital, traders (that is, the market), rather than producers, began to dominate decision-making in production. Free-marketeers begin to impose their view of reality, in which everything that is achieved through market forces is seen as positive. The market is presented as capable of resolving all problems, even of protecting human rights through the façade of corporate social responsibility. Globalisation is seen as the answer to everything, and with it comes a redefinition of the nation state, democracy, human rights, governance and national security. Relations within and between nation

states are restructured, so that capital is freed from all the constraints (however ineffective they might in practice have been) that were devised to protect democracy, equity and justice.

Market hegemony

Globalised capital, ever eager to extend its reach, has moved into "accumulation through dispossession", by taking communities' land, biodiversity and culture. The exclusion of vast sections of the population from meaningful economic activity, rather than mere expropriation of resources, has become one of the engines of economic growth, and of progress and development itself. This creates widespread insecurity, all in the name of the hegemony of the market.

To achieve this, "rights" have been reinterpreted to suit the "free" movement of capital and, with this, relations between production and labour are restructured. Trade flows, investment flows, financial flows, and flows of services, technology, information, ideas and persons across national boundaries are all promoted. But it is not just this: social relations between communities and within communities are also redefined. The market must have "access" to everything, so people's rights to livelihood, natural resources, and knowledge, whether traditional/customary or modern – in short, the resources needed for survival – must all be modified to permit such access. Rights-holders are converted into duty-bearers, with duty itself defined by the market. Diverse forms of inequity are legitimised.

Paradoxically, while this is happening, international and national standards of human rights are being continually refined and upgraded through increasingly complex processes (so complex, in fact, that they make it impossible to achieve decisive outcomes). Elaborate but weak international institutions, such as the various UN and multilateral bodies, along with equally ineffective national institutions, have been established to implement these upgraded standards. Even so, it is clear that the global hegemonic economic agenda is dominant; components in national laws,

* The repression took the form of the forcible eviction of some hundreds of thousands of traditional forest inhabitants, and large-scale clearing of forests, in the name of "development". The resistance movement forced the state to acknowledge formally the "historic injustice" that it had perpetrated. Formal recognition of rights followed through the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.



initially introduced to protect national rights, are being dismantled; in stark contrast, instruments and institutional mechanisms in pursuance of the hegemonic economic agenda are predictably well in place and functioning (such as those of the WTO).

Legitimising pretexts

These bodies form the administrative, governing and judicial basis for reinterpreting policies, programmes and laws. Democratic rights are being sacrificed to facilitate the expansion of global capital and globalisation. Again, paradoxically, imperialist powers are using both human rights and democracy as legitimising pretexts for sending multinational armies into recalcitrant regions. Ironically, the pretext of promoting national and global security, along with peace and prosperity, is being used to legitimise the flouting of laws.

Both equity and justice are being ignored, replaced by paternalistic ideas of individual compensation, defined largely in economic and market terms. The judiciary is internalising an ideology that venerates the virtues of the free market and undermines the role of the state in matters of justice, while endorsing unquestioningly its role in promoting the logic of globalisation and all that it entails, including militarisation in the name of internal and external security.

Instead of creating a society where rights are genuinely respected, a new paradigm is being created, with the creation of market-friendly “rights”, where the very concept of rights – and thus of rights violations -- is severely restricted. The new paradigm is progressively legislated into existence and strongly promoted by the media. The idea is to manufacture consent, thus completing the deception.

The new market regime further disenfranchises marginalised and powerless people. With widespread rights violations, the focus is on the development of rights services to meet different demands, rather than on a democratic overhaul of the governance system. The citizen becomes a consumer or a potential consumer, not a holder of rights.

Resistance and change

The victims and the losers in this system, as well as those working to bring about greater equity and justice in the world, need to analyse carefully the dominant discourse of “rights” in order to

understand its truly diabolical and subversive nature and the way it is being used to promote neo-imperialist interests. Those struggling against the new hegemony need to understand the enemy they are facing.

The essential goals of those active in the struggle for rights are, on the one hand, to protect the people against all actual and potential abuses of power and, on the other, to promote a society that guarantees the fundamental freedoms and basic entitlements needed to respect everyone’s basic human dignity.

The struggle for rights must be seen for what it really is: an ongoing collective dynamic process of resistance and change that engages and transforms unequal relations of power. Rights can be achieved only through the involvement and empowerment of the community as a whole, particularly those whose rights are most violated. The struggle for rights must be grounded in people’s needs. In their struggle, people use human rights standards as a powerful resource for transformative, action-oriented political change. People do not begin the struggle by seeing how rights are defined in the international human rights framework that their governments have agreed to, or by turning to national or regional legal instruments.

The struggle begins and develops from people themselves and their day-to-day reality. They come to identify themselves as rights holders, seeing rights as an indivisible whole, where individual rights, while embedded in collective rights, are subordinate to them. Rights are tools for communities in their struggle to understand why their basic human dignity is not being respected. They need to identify who is responsible, to analyse the possible entry points for action, and to take action, formal and informal, to change the conditions preventing the realisation of these needs.

From object to subject

People move from being the object of a service to being the subject of their own destiny. Those in struggle recognise that:

- rights may not be entrenched within an accessible, independent and effective legal system where citizens can readily make claims;
- there may be social, cultural and political realities that prevent people from being



able to make claims, even where there is an enforceable legal system

Those in struggle seek:


- to move beyond these formal mechanisms of protection
- to engage in a broader struggle.

This involves

- a process of confronting and transforming unequal power ideologies, relationships and structures that deny rights.

Some key tools are to:

- recognise and accept the oppressed as the central actors in the process of change;
- engage in protest and resistance wherever the abuse of power affects peoples' capacity to sustain their daily livelihoods;

- negotiate responsibilities with authorities at different levels to change the adverse power equation;
- confront not just the state, but also other actors whose action impinges on people's basic rights, including corporations, businesses, traditional leaders and development agencies;
- run creative judicial interventions to challenge and expose the system and the legal edifice that perpetuates the system;
- move beyond the traditional ineffective and often dubious protest-oriented and monitoring approach to human rights strategies;
- present concrete alternatives grounded in people's needs and mobilisation towards sustainable solutions, to recharacterise the state and other duty-bearers, and renegotiate their engagement with the people. 



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EVA ROBLES

What is the problem with the concept of rights, what is it that allows it to be co-opted?

That's a complicated question. It's linked to the question of what's happening to the legal system. We used to be able to use the legal system as a weapon in our defence, but today we see it being used more and more to destroy collective rights and the rights of communities.

An example is what has happened in Mexico. The 1917 Constitution, adopted after the Revolution, responded to the concerns of the people and enshrined their right to their land, to their wish to have land seen as social property, whether in the form of the *ejido* [land held in common] or as an indigenous reserve. In the case of the indigenous communities, their right to hold communal goods

was recognised. This allowed the communities for many years to breathe freely and to work their land. But in 1992, Article 27 of the Constitution was amended, with important changes in the articles referring to land, forests and mining. Out of this amendment the New Agrarian Law was born, which in its turn led to the Programme for the Certification of *Ejido* Rights (PROCEDE). The official objective of this programme is to give "legal certainty" to members of the *ejidos* so that they have "full possession" of the land. In other words, it permits individual ownership of land. Later the Programme for the Certification of Communal Rights (PROCECOM), which applies the same mentality to indigenous land, was created. At the same time, the government changed laws governing the environment, water and mining, all in the sense of permitting greater private ownership.



The main decision-making power in both an *ejido* and an indigenous community lies with the assembly, which decides how land, water and forest should be used. But now, after the introduction of “full possession”, an individual can decide to sell or rent land or forest. This weakens the assembly, because it seriously erodes its powers. After a few years there is an increase in migration towards the urban areas or the United States, and a crisis erupts.

Why did people accept PROCEDE and PROCECOM?

People were deceived because the attorney-general in charge of agrarian matters told them that PROCEDE was a mechanism for resolving conflicts. They were told that it would bring security to their families, to the *ejido*, that it was nothing to do with selling land. They took at face value the government’s commitment to recognise their rights. They thought that, with the strengthening of their rights over their territories, they were going to be in a better position to resolve land conflicts and territorial disputes with neighbouring communities. But there are two parts to PROCEDE: the first part allows for the marking out of communal land; and the second permits individuals to have full property rights over their land. In other words, private property is permitted, individuals can sell their plots, and the assembly loses a lot of its power.

Afterwards, the government said the same thing about PROCECOM and people believed it. For instance, indigenous communities hadn’t managed to get the boundaries to their lands properly marked out and they thought that they would achieve this through PROCECOM. Even though many people warned them that it was a trick for privatising their land, the communities didn’t believe it. They put their trust in the strength of their assemblies. And the *ejidos*, some of which were already weakened, thought that they could use the new programme to regularise their situation and emerge stronger. But nothing worked out as they had hoped.

The pressure intensifies

Over the last few years, the effects have become very clear. For example, the communities have gone on holding assemblies, but today very few people attend them because they have lost so much of their power. In contrast, PROCEDE and PROCECOM have become far more efficient and work more quickly than in the past, because they have new instruments, like Global Positioning

System. At the same time, because of the free trade agreement with the USA, foreigners are showing more interest in investing in Mexico. So the World Bank is demanding “legal certainty”, saying that investors have to know who they are dealing with. If you negotiate with an assembly, they say, who is going to guarantee that the contract or agreement is honoured?

With all this, the pressure on the land and on the communities has intensified. The first phase of PROCEDE has ended and the government has begun a new campaign, trying to bring on board all those communities that so far refused to accept the programme. For example, even though it is supposed to be a voluntary programme, I know a community which government officials have visited eight times to try and get the assembly to accept PROCEDE. The officials insist and insist, promising to adapt the programme to the community’s needs and take out those aspects that the community dislikes. But when you look at the programmes later, you see that they haven’t been adapted and the promises were no more than lies to win people over. And little by little we see that what we were told was a “right” has become an obligation that is used against the community.

What role did the assemblies play in developing the capacity to say no?

The assemblies played a leading role. The *ejidos* and the communities that resisted were those that had the strongest assemblies, which met frequently and discussed the issues. It was these assemblies that showed most interest in discovering what PROCEDE was really about and publicised the idea that PROCEDE was about selling land and told people not to go into it.

What lessons can be learnt from this, particularly about strengthening future processes for recovering indigenous and peasant land?

The assemblies need to be strengthened and we need to develop and share tools for helping people to understand what is happening. In the old days we could use laws, if they were accompanied by social and political tools. But today that is not enough. Today laws are pushing everyone and everything into the market. They are even talking about the right of the community to sell everything – its culture, its territory, everything! It’s important that people become aware of what is happening. This means that people must meet a lot, study a lot and exchange ideas. Communities must also develop clear strategies. We must combat the divisions



that the authorities are creating by bribing us with money and powerful positions. So the people who still believe that we can live in a different way, in communities, need to get stronger. We have a big challenge ahead and we need to face it with imagination. We also need to show courage because the state institutions have been developing strategies to destroy communities, and they have dealt us heavy blows. We must create more collective bodies and be less trusting. We must also show more secrecy in developing our strategies, so that they are less vulnerable, and strengthen our collective processes until they become irreversible.


In the beginning, you said that the legal system doesn't recognise the rights of the people, especially their collective rights. What is the difference between collective rights and individual rights?

Individual rights can be rights that everyone has, such as human rights. Collective rights are those that a group of people has to decide how it wants to live, how it wants people to relate to each other. For example, a person can have the right to a piece of land on which to work and to live, but only a collective body, a community or a people, has the right to own that land and to decide what kind of life or civilisation should be practised on it.

Individual rights have no meaning if they don't have a collective expression. For example, the right to education doesn't make sense unless a people decides what kind of education it wants.

The right to territory isn't a property right, but the only way of getting legal recognition for territory is

by turning it into property. For many indigenous communities, the relationship they have with their territory goes far beyond legal recognition. This becomes obvious when you look at areas that are sacred for indigenous people but lie outside their legally recognised territory. If the Indians' ownership over these lands isn't recognised, these areas create permanent conflict: they are areas over which the indigenous people have no formal decision-making power, even though they hold them sacred. For capitalism, the only kind of relationship that is possible is through property rights. It is capitalism that converts people's rights and their relationship with territory into property rights, even though indigenous people have a far broader relationship with their territory.

For communities, territory can only be seen as a whole – what you do with respect to one aspect of it is going to have repercussions for the other aspects. Everything is related – the people, the plants, the forests, everything. Territory is the place where you can still decide how to live, what to do. And there you can't separate the forest from the water, the land from the rainfall, and none of this from the customs of the communities. For example, a Huichol Indian cannot spend more than two months away from his home because he has to practise certain ceremonies in sacred places and, if he is not at home, he can't do this and so he can't carry on with his life. It is clear that rights are linked to obligations. For the Wixaritari Indians the very purpose of their life is to care for the world, this is their obligation. And only after this will come rights and benefits, but always linked to more obligations. 



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EDMOND QUINSOU

If rights are badly defined, this will have serious consequences for mankind's relationship with fellow human beings and the environment, and, indeed, for everything that makes up society. Duties and responsibilities are intimately linked, but very often people from all sectors of society give undue emphasis to the "rights" side of the equation. This is particularly true with jurists, governments and regional intergovernmental organisations and

international organisations, such as the African Intellectual Property Organisation and the World Intellectual Property Organisation.

Moreover, all over the world, including Africa, the concept of rights has been assimilated within the concept of private property. This is serious, for African culture says that collective rights should take precedence over private and individual rights. Unfortunately, the political authorities do

not always take collective rights into account. In my opinion, this is because, in the decades since the Universal Declaration of Human Rights was imposed on the whole world, rights have been standardised, despite very diverse social, cultural and political realities.

Rights by themselves do not encapsulate all relations desired by humanity. Indeed, rights, which is a general concept, now covers both values that are useful to progress and the development of humanity and those that are harmful. Indeed, if we want to continue to fight for our rights, we must make a distinction between legitimate and illegitimate rights by assessing the contribution they make towards progress and the development of humanity.

To protect collective rights against exploitation by multinationals, people must be informed about their rights and duties, their obligations and those

of the multinationals, within the framework of a win-win social partnership. Each member of society should be taught about this so that social relations can be established on a healthy basis.

Where I live, traditional standards are imposed by private rules. The individual belongs to a family, which is part of a social group, which is, in its turn, an integral part of the community governed by a very precise system of values and standards.

Individuals develop by stages and, at each stage, they have rights, obligations and duties to other members of the community. It is a pre-established system that is accepted by all members of society. But these days modernity and its corollary, “development”, have introduced other ideas and concepts that make it difficult to apply the traditional system of regulating society in Benin and Africa.



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LOUIS TOVIOUDJI

Some professions, such as sculpture and basket-making, which are exercised only within a family or group, or a certain community, may use particular species of plants. They have a monopoly of production and never reveal their secrets. People hand down this jealously guarded right to their children, grandchildren and great-grandchildren.

In our various traditional and even modern societies, the preservation of rights is dependent on the exercise of discretion, which means that you do not copy what another person does unless they give you the “right” to do so. A sale of rights, accompanied by a blessing, then takes place. In the herbal medicine we practise in Benin, everything is negotiated at a price (with payment in alcohol, money, cloth or other goods) and the beneficiary has an obligation to pay. That is why, in order to protect their place in society, almost all inventors do not divulge their secrets, because they don’t want everything stolen or available to everyone. If you feel exploited or dispossessed of your goods or knowledge, and believe that someone else is profiting without any consideration for you, then you feel a sense of indignation. This degrades the relationship with regard to rights.

Singer-composers with a gift or a talent have often been exploited. People with financial resources pay them next to nothing or give them objects of little importance (T-shirt, alcohol or whatever) for their work and then sell on their work at a high price. It is easy to spot the pirates and the traders who take advantage of the singer-composers and exploit their work on the commercial market.

The right to exchange seeds

As for the peasants and farmers here in Avrankou and in the district as a whole, the question of the right to seeds is not an issue. No particular place and no single ethnic group has the right to the exclusive ownership of seeds. Different seeds are grown in different regions, and these must be allowed to be exchanged freely or given as a gift. The crops grown here are maize, manioc, groundnuts, sweet potato and beans.

Each socio-professional group (peasants, fishers, hunters, livestock raisers, traditional healers and so on) should meet to think through the problem of property rights in their particular sector. Then all producers should come together and work out their position collectively.



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Houédassi Kounagbodé

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HOUÉDASSI KOUNAGBODÉ, TÉTÉDÉ OGOUTOLÉ, JEANNE HOUETO

Rights for us is linked to our need to protect our way of life. If we are to preserve our biodiversity and our traditional knowledge, we must go on preserving our seeds. There are all sorts of ways of preserving seeds – in bottles, in nurseries, on the roofs of houses or above kitchen fires.

We follow very strict rules with respect to produce stored from the harvest. For example, we must not pass the light of a lantern above maize and beans. If we don't respect this rule, we will have weevil infestations. Products made from processing crops are also subject to certain rules. Palm oil from the fruit of the palm tree [*Elaeis guineensis*] will go rancid if a person who has not washed after attending a funeral comes near.

We have other customary practices and community rules that contribute to the preservation of the genetic diversity of foods. These include:

- **Offering the new yam to the Vodoun fetishes.** The first member of a family to see a new yam in the market must buy it to offer to all the family's Vodoun fetishes. Even those who have converted to Catholicism and no longer worship the Vodoun contribute in this way and buy yam tubers. This traditional practice must be followed before eating yams from the new crop. Failure to observe this ancestral customary practice may cause children to become ill, especially with fever. Sometimes festivities are organised when the offering is made.
- **Annual festivities of the Oro (in Nagot) or Olo (in Torrigbé) fetish.** These take place every year, more or less in the same period – July or August. They always involve the preparation of dishes using beans and yams from the first harvest of the year. Each hamlet provides some tubers and a certain quantity of bean seeds. The festivities include felling trees and playing music in the local style, which may be high-pitched, deep or very deep, and are especially common in south-east Benin.
- **Traditional baptism: Djèdoudou.** This ceremony requires the use of a species of carp (*Melanocarpa*) – known locally as djènoufè – salt, palm oil, maize, beans and yams. Just a taste of salt is placed in the mouth of the mother and the newborn child along with a dry leaf from a ronier palm. This is repeated seven times for a baby girl, nine times for a boy.
- **Birth of twins: Akantountoun.** The birth of twins requires the mother to stop all economic and social activity for three months. Festivities are organised at the end of this period, at which point she will be allowed to resume her activities. This ceremony requires the purchase of mutton and chickens in cages. During the ceremony, the mother of the twins makes an official visit to the market, with special clothes and gourds containing certain foods on her head. The width of the gourd indicates how well she has been looked after by her husband and in-laws.
- **Annual ceremonies: Hounhouè.** These are celebrated by each clan or tribe: for example, the Wètonoun, the Dowènoun, the Houhouènoun, the Azowènoun, and so on. These ceremonies always use beans and yams. Each clan or tribe is autonomous and decides independently on what date to have the Hounhouè festivities. If by chance there is a clash of dates, the clans reach an agreement to change some of them. This organisational precaution allows members of each clan to participate in others' festivities.
- **The Ogou (God of iron) ceremony.** Ogou ceremonies are held if someone is killed in a road accident. In this region, if someone who has died in a road accident is buried without this ceremony taking place, the soul of the dead person does not rest in peace and will disturb the peace of their family. The Ogou festivities require the purchase of a goat, chickens in cages, beans and yams. Yams and beans are the most important foods in all these local ceremonies.




- Theft prevention: To stop our crops being stolen in the fields, Vodoun statues are placed there. Anyone stealing crops in the presence of the Vodoun is cursed and will fall ill, and babies born just after the theft will have birth defects.

The multinationals cannot dispossess us of our traditional seeds and we will always plant our own seeds in accordance with our traditional practices, and no one is able to prevent us from doing that.

Additional contributions

Houédassi Kounagbodé and Tétédé Ogoutolé Adékou: “The world is changing and we no longer live in the world our ancestors knew. Traditional rules are often no longer observed, for different reasons. In past times, nobody bought seeds. We

exchanged them among ourselves. This practice is tending to disappear and we are forced to buy seeds.”

Tétédé Ogoutolé Adékou: “We have to recognise that cultural practices influence how long harvests can be preserved. Where I live, in Ifangni, we do not use fertilisers, and seeds and food staples last longer than here. Peasants, friends and relations still exchange seeds. That is the case where I live. Better still, if you are hungry, where I live, you can go into any field that has ripe crops (maize, yams, manioc and so on) and take what you need to satisfy your hunger. You can sit down on the edge of the field and prepare the food there and then. Nagot society authorises you to do this. Even if the owner finds you in his field, he will say nothing to you. He may even share your meal in a fraternal way.” 

M. Dodou Koudafokè belongs to an association that brings together traditional healers from four villages (Ouanho, Tchakla, Gbakpo and Hèhoun) in the district of Avrankou in south-east Benin.



DODOU KOUDAFOKÈ

We are not directly involved in the discussion on rights. The political authorities in Cotonou work on this but they come with white people to consult us about their work. Intellectuals who understand French are the ones who conduct the theoretical debate on the concept of rights.

As in other parts of the country, the land in our village has been parcelled up into plots, and the risk that some medicinal plants will disappear has led traditional healers to start botanical gardens at village, commune and department levels, with the support of the political authorities. The latter have associated this initiative with local community literacy programmes. As a result of these programmes, there are now traditional healers who read and write Torrigbé or Goungbé [languages spoken in Benin] very well.

Parents pass traditional knowledge on to their children. The holders of traditional knowledge used to keep that knowledge secret and were afraid of passing it on, fearing that it would become public knowledge. That is no longer the case today.

Some healers even give out recipes on the radio. These, however, are often false healers.

One of the endogenous strategies to preserve traditional knowledge about medicinal plants is through Vodoun, the traditional religion of Benin. In the past, some medicinal plants were found only in certain Vodoun temples. That is not very common these days. Such plants can be found in the fields, or in the bush and the remaining forests. Some serious illnesses need treatment associated with Vodoun practices. But it is necessary to disassociate the use of medicinal plants from the practices of Vodoun. If a sick person is a Christian or a Muslim and does not believe in Vodoun, healers may still use these plants.

Each traditional healer has a specific skill. Even though they may be able to cure several illnesses, each has his or her own area of expertise, which is known and recognised by other healers and members of the community. So there are healers for epilepsy, tuberculosis, gynaecological problems, difficult pregnancies, and so on. These skills are also inherited by their children. Through associations of traditional healers and those practising divination,



we participate in meetings with colleagues from other villages at departmental and national levels. But we have to recognise that modern times and the introduction of French schools into our country have changed these social values.

Misappropriation of plants

We have no power to deal with the activities of multinationals in our region. Only intellectuals can defend us, because we are powerless in the face of these people. Sometimes the whites come to search for our medicinal plants, which they take away, and then come back with pills made from the plants, which they sell to us for a lot of money in the chemist. We are often asked through our traditional healers' associations to grow specific plants for export. Some traditional healers are quick to accept in order to feed themselves, but others systematically refuse to do so in order to not divulge and sell off cheaply our ancestral knowledge. These different responses often cause open conflict within associations or between associations, with bitter quarrels and even death threats.

Whatever happens, traditional knowledge will not disappear. We are the guarantors and guardians of the knowledge we inherited from our parents. We are in the process of passing it on to our children, even those who go to schools run by whites. I hope such knowledge is always present in our societies. I also teach the children strict respect for the truth. You need to have the humility to say what you can heal and what you cannot.

If children listen to their parents and act accordingly, we will overcome the multinationals, first at the national level, then at the local level. The multinationals always use Benin citizens to make contact with healers and to search for medicinal plants

In order to maintain traditional knowledge effectively, we need to hold meetings in each village and district to decide what attitude to take. Unfortunately, the lure of easy money means that the position taken in one district may differ from that in another, and this makes it difficult to reach a decision at the departmental or national level.



M. Honguè Koudafokè is the brother of M. Dodou Koudafokè. He is also a traditional healer and lives in the village of Ouanho, Benin.

HONGUÈ KOUDAFOKÈ

If rights are not properly defined, humanity will be committing a crime without knowing it. We must not allow rights to be subordinated to property, because this would mean a return to the way white colonialists used to exploit us. Defining rights in the way outside powers wish is a way of keeping Africa underdeveloped, and their definitions do not accord with reality or with the wishes of the people. It is only legislators, serving their own interests, who want rights defined this way. Multinational companies get access to our country's resources through their influence over our authorities. We must be united and press for our countries to be independent financially from the colonists, because only then might we be able to achieve something.

We can protect our resources in our own way. We can plant the seeds of useful plants, and look after plants that are in danger of disappearing. We have

forestry workers protecting natural resources and preserving our sacred and traditional forests. We must record our knowledge in our notebooks and pass it on to young people. We must take care of our relationship with young people because these days many no longer like to listen to older people, and they are unaware of the value of knowledge.

So what is the way forward? We need to raise people's awareness and encourage them to revolt against outside domination. It is not easy because there is no shortage of traitors among our number. Each family and each community must continue with their own practices. We must combat ignorance and continue with our ceremonies that celebrate haricot beans and yams. We must monitor our traditional practices, because some young people use Vodoun to do harm. We must make sure that traditional healing continues to be a profitable business, just as it was in the past. We must be self-sufficient and take care of our resources.



Nestor Mahinou is the executive secretary of Synergie Paysanne (Peasant Synergy), a peasant farmers' trade union in Benin.



NESTOR MAHINOU

In the name of liberalism and globalisation, what we are seeing today is centralised control of all that we usually call “goods”, whether they are owned collectively or individually. The freedom to believe, to learn and to share with others is diminishing and we are losing the capacity to live without the multinationals. They control everything, including our food supply. At the heart of this control lies a set of property “rights”, patents and other registered trademarks.

Property rights pound traditional practices

All this is the prerogative of those enterprises and companies that invest in new technology, which gives a pounding to our traditional practices, standards and customs. In fact, we have a right in our country to have healers with recipes and formulas to treat illnesses. Although healers have this knowledge, they do not hesitate to pass it on to their children, friends and relations. They may exchange it for goods or money, but in all cases there is a respect for hierarchy.

The same system operates for the peasant who selects his own varieties of seeds. He shares them with his neighbours and does not claim any rights of invention. The same is true of a craftsman who innovates when he makes a piece of furniture. They are the property of everybody, a common good.


However, when a company creates a hybrid variety that is more resistant, can be harvested earlier or

has a high yield, the farmer must pay to plant the hybrid and faces restrictions on its use. This is extremely harmful, because it curtails the farmer's freedom, makes it impossible to innovate, and harms the local culture. It prevents users, consumers and peasants from doing what they want with the creative work done by other people.

The right to intellectual property is now the main source of profit in what we could call the economy of knowledge. We must fight such practices; consumers, producers and users must feel free to adopt or reject any new invention. What is involved is the right of farmers, healers and other users of public goods to choose what they do with collective goods.

Maximising peasant strength

What we need is a peasant organisation that allows us to maximise our collective strength and enables us to have control over and access to agricultural biodiversity. We need to continue to develop agricultural systems that respect the environment and human health. If we accept a bad definition of the concept of rights, our legitimate right of access to natural resources will come to an end.

Companies must not be allowed to appropriate our rights through patents. It is therefore imperative to establish rules that protect indigenous wealth and knowledge. We must be able to codify these rules to ensure that farmers maintain their true rights, such as the freedom to keep and share seeds. 

Farhad Mazhar is a leading member of Bangladesh's Nayakrishi Andolon (New Agricultural Movement), which practises and promotes biodiversity-based ecological agriculture.



FARHAD MAZHAR

Any discourse of “rights” presupposes an autonomous and egocentric subject. In contrast, Nayakrishi Andolon is concerned not with “persons” or fictitious subjects endowed with “rights”, who exist outside society or the community, but with “relations”. A social

formation, including its political structure, is composed of the totality of concrete relations – ecological, economic, cultural, political, and so on – upon which the community is organised. Given the present as it is, Nayakrishi explores the possibility of creating the conditions for joyful relations. Strategically, it would like to engage in



tasks that may reveal a particular but determining relation in a historically specific context that in turn determines all other relations or edifices of a society and state.

We think that, in Bangladesh, agriculture is the site where we should explore this relation, and our strategic political activity takes place around seed and genetic resources. Understanding seed as the point at which various ecological, economic, social, political and cultural relations culminate is crucial for our work. Seed is also a powerful metaphor, and it opens up new horizons to explore relations. As a very first step, simply from a common-sense perspective, Nayakrishi is critical of organising society around egocentric assertions and privileging the individual over and against the community or nature. Therefore we reject all uncritical discourses of rights that knowingly or unknowingly promote fictitious and autonomous subjects and that locate the essence of personhood in the privatisation and colonisation of nature, resources and knowledge, thus breeding violent competition that culminates in war and destruction.

“Rights” not translatable

Interestingly, in the Bangla language we do not have any word like “rights” – it is translated as “*odhikar*”, which is Sanskrit, rather than Bangla. The absence of such a word or concept implies either that the society is organised around different principles, in contrast with the generalised egocentrism of capitalist formations, or that egocentrism is still not the general foundation of the society. Since Nayakrishi intends to ground itself on the history and culture of Bengal, we had to research the unique foundations of our communities and explore their possibilities in the era of predatory globalisation. If our societies were simply forms of pre-capitalist societies, implying a stage of underdeveloped egocentrism, we would still need to deconstruct this ego in order to deal with the predatory nature of the “self”, which views the world only as an object of consumption and appropriation, and reduces other human beings simply to means to satisfy needs and desires.

While we had no word for “rights”, we have words such as “*daiy*” (obligation) and “*daya*” (caring for the other) and, taking into account other historical, anthropological and cultural data, we concluded that the culture we inherit gives greater importance to our obligation to care for others than to rights. But we have a problem too, for the caring and the obligations towards others could also become

oppressive if it is reduced to a mechanical and lifeless relation.

Therefore, rather than looking for notions similar to rights, we need to search our history for the discourses that people in our past used to organise themselves against oppression. What did they imply by the slogans and notions they developed during their struggles? If people organised socially, politically or culturally, there must have been notions to indicate who was the oppressor and who was oppressed and what they meant when they said that they wanted to be free from oppression.

When we studied the history, we noticed that there were “modernist” trends that could be called “political discourses of rights”, but these were quite recent, taking shape mainly during the colonial period. There were also other powerful trends that could be classified as a “political discourse of responsibility”, which can be traced back to the past, mainly to the Buddhist phase of Bengal, though it also flourished during the “Sultani Amal” – or Muslim periods of sultans. Various spiritual-political movements demanding submission of the self to all-encompassing Nature, or to her playful relation (‘Lila’) manifesting as Subject and the Object – the human being and the material world – anticipated a possibility of cultivating relations that are not predatory, where one domineers over the other. Such ideas can be located in the ancient Hindi Nathpanthi poets, in the Bengali Hindu tradition of Sahajiya Vaishnavism, in Muslim Sufi traditions, and so on. One notices a creative intermingling of Hinduism, Buddhism and Islam shaping the minds of the people of Bengal; this was later derailed by colonialism and subsequently by the ideas of modernity, “development” and technology. Interestingly, while the political discourse of rights does not include responsibility as an integral component, the discourses related to the politics of responsibility are actually grounded on the idea of “rights” as free will or the unconditioned freedom of the spiritual being of the individual.

Integrate the whole being

Such discourses are abundant in Hindu Bhakti and Muslim Sufi movements – the varied spiritual traditions of Bengal, particularly those that stand politically, socially and culturally against caste, class, patriarchy or, for that matter, any form of predatory, oppressive or violent relation. The concept of freedom in these discourses can be summarised as follows: freedom of the spirit is experienced by its capacity to stand above predatory, oppressive or violent relations to another, and thus



the relation appears in an experience of Ananda (joy), reaffirming freedom in a concrete reciprocal relation, and not as an abstract notion or fictitious state of mind of an autonomous subject. But such a capacity can be achieved only if we learn and develop all our human faculties simultaneously. If our intellect or reason is developed alone, while emotion, affection and love are lacking, we cannot resolve predatory, oppressive or violent relations. Similarly, if among our senses only the eyes dominate, while other senses, such as our olfactory, tactile, auditory or gustatory capacities, are degraded, we will physically lose the capacity to enjoy our “body”, which is the same thing as the spirit. There is no spirit outside the body. No body without spirit. This simultaneous cultivation of all the faculties of the body is known as “Shahaj”. So Nayakrishi adopted the principle, which is now well known: the “Shahaj way to Ananda”.

These discourses achieved their highest expressions in the songs of Fakir Lalon Shah, who is not from the distant past, but a thinker of recent times. He is unique in many ways. Experiencing the joy of the free being is for him the capacity to undertake absolute responsibility, the capacity of the supreme being to be a dash (slave). Spirit is truly free when it wilfully employs freedom for the good of others. Wilfully becoming a “slave” to the community is a capacity that belongs to the higher spiritual order of an individual. In Lalon’s songs one gets suggestions that people who are capable of becoming the “slave” of the community are those who are totally and absolutely free in the first place. It is this that he is referring to in his song: “I wish to be the slave of my Guru and through Guru I am obliged to the world – animate or inanimate, life or not-life”. He is, in fact, celebrating the spirit as the supreme freedom to undertake absolute obligation and thus to become the caretaker of the world. “Right” here appears not as the rights of the individual as against the community or others, but the right to experience the supreme joy of the free spirit, which can do nothing else but show absolute obligation to the other – to the community, to nature at large, and so on.

If one reads Lalon politically, one will readily understand that he is indeed overturning the prevalent notion of dash – the lower caste of the community who have no rights but only obligations to the upper castes. He is the philosopher of the “dalits” and rejects the master’s narrative in order to demonstrate the higher spiritual order of the dash or dalits. This is extremely significant, for otherwise one cannot understand why in Bengal the anti-caste movement has always essentially

been a spiritual (Bhakti–Sufi) movement and why Islam could easily find a fertile bed in which to spread here. Since dalits were already powerful in political and philosophical movements, Islam (mainly Sufis) had ready ground to win. Needless to say, Islam does not subscribe to slavery or the caste system.

Nayakrishi Andolon as a peasant movement had to reckon with the peasants’ spiritual and political history. Grounding in our language and culture is necessary, not because Bengali culture is uncritically superior to European cultures, but because the capitalist world order has either destroyed or is in the process of destroying these elements, and without them we cannot globally imagine a post-imperial, post-capitalist world order. We need to recollect, invent and organise our language and discourse to develop a viable politics against the Empire.

Mutual obligation

So the dominant discourses of rights create serious problems for Nayakrishi Andolon. Its intimate corollary – obligations and responsibility – is also a problematic area, since it articulates the deficit in the original notion of rights in order to retain the privileged position of rights. This is the reason why obligations and responsibility are not posited first as independent of rights, but only in conjunction with rights, for example in the phrase “rights and responsibilities”. In contrast, Nayakrishi would like to explore the relation of obligation to the other – human beings and the non-human world – in order to experience real joy in life and in order to create the possibility of a post-imperial and post-capitalist global order. Nevertheless, we will have to demonstrate in practical terms what it implies when we say we promote the Shahaj way to Ananda. This demonstration must first be revealed in our lifestyles, in our food systems, the clothes we wear, the friendships we make, and the literature, poetry and imagination we cultivate. Whether human beings are violent by nature, or their private property is essential to manifest their personhood: these things are irrelevant to us to the extent that the task is not simply to explain what we are, but where we would like to go.

The notion of “rights” is inseparable from the history of “property” or privatisation of nature, resources, processes, knowledge, and so on, for appropriation, consumption and control by the powerful, who can take possession of objects by force, excluding others. In the global capitalist or imperialist order, the historically specific juridical



relation of “rights” can be nothing other than the rights of corporations as legal persons competing against the fictitious abstract persons constructed by the discourses of private property. The debate over property relations in general and intellectual property rights in particular hinges upon these juridical implications.

This explains why the juridical notion and practice of “rights” is absolutely integral to the imperial world order and necessary for the abstract self-expansion and accumulation of capital as against the particularities of real life. Ecological movements that would like to see the flourishing of human possibilities cannot but oppose such a juridical notion. The claim that communities can benefit if intellectual property rights are allowed to govern seed and genetic resources is flawed. The claim that farmers should, like corporations, have the “right” to patent their seeds and knowledge is based on an uncritical understanding of the abstract juridical notion of “rights”.

Against this trend, Nayakrishi’s position is neither juridical nor “closed”. It is surprisingly simple. The position we have adopted came from the farmers – particularly women farmers, who first coined the simple but effective slogan of the movement: “Sisters, keep seeds in your hand”. Keeping seed “in the hands of farmer women” is not a property relation or a juridical proposition. It is a demand for power.

Nayakrishi Andolon is aware that what we are indeed discussing is a battle, not for “rights” or “property”, but for power, a battle between corporations and the people of the world. Once the people of the world are united to create alternative power we will be able to go beyond the present phase of capitalist history and reveal the joy that is possible in community and global relations. From the perspective of the Shahaj way to Ananda, “rights” and “persons” are only a passing phase of history, and we should engage politically to make this phase as short as possible.



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TERRY BOEHM

Rights have historically been both a defensive response to power and a tool to impose power structures. The “divine rights of kings” is as an example of the latter. In Western societies, movements for “no taxation without representation” have been examples of the former.

What is critical is not just the intent of rights but their definition and construction, coupled with mechanisms that allow rights to be exercised with their true intent. This also creates obligations for those who hold certain rights to participate and exercise them. Voting rights come rapidly to mind in this regard. One has to make a distinction between rights that are societal (democratic, human, and so on) and those constructed to protect property or commercial gain. At the level of the nation state, constitutions have been carefully constructed to protect democratic rights. At the international level, nation states have been ceding their sovereign rights to international corporations, either by coercion or duplicity. These states willingly give their resources and sovereignty to private entities when the public

good becomes defined as anything that promotes private economic gain. This is largely due to the acceptance of property rights being established over an increasing dominion and the belief that there are no alternatives.

Areas such as seeds become subject to international constructs such as the International Union for the Protection of New Varieties of Plants (UPOV), Trade-Related Intellectual Property Rights (TRIPS), and the World Intellectual Property Organisation (WIPO), which are endorsed and enforced by the nation state. Increasingly, there is a shift where all decisions incorporate a “market” component, and rights become characterised by property and trade relations rather than custom and tradition. Ultimately, the fight for rights has become reactionary, a form of resistance necessitated by commercial control.

There is an inherent association between the word “right” and justice. So even intellectual property rights benefit from this implicit assumption on the surface.



The rule known as UPOV '91 plays this dichotomy out with the market-based philosophy of breeders needing to be compensated through cascading rights (the right to collect compensation beyond simple seed sales at all points in processing or crop production), while at the same time offering the so-called "Farmers' Right or Privilege" to save and re-use seed. This right is effectively negated by the breeders' ability to control the stocking (storing) and conditioning (cleaning) of seed. A farmer who can neither store his seed nor have it cleaned essentially has nothing suitable to plant. His "right" is extinguished.

Carry on sharing

So how does one create options and protect biodiversity when rights regimes are so easily compromised? I think the fundamental requirement is to reject all international agreements such as UPOV and TRIPS, which commodify the public space. This can be done by behaving as farmers have always done, by saving, exchanging, and selling seeds so as to make these agreements unenforceable. Important work at a national level is to break international monopolies or oligopolies through calls for anti-trust legislation. A century ago in the US, Carnegie Steel and Standard Oil

were each dismantled because it was not in the public interest to have a single company dominate a basic resource. Now we have international firms that dwarf these former conglomerates. Turning everything into property seems to create economic activity out of thin air, but the costs of this are huge. We can no longer allow our environment to be defined by marketable property. We are confronted by the Tragedy of the Private! In the western context one needs to reframe debate away from private economic growth to asking repeatedly who the real beneficiaries are of any programme or direction.

Sharing resources, genetic or otherwise, can be selective only when people have time to debate the merits and know that when a resource is shared, a future exchange is expected without it being sold back via IPRs. Biological controls and Genetic Use Restriction Technologies (GURTS) present another challenge from contract law and other jurisprudence, and these must be banned at all levels to ensure that they do not become the next stage of property control. The rights-based approach can succeed only when the power structures that seek to privatise and enrich themselves are sufficiently weakened and controlled. Rights alone, no matter how carefully crafted, will not stop the negative outcomes we are seeing.



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RADHA D'SOUZA

Before we look at the problems associated with "rights" it is important to understand what the word means, not least because it means different things to different people at different times. "Rights" are commonly understood to mean entitlements to do or not do something, and for others to respect that entitlement. Social justice activists often believe that the corollary of "rights" is obligations and responsibilities, and that social injustices exist not because of problems with the concept of "rights" as such but because the concomitant of "rights" – "obligations" and "responsibilities" – have been erased from our

thinking and from debates about "rights". These beliefs are based on misunderstandings of the real nature of "rights". The misunderstandings arise partly because "rights" are a philosophical, political and juridical idea, and the concept and its meanings in philosophy, political theory and law are not the same. Confusions arise because the three overlapping fields are used interchangeably in different contexts.

In part, misunderstandings about "rights" persist within social justice movements because they have forgotten the history of "rights" and the critique of "rights" by revolutionary thinkers of

the late nineteenth and early twentieth centuries, and the political programmes of the successful movements for socialism and national liberation struggles to alter the nature of "rights". As a result, social movements, instead of learning from and developing those revolutionary experiences, have discarded the history of struggles against "rights" and feel frustrated that "rights" do not work, but have nothing to offer beyond "rights". If we wish to move forward, it is important therefore to grasp the concept of "rights", its history and the critique of "rights" by radical movements of working people in the past.

It may be noted that the concept of "rights" is peculiar to Greco-Roman civilisations, but its history need not concern us here except to note that the philosophical concept was an objective concept associated with ethical and moral ideas of what is right or wrong. As all human beings are required to do "right" and abstain from doing "wrong", the philosophical concept was supposed to guide people in "right" actions.

Philosophers of capitalism

The philosophers of capitalism in the eighteenth and nineteenth centuries radically transformed the classical idea of "rights" into a subjective political idea attached to individuals who became "right bearers" vis-à-vis the state and society. The idea of "rights" was transformed into "freedom from state" and social constraints. As such, the corollary of "rights" is "freedom", "choice" and absence of restraint. Today, the philosophical idea of "rights" exists at best as a moral ideal because the political philosophers of capitalism have put rights on a different institutional and juridical foundation. When social justice activists speak of "rights" they have in mind this classical ideal, but often it is forgotten that the institutional and legal basis for objective "rights" do not exist any more.

Capitalism developed the idea of "rights" to new levels by introducing two components that radically altered the nature of "rights". First, philosophers of capitalism introduced the novel idea that property was a natural and inalienable right attached to every person in the same way as life, and the conditions that sustain life: air, water and food. Second, "rights" were articulated as negative juridical concepts, in that "rights" only guarantee the possibility of something, not the actual thing. Thus the right to collective bargaining creates the possibility of a living wage but does not guarantee a living wage; the right to property makes it possible

to own a home but does not promise everyone a house to live in.

It is therefore wrong to think that through default, somehow, "rights" have come to be equated with property rights. "Rights" in its modern form and as a political idea owes its very existence to property rights, and is inseparable from it; and the concomitant idea of freedom is about freedom to own and accumulate property without interference from the state. Circumscribing property rights for social purposes does not take away its primacy in the political and legal order. Capitalism will be impossible if property rights are taken out of the scope of "rights".

The revolutionary critique

Revolutionary social movements of the early twentieth century advanced three main philosophical criticisms against "rights", which are still valid. First, the "empty shell" argument: liberal rights are negative endowments that promise the possibility of, but do not create the conditions for, their fulfilment. Second, that any talk of "rights" in politics must be backed by an economic system that facilitates it, and capitalist individualism, commodity production and market economy do not create the conditions for freedom from want and other freedoms; to the contrary they create bondage and oppression. Third, the "means to an end" argument: "rights" free labouring people from feudal obligations and old forms of oppression (caste, gender, and so on) and allow limited political space for organised dissent, which is useful not for its own sake but only if people actually organise themselves to create the conditions for real freedoms.

Socialist revolutions of the early twentieth century extended the philosophical critique to the political arena and removed property from the idea of "rights" and tried to infuse the idea of "rights" with positive substance, so that the right to a job meant that everyone should have a job, not just the possibility of finding a job; the right to education meant that schools should be free so that every child could go to one, and not just the possibility of education for those who could afford it, or those supported by charities.

Given this backdrop, is fighting for "rights" the road to follow? To say yes is effectively to go backwards in history or to argue, as some modern-day philosophers of capitalism such as Francis Fukuyama argue, that there is no alternative to liberalism in philosophy, politics and law, the



foundations of which stand on the idea of “rights”. For emancipatory social movements, a more useful way of understanding the question of “rights” would be to interrogate critically the *return* of the “rights” discourse in the contemporary context of neo-liberalism. The socialist and national liberation struggles articulated and attempted to achieve “human emancipation” and “liberation” from oppression, not “rights”. Neo-liberalism claims legitimacy on the grounds that this aspiration can no longer be fulfilled because socialism has been defeated. The real question then is: are we willing to concede the hope of human emancipation to “empty shell” possibilities of “rights” based on the primacy of property, which very few possess? Are we ready to concede that liberation from oppression is not possible because the economic system cannot be changed?

Limits of statute law

Turning to law, legal theorists, following in the footsteps of political theorists of capitalism, developed legal principles and innovated institutional mechanisms that sustain capitalism. The most significant legal development was the idea of statute law, by which we mean different Acts of legislature on different social issues enforced by a court system backed by police powers. This form of law, which most people today think is “natural”, as if that is how law has always been, came into existence only with capitalism, and is far from being “the way law has always been”. Under statute law, each aspect of social life is cast into a distinct legislation or statute which makes it difficult to envisage the social whole. What one statute gives another can take away. For example, a statute may provide for a minimum wage, but if prices go up as a result and cancel out the wage gains, that is not an issue that can be addressed within the scope of the minimum-wage legislation. A statute may grant the “right” to education, but treasury and fiscal management rules may simultaneously require cuts in spending. “Choice” then is limited to whether we allow budget cuts to affect the “right” to education or some other “right”, like health for example.

Socialist movements, while strong on philosophical critique and political action, were weakest in legal development and institutional innovation. If we wish to advance, and not go backwards, we need to rethink how we can recover the gains made by liberation struggles, what the weaknesses of those struggles were, why working people everywhere lost, and how we can regain the ground and consolidate the gains when they are recovered.

Those who say there is no alternative to “rights” do so by forgetting the history of struggles against “rights”, and implicitly deny the possibility of emancipation and liberation.

Five themes

Social justice movements need to reflect on five broad themes in relation to “rights”. The first and most important is what may be called the “colonial question”. Neither liberal theory, nor politics, nor law extended “rights” to colonial subjects in the colonial era. Although based on liberal ideas and “rights” talk, the power structures of the post World Wars world privileged the victors, primarily the Allies, whether it be through the United Nations Security Council veto, or the weighted voting rights in the World Bank and the International Monetary Fund, or the dispute resolution mechanisms in organisations like the World Trade Organisation. The UN Charter by institutionalising and privileging the “rights” of the Allies and the victors in the Second World War, has perpetuated neo-colonialism, poverty and wars. Without challenging the constitution of the UN, any “rights” talk at nation-state level today is a non-starter. The “colonial question” in the neo-liberal era is a philosophical and political question, and it is not possible to find a juridical solution to a more fundamental problem of our times, as many social justice movements try to do when they advocate “rights” as the solution. Besides, the legal systems in “Third World” countries by and large were created by colonial powers and remain neo-colonial institutions. To speak of juridical ideas of “public goods” and “commons” and “community” without evaluating how their social substance has been warped by imperialism past and present is to insist on confusing appearance with reality.

Second, the impulse for “rights” talk today is largely driven by environmental questions, and is primarily about extending private property regimes to aspects of nature and natural resources, something that was impossible before but made possible today by technology. For example, water was attached to land rights until technology made it possible to separate water from land and deliver it across continents, a development that required legal and institutional innovation.

Third, while the political idea of “rights” promotes the idea of equal opportunities for all, the juridical idea rests on the foundational myth that the “corporate person” stands on the same footing as the “natural person”. The size and reach of corporations today are vastly different from what



they were in the eighteenth or nineteenth centuries, and make the legal myth of the corporate person an absurdity. The real issue is whether “rights” claimed for the natural person can be extended to corporations. Cracking the juridical myth on which modern society is founded is a task that needs to be taken more seriously and fleshed out programmatically in politics.

Fourth, capitalism has transformed the structure of communities. Communities too are formed on market principles based on common “interests” in the market-place, and not allegiance to “people in places”. For example, a person joins a trade union because of common interest with others in the labour market, and joins a consumer organisation because of common interest in commodity prices, and joins a “water rights” movement because of interest in water, and so on. Interest-based communities alter the character of “rights” in fundamental ways. As each interest is governed by a different statute law enforced by a different set of institutions, it is no longer possible to find institutional and legal recognition of “people-in-places”, whose well-being requires the convergence of several interests.

It is sometimes argued that, notwithstanding all of the above, it is possible to create parallel enclaves where indigenous communities and knowledge flourish. This may be possible in the short term, but not in the long term, because imperialism is capitalism plus militarism, and both are by their very nature expansionist. Customs and traditions grow from economic and production relations. Colonialism arrogated to itself power over

economic relationships and allowed “freedom” for cultural practices whether in the economy or society, as if tradition could exist without economic foundations. By doing that, imperialism appropriated the productivity and social stability following from the space provided for customary knowledge and practices. To insist on “customary rights” without considering the imperialist context and colonial history within which it survives is only to insist on being blind.

Fifth, there are three interrelated battlegrounds on which movements desirous of human emancipation must fight: the philosophical, the political and the economic. Each of these involves very different types of struggle, and yet emancipation is impossible without fighting on all three fronts. Of the three, economic struggles were prominent in the Cold War era; the end of the Cold War has seen the return of political struggles, and on both fronts emancipatory movements have gained considerable experiences and successes everywhere. On the philosophical front, emancipatory movements have more or less abandoned the field; and the conundrum of “rights” exemplifies this failure. Dismissed by social justice movements as “too academic” or irrelevant or simply talk-shops, and sometimes, sadly, with contempt for people’s intellectual capabilities – evidenced by arguments like “ordinary people will not understand philosophical issues” – abandoning this field of struggle is an important reason why emancipatory movements have become stuck in conceptual grooves. This is a problem in its own right for those who wish to get to the bottom of the “rights” conundrum.



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MARIA FERNANDA VALLEJO

One problem that we face today in the struggle for rights is that the conflict takes place within a political and legal structure controlled by the hegemonic neo-liberal state. So within the conflict it is never possible to question the legitimacy of this structure, because, even when the powerful are pushed on to the defensive and are forced to recognise rights, they still control the parameters within which the struggle occurs. I am not saying that it is wrong to

struggle for rights within a determined power structure, because this can be a way of accumulating experience and strength, but this is not an arena where one will really win rights. Real rights have to be exercised; they have to be lived.

I see the demand for rights as a tool, or part of the road along which communities learn to exercise autonomy, to form alliances and to change the relations of force. Gaining awareness is of fundamental importance, because this makes it

possible for you to identify the space where you can resist. It allows you to exercise certain minimum rights, even knowing that you will never be able to realise them fully. For example, you can refuse GM crops, or refuse to produce cash crops for the market, or to give up subsistence agriculture. And these small victories can become tools in the development of new demands and the exercise of new rights. For example, the International Labour Organisation convention delivers very little in terms of collective rights for indigenous groups but, by taking advantage of these limited rights, indigenous groups can conquer more space.

But the important point is that real rights cannot be exercised without a transformation in the structure of power. This is especially clear with respect to social and economic rights. The structures of power allow you to exercise certain cultural rights, which are not seen as a threat, but they do not allow you to exercise economic rights that could be used to challenge their power.

Transforming structures of power

The big question is how to accumulate rights so that they begin to transform the structures of power. Clearly this has to be achieved through popular struggle, which is built collectively by social movements. And to ensure that social movements are not co-opted by the powerful, one has to pay close attention to ethics and values. One has to take great care with the political training of leaders within social movements. Co-option isn't new. There are thousands of forms of co-option. If one doesn't build a very solid ethical foundation, it is very easy for an organisation to collapse. For example, here in Ecuador it is going to take a long time to rebuild our ethical foundation after part of our movement was co-opted. That we were co-opted should come as no surprise, because the powerful are always setting traps for social movements. If there is a dispute over institutional powers, it is very easy to get tied up in a debate over roles, whether or not one should participate in this or that, when in fact the participation doesn't add up to very much at all. It seems to be important to people at the time but that is because they have lost their perspective.

For example, in the 1990s the indigenous groups won a very important demand – the creation of territorial districts. They saw it as a way of being able to exercise collective rights and to practise a kind of communitarian socialism. But after ten years it has become clear that the balance of power didn't allow indigenous groups to achieve

real autonomy in the administration of their territories and, as a result, they watered down their demands. They made so many concessions that today they are concerned only to win a plot of land, not to manage their own territory. Today we have a paradoxical situation: the Quechua people will have to go back to their original demand for a totally new way of administering territory, both at the national and indigenous level – a demand they thought they had won – if they are going to be in a position to achieve real agrarian reform and guarantee a future for their children. If they had not relinquished their original demand, this struggle could have been really powerful by now.

Using rights to think differently

But this is only one aspect of the problem. The other part is how you think. If in these ten years, instead of becoming bureaucrats or candidates in local elections, the indigenous leaders had trained cadres to develop processes in which people could think about how to construct their own territory and turn it into something that could have been used to realise a collective dream, then the struggle would have advanced much further. It is possible that by now they would have been much closer to administering their own territories.


Another example is the struggle for bilingual education. This is seen as a great victory, for indigenous people won the right to be taught in their own language (alongside Spanish). Today bilingual education has its own statutes and its own budget. This has led to real advances: young people are no longer suffering the discrimination and maltreatment they did in the past. But ten years on, many young indigenous men want to become military policemen! The powerful have used bilingual education to produce agents in the repressive apparatus that will be used against the social movements. In itself, bilingual education was a real advance, but we did not pay enough attention to the political content of the teaching, so the project became totally distorted.

Rights and the grassroots

At one time our movement here in Ecuador was strong enough to gain the initiative, but as we achieved this victory without developing a clear strategy beforehand, a significant part of the movement gave up the idea of transforming the structures of power and settled instead for gaining a voice among the powerful. So, instead of us overthrowing the powerful, the powerful used the situation to forge a sophisticated and perverse



mechanism for controlling the movement. They reproduced an old tactic for maintaining control – putting in charge a man chosen from among the people. And today these new agents of the ruling class not only enjoy huge power, but they have also imposed the idea that they have to “defend the space they have won for the people” among the powerful. It is a difficult situation because, although people at the grassroots despise these agents, they are dominated by them. A new system of patronage has been created, which is supported by various development agencies.

However, I think that we have a great capacity to fight back. Many people who practise subsistence agriculture or have been evicted from their land or are fighting the takeover of their land by national or transnational companies are resisting. Once we manage to recreate our own perspective and reject the idea that the only way forward is through negotiation, then we can rebuild political awareness, and advance. We can talk then about new alliances, such as between the towns and the countryside, which was something that we almost achieved in the past, though it wasn't consolidated. 



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PREM DANGAL

Today, we all are fighting against the corporate regime. It is as if our rights are under siege by this. There is a battle between people's power and corporate power. Who is more powerful? It ought to be people. It was so in the past and it will be so in the future, no doubt at all. But for the time being, we are in an era of corporate control. Rights are inherently vested in the people. Nobody grants them rights. They possess them by the very fact of being human, and they are basic to a person's survival with dignity. For example, once a human being is born he or she has a right to decent survival (food, shelter, education and health). However, these basic rights are either being denied or not being respected. There is a crisis of life and living. People are dying of hunger, not because there is no food, but because they do not have access to food.

It is the urge to make profits that is violating and denying people's rights by many different means. One such instrument is “Intellectual Property Rights”. Who makes these? For whose benefit? It is very clear that they are being imposed by the corporate regime, which is making profit out of it, converting even knowledge into property. We do not need to ape those so-called “rights” which enable “property” values to be imposed on our commonly held resources and knowledge. We should not allow them to control our commons. On the contrary, we have to defend our commons

to defeat the corporate regime. And the people will win; and, once they win, they will win forever. It may take time and there might be many failures, yet, despite the repeated setbacks, ultimately the people will win and they will restore their rights as they understand them.


Our rights are the old rights

We are pushing back those elements that are trying to snatch away our rights. We are not developing alternatives but protecting our old way of life. People say, for example, that “food sovereignty” is an alternative programme to neo-liberal economic policy. But that is the wrong way of thinking about it: food sovereignty was there, is there, and will be there. The neo-liberal policy is the new policy that is being pushed as an alternative to food sovereignty. This should be our starting point and the way we understand it.

For me there are two different kinds of collective rights. One kind concerns property. Land reforms have been undertaken with collectiveness in mind. But when land is collectivised, no tiller feels that he or she is the owner and thus responsible for production. So productivity decreases and the state ends up by handing back ownership to the peasantry. But there are areas where collective rights are appropriate. Building a nation, for example, needs collective effort. Fighting the corporate regime will also require collective effort.



Meanwhile, what should we do in the current situation? Our responsibility is to work with people and share the truth. For example, food sovereignty for a European and food sovereignty for me, a peasant working in a rural area, mean different things. For generations we have been defending what amounts to food sovereignty, but we have been referring to it in other ways. We have been demanding land reform, the right to food, shelter, education, safe water, and so on. These

are our old demands. We have had to reformulate those demands in a new situation where neo-liberal economic “reforms” are taking place. So, when we are organising our people, we should explain that we are not inventing new demands but merely expressing in a new way what we have long been demanding. We are struggling to protect our customs, ethics and culture, everything that people have been practising traditionally. And people will understand this. 

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CLARK PETERU

Customary rights pertain to the way that a society has traditionally lived. In contrast, modern rights, as crystallised in various UN conventions and as adopted in the written constitutions of many Pacific Island Countries (PICs), provide a measure of individual freedoms and entitlements not fully articulated in, and in some cases antithetical to, customary rights. Nevertheless, these two types of rights exist side by side. While at the macro-level the 14 independent PICs function according to the Westminster model of law and government, people still live according to their traditional way of life.

Inevitably, traditional patterns of living are pervaded deeply by global influences. A hybrid lifestyle has developed, which appeals to younger and older generations alike. People are more materially prosperous than at any time previously, are better educated and are either healthier or have access to better health care. The cash economy and liberal thinking have engendered an individualistic streak in people. This has led to an increasing assertion and exercise of individual rights.

As a result, taking Samoa as an example, village control over people's lives has weakened, although extended family relationships remain strong. People still regard their relationships as more important than property and, for the time being, community relationships as more important than individual rights. Sharing and reciprocity are a fundamental part of island life. Traditional compensation (ceremonial delivery of valued cultural artefacts, coupled with money and goods) for tattooists, traditional house builders and canoe builders is

still strong, but the cash component is becoming more dominant. Traditional healers operating for commercial gain are unheard of, whereas it is common for fishermen to take payment.

The bulk of land in almost all PICs remains under customary control. Use, exploitation, transfer, and so on, are determined according to customary rules. So too is conservation. Customary control of land has long been heavily criticised by outsiders as an impediment to development. There is often insufficient capital or incentive for local owners to start up a business venture, and overseas investors seldom commit to a business unless the land is freehold or is secure over the long term. With PICs anxious to increase economic growth there is strong pressure to convert customary land to freehold tenure. Thankfully, there is overwhelmingly resistance to this. Land is more than just earth to Pacific islanders, as it defines their institutions and their identities.

Bioprospecting in PICs has given rise to novel questions regarding the commercial value of biodiversity and associated traditional knowledge. While there will be tabu (holy or sacred) areas and sacred knowledge that will be beyond commercial exploitation, the notion of receiving benefits from biodiversity and associated traditional knowledge has met with general acceptance.

Yet there may be a certain naivety regarding such transactions, and with growing awareness a measure of resistance may develop. In the immediate term, however, the primary focus has been in informing both resource owners and knowledge holders and ensuring that their interests are protected. 