

Foucault's Concept of Power and the Global Discourse of Human Rights

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This article carries out a Foucauldian analysis of the global discourse of human rights. In the spirit of Foucault's genealogy it identifies a historical discontinuity in the development of human rights between the Cold War period, when human rights were a heavily contested concept, and the late modern world in which human rights are becoming a form of global standard whose validity is less and less questioned. Using Foucault's understanding of the way power is exercised within discursive structures and knowledge/power configurations, the article argues that in the late modern world human rights constitute a global norm with reference to which agents are evaluated and increasingly evaluate themselves. Power may be exercised over those forms of agency that do not conform to this norm by other agents, and at the same time, we witness more and more situations in which there is no such coercion and yet agents find it necessary to alter their behaviour and declare their adherence to human rights. The article also seeks to extend Foucault's framework in order to explain the emergence of the global human rights discourse. It thereby complements a Foucauldian analysis with a political economy approach which, it is argued, helps us enhance the Foucauldian framework which suffers from the separation of discourses and politics from the economy.

Introduction

The aim of this paper is to carry out a Foucauldian analysis of a global discourse of human rights that has developed in the late modern global political economy (GPE). Foucault's notion of discourse allows us to bring together linguistic and extra-linguistic elements of human rights, that is, the rhetoric of human rights on the part of numerous forms of agency (state leaders, civil society activists, business executives, academics, journalists, etc.) and different policies that are advocated or adopted by them in the name of human rights.

Since the end of the Cold War, which has been perceived largely as a victory of freedom over tyranny, a commitment to further combat oppressive regimes, to spread democratic values and institutions, and to promote individual rights—mostly political and civil rights—has been expressed by a multiplicity of different state and non-state actors at international, regional, national and local levels. A whole range of policies and strategies of human rights advocacy and protection—ranging from campaigns and rallies, to making the respect for human rights a pre-condition for economic aid, to sanctions and even the use of military

force—have been developed and implemented. The development of this discourse of human rights over the last two decades, as will be argued below, has resulted in rendering human rights a form of global standard or norm with reference to which different agents may be evaluated and disciplined, and with respect to which they increasingly evaluate themselves, and change their behaviour in order to conform (at least officially) to the standard.

The examination of situations in which dominant discursive structures provide a set of norms with reference to which agents may exercise power over other agents, as well as over themselves, to ensure conformity has been at the core of Foucault's historiography, particularly in his later works *Discipline and Punish* and *The History of Sexuality*. The traditional analyses of power in political science and its subfields such as International Relations (IR) have focused on its negative and behavioural aspects, that is, on power as observable repression, coercion or negation. On this view, power is the ability of an actor A to make an actor B do things (that are, as a rule, in A's interests) which B would not otherwise have done. Power on this reductionist view is a property of an agency; it is *possessed* and used by A to obtain the desired behaviour change in B. One of the key contributions of Foucault's project has been to introduce a different conception of power, which is structural and which is not reducible to the properties, intentions or characteristics of agents. This form of power results from a constellation of discursive structures, (scientific) knowledge and practices that accompany them which create a set of rules and standards, with reference to which agents may *exercise* power over other agents, as well as over themselves. This conception of power has two principal characteristics: (1) power is not possessed by agents; when they use power they *mediate* the dominant view of what constitutes normality or deviance. To put it differently, here A and B are not fixed, they constitute forms of agency that are *substitutable*; what matters is the discursive structure that sets the standards of accepted or expected behaviour; and (2) power is positive, it "produces" behaviour that is in conformity with the dominant standard of normality or acceptability. This means that power may be exercised not only over others but also over oneself, a situation in which the subject transforms himself or herself into an object of power and adopts forms of behaviour that are expected by the prevailing discourse and truth configurations. To return to the example of A and B, A may be totally absent, and yet, despite the fact that there is no exercise of power by A, B will nevertheless alter its conduct.

It will be shown below that these two elements of power characterise the "games of truth", to use another of Foucault's term, that take place within the global discourse of human rights. First, in line with Foucault's genealogical method, we will see that with the end of the Cold War a historical discontinuity may be identified with respect to human rights. During the Cold War, human rights—particular civil and political liberties of individuals—was a heavily contested concept. It was challenged, on the one hand, by socialist states on the grounds that it represented a bourgeois version of freedom and justice, and, on the other, by non-Western developing political economies as a Western concept unfit or inapplicable in other cultures characterised by the primacy of communal interests and values. With the end of the Cold War, the concept of human rights, understood predominantly as negative rights of individuals, is less and less contested, and is increasingly acknowledged as one of the priorities of governments around the world. In addition to this, human rights are increasingly promoted by

business enterprises, which was not the case previously. To put it differently, human rights may be said to have become a global standard or a global norm with reference to which different forms of agency are evaluated and may be disciplined in various ways by other agents.

Thus, with respect to the first characteristic of Foucault's notion of power we will see that the subjects and objects that power exercises with reference to human rights are substitutable: it may be states disciplining other states or business enterprises; it may also be business enterprises engaging in policies of human rights promotion in states where they are not respected; it may be non-governmental organisations (NGOs) organising campaigns against states or business enterprises to enforce respect for human rights. Concerning the second aspect of Foucault's notion of power, it will be shown that today we increasingly witness changes in the behaviour of states or corporations which proclaim their adherence to human rights norms and adopt policies of their promotion without any coercion. That is to say, today agents tend to find it necessary to declare their commitment to the respect of human rights, to conform to the established standard of what constitutes an accepted polity, and increasingly an accepted business activity. This, of course, is not to say that non-Western states have suddenly started respecting human rights, and that corporations not only avoid engaging in practices that endanger human rights but in fact have become their champion. It is only to identify a qualitative change or a discontinuity with respect to what was the case during the Cold War, which consists in (a) a gradual disappearance of a critique of the concept of human rights and (b) its development into a global norm with reference to which agents are evaluated and increasingly evaluate themselves.

Such an approach to human rights constitutes an alternative to the existing analyses, particularly of those that are inspired by Realist theory, which tend to treat human rights as a cover for the selfish interests of actors that engage in their promotion or enforcement. While it may well be the case that in some cases human rights are used only to conceal some other agendas, it does not explain why it is human rights and not some other notions that are employed. Furthermore, such analyses usually treat power that is used, most often by Western states, in the name of human rights in a reductionist manner, as their property or capability, as something that is possessed. Using Foucauldian analysis enables us to have a better insight into such uses of power; it helps us to see that it is not reducible to actors that engage in human rights enforcement, and that in fact what they do is *mediate* a global norm.

However, despite the usefulness of Foucault's categories and method, the analysis of the global discourse of human rights needs to go beyond the framework of Foucauldian categories if we wish to *explain* the emergence of this discourse. That is to say, if we wish to understand why it is that this particular configuration of knowledge and individual rights that has come to dominate the late modern GPE, and not just focus on the way it operates, we have to extend our analysis beyond Foucault's categories. Thus, it will be argued below that Foucault's historiography and his method of genealogy is useful in identifying the supersession of some discursive structures by others, in highlighting differences between them, as well as the implications of these differences for practice. However, a strictly Foucauldian framework would tend to under-privilege explanations for such changes, treating these historical breaks as a starting

point, without seeking to subject to scrutiny the reasons for the emergence of new historical configurations, and their role in social totality. In his attempt to provide an alternative to Marxism and its method of historical materialism, Foucault neglects the role of economic relations, of structures of production which, as will be argued below, constitutes a regrettable omission. We will seek to complement Foucauldian analysis with an account of the development of the global discourse of human rights which examines it with reference to production relations. It will be argued below that at the heart of the global discourse of human rights reside individual rights that emerged with the rise of capitalism, that have played a causal role in its development, and that continue to play this causal role today. With the help of the concept of ideology used in the negative sense, we will see that the dominant view of what constitutes (fundamental) human rights identifies individual political and civil liberties that are not only compatible with the operation of global capitalism but in fact play an important causal role in its reproduction. It will be argued that at the current historical juncture the global discourse of human rights provides the existing order at the heart of which reside the interests of transnational capital with a Gramscian quality of moral and intellectual leadership.

Foucault's Historiography

To understand Foucault's project it is necessary to locate it in its historical context. Beginning with the late 1950s, Western Marxism, which dominated the field of critical theory and opposition in Western Europe, could no longer provide an adequate analysis of advanced industrial societies. On the one hand, the Marxist conceptualisation of politics in terms of class politics and its reduction of the political to the level of class alliances and class struggle were hardly suited to the examination of diverse forms of oppression and resistance movements that increasingly characterised Western societies. Such phenomena as discrimination against sexual minorities, the subordinate position of women, the overwhelming and omnipresent power of bureaucracy or the treatment of prisoners and the mentally ill could not be reduced to a project of the bourgeoisie and required a different conceptual framework. On the other hand, the opposition to these forms of oppression was not carried out by the proletariat either, but by a whole range of different social movements: the women's movement, the student movement, the gay liberation movements, the movement for prison reform, the anti-psychiatry movement, and so on. These shortcomings of Marxism as a method of analysis and as a theory of praxis manifested themselves most acutely during the May 1968 protests in France. During the month of May the protest movement was constituted by social groups not traditionally associated with the proletariat: the events were initiated by students, and carried on by professional and technical workers; in terms of their demands, they spoke not only against capitalism but also against bureaucracy and all forms of non-democratic social organisations. As Lefort has argued, "the protesters questioned the 'organizational viewpoint' which ordered Western society by parceling social life and labeling individuals".¹ In addition to this, there was a more general dissatisfaction with Marxism as a political project in the light of the highly oppressive Soviet state and the barbarity

1. C. Lefort, "Then and Now", *Telos*, No. 36 (1978), p. 37.

of its military interventions abroad justified as necessary to preserve socialism (in East Germany in 1953, in Hungary in 1956, and in Czechoslovakia in 1968).

The dissatisfaction with Marxism and with the method of historical materialism is at the heart of Foucault's project. His work can be described as an attempt to make intelligible modes of domination or "technologies of power" that escaped the attention of Marxism, and, in order to do so, to develop a different form of historiography and an alternative conceptual apparatus. Foucault was particularly concerned with the operation of discourses dominated by science, and their relationship with social practice and forms of oppression that result from these configurations. For Foucault, historical materialism was inadequate in that it split discourse from practice and then subordinated the former to the latter, and thereby introduced a division in critical theory between what human beings say and what they do, a division which could no longer go unchallenged.² At the same time, by designating itself "science", Marxism gave itself a false legitimacy that enabled Marxist theorists to place themselves above the masses as the bearers of the universal. The method of historical analysis that Foucault adopts instead is the method of "genealogy" of Friedrich Nietzsche. Nietzschean genealogy was an effort to delegitimise the present by separating it from the past. Contrary to "traditional" historical studies which examine particular events within grand explanatory systems and processes seen as linear evolutions, Nietzschean genealogy seeks to depict the present as finite, limited, even repugnant, simply by locating differences in the past. The Nietzschean historian begins with the present and goes backwards in time until a difference is located. Then he proceeds forward again, tracing the transformation and taking care to preserve the discontinuities as well as the connections in the historical line.³ As Foucault states with reference to Nietzsche's genealogy:

what Nietzsche has incessantly criticised ... is the form of history ... which would allow us to recognise ourselves everywhere [in history] and to give to all shifts and changes a form of reconciliation; ... To know, even in history, does not mean to "recognise", and certainly not "recognise ourselves". History may be "effective" only in so far as it succeeds in introducing the discontinuous into our own current being.⁴

Foucault's genealogy is similarly an attempt to study historical discontinuities and breaks, rather than chronologically narrate what happened in the past; its goal is "to establish and preserve the singularity of events, turning away from the spectacular in favour of the discredited, the neglected, and a whole range of phenomena which have been denied a history (e.g. reason, punishment, sexuality)".⁵ As Foucault observes, the objective of genealogy is to

to spot the uniqueness of events, outside any monotonous finality; to look for them where we would least expect them and in what goes as having no history at all—feelings, love, conscience, instincts; to capture their

2. M. Poster, *Foucault, Marxism and History: Mode of Production versus Mode of Information* (Oxford: Polity, 1984), p. 66.

3. *Ibid.*, p. 64.

4. M. Foucault, *Anthologie* (Paris: Gallimard, 2004), p. 409; my translation.

5. B. Smart, *Foucault, Marxism and Critique* (London: Routledge, 1983), pp. 75–76.

return, in order not to trace the curve of their slow evolution, but to find different stages at which they played different roles.⁶

Thus Foucault does not focus on the evolution of the past, on the story of how historical events eventually lead into the present, but seeks to show how the past was different, strange and at times threatening.

What is important to note is that Foucault's reflections on genealogical analysis demonstrate that it is inextricably linked with a commitment to critical analysis, to the discovery of forms of oppression and power, and the manner in which individuals become the subjects and objects of technologies of power. For Foucault, knowledge is political in the sense that its conditions of existence include power relations. As he puts it with respect to his genealogy of sexuality:

by genealogy I do not mean to provide a history of successive conceptions of desire, lust or libido, but to analyse the practices by means of which the individuals have been driven to examine themselves, to decipher themselves, to recognise and admit themselves as objects of desire ... In short, the idea was, in this genealogy, to look for ways in which individuals have been driven to exercise over themselves and over others the hermeneutics of desire.⁷

The genealogical analysis of discontinuity of knowledge/power configurations within which individuals exercise power over others and over themselves is particularly pronounced in Foucault's later works *Discipline and Punish* and *The History of Sexuality*. In these two pieces Foucault divides the histories of crime and sex into two or three main periods, with the 18th century serving as the dividing line. In the earlier periods, the focus of knowledge/power about crime and sex was the body of individuals; beginning with the 18th century, it shifts to the mind. New regimes are established in which criminals and sexual activity are scrupulously monitored. Elaborate bureaucracies are established to keep tabs on people; files are developed with an expansion of disciplines and scientific experimentation to study the most banal thoughts and actions of potential criminals and recidivists, childhood masturbators and hysterical women.⁸

Now, returning to the concept of power, Foucault observes that we may distinguish two categories of power: (1) the techniques of domination "which allow to define the behaviour of individuals, to impose certain finality or certain objectives"; and (2) the techniques of the self "which allow individuals to carry out, by themselves, a certain range of operations on their bodies, their souls, their thoughts, their conduct, and to do so in order to produce in themselves a transformation, a modification, and to attain a certain state of perfection, of happiness, or purity, of supernatural powers."⁹ Taken together, these two categories form what Foucault referred to elsewhere as "governmentality" or "the encounter between the techniques of domination exercised over others, and the techniques of the self".¹⁰ And, as already mentioned, a crucial role in the development of

6. Foucault, *op. cit.*, p. 393; my translation.

7. *Ibid.*, p. 708; my translation.

8. Poster, *op. cit.*, p. 81.

9. Foucault, *op. cit.*, p. 654; my translation.

10. *Ibid.*, p. 655; my translation.

governmentality is played by sciences. As Foucault states: "From the eighteenth century until today, 'human sciences' have reintegrated the techniques of verbalisation into a different context, making of them ... the positive instrument of the constitution of a new subject."¹¹

Thus, what we may infer from the foregoing discussion is that Foucault's conception of power may be said to have two key characteristics. On the one hand, power is not reducible to agents that exercise it, it is not their property; when power is exercised it *mediates* the dominant view of what constitutes normal and acceptable agency, and forms of behaviour that are seen as deviant or unacceptable, and the form it takes is based on the prevailing conventions which determine how deviance is to be dealt with. As Foucault puts it, individuals do not possess power but constitute its effect, "the element of its articulation ... its vehicle".¹² As mentioned above, on this view the subjects and objects of power are interchangeable; they operate within a "discourse with a truth-function, discourse which passes for the truth" which "constitutes a set of structures *whose agency is at once everyone and no one*".¹³

On the other hand, Foucault describes forms of power that are not based on negation or repression, but which are positive, which "produce reality and produce domains of objects and rituals of truth".¹⁴ It refers to situations in which power is exercised not only over others but also over oneself; it depicts how the subject transforms himself into an object of power and adopts "willingly" forms of behaviour that are expected by the prevailing discourse and truth configurations. As Foucault argues, the role of historiography is to establish

voluntary practices by means of which individuals not only create for themselves the rules of conduct, but also endeavour to transform themselves, to modify their unique being ... and [by means of which] an individual comes to think of his own being when he recognises himself as mad, when he regards himself as ill, when he thinks of himself as a living being, working and talking, when he judges and punishes himself as criminal.¹⁵

In sum, what I wish to highlight for the purposes of the discussion of the global human rights discourse that will be undertaken in the next section is that Foucault provides us with tools to analyse historical configurations of power structures, historical breaks or discontinuities in their existence, as well as the manner in which agency is constituted and disciplined within them. Of particular importance to what follows are Foucault's insights into the manner in which particular discursive structures and knowledge configurations develop norms, rules and standards of accepted or normal behaviour, with respect to which agency may be evaluated and evaluates itself. Let us now see how these notions can help us understand the global discourse of human rights.

11. *Ibid.*, p. 663; my translation.

12. M. Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972–1977* (Brighton: Harvester Press, 1980), p. 98.

13. Poster, *op. cit.*, p. 78; emphasis added.

14. Smart, *op. cit.*, p. 86.

15. Foucault, *Anthologie, op. cit.*, pp. 709, 713–714; my translation.

A Foucauldian Analysis of the Global Discourse of Human Rights

Human rights appeared on the international scene after the end of the Second World War with the adoption of the UN Charter in 1945 and the proclamation of the Universal Declaration of Human Rights in 1948. However, right from the start the concept of human rights was challenged by the USSR and its allies as an expression of individualistic bourgeois morality. As Evans observes, the socialist states asserted that individual rights “were nothing less than a reactionary attempt to legitimate a set of . . . bourgeois values that did little for the poor and excluded”.¹⁶ Indeed, an irreconcilable tension existed between the primacy given to the individual embodied in the notion of human rights and the privileging of the collective that was at the centre of socialist systems. One of the rights that posed perhaps the most difficulties was the right to private property, which was not recognised in the Soviet bloc. The USSR Constitution, for example, stated that the economic foundation of the USSR was “the abolition of private ownership of the means of production” (Article 4) and that property existed “either in the form of state property or in the form of co-operative and collective-farm property” (Article 5). The socialist camp accused the West of economic exploitation of people and advocated the international development of social and economic rights.¹⁷ This advocacy of positive rights received a new momentum with the process of decolonisation as newly independent states expressed various reservations concerning the concept of individual rights and joined the socialist countries in the critique of the Western conception of human rights.¹⁸ Although more often than not such critique was a strategy employed by authoritarian regimes to justify their non-democratic systems as conducive to political stability which, it was claimed, was necessary for economic development and the guarantee of economic and social rights (deemed to be a more important objective than democracy), it is nevertheless important to note that such regimes contributed to the challenge of the notion of individual political and civil rights.

In addition to this, the Cold War environment characterised by the constant competition for allies and attempts on the part of the two blocs to extend their spheres of influence meant that even Western states sacrificed human rights considerations when they came into conflict with their strategic interests.¹⁹ It is also worth noting that the three cases of intervention that are regarded by a number of scholars as examples of humanitarian intervention that took place during the Cold War—the Indian intervention in East Pakistan in 1971, the Tanzanian intervention in Uganda in 1979, and Vietnam’s intervention in Cambodia in 1978—involved only marginal references to human rights. Most of the justifications for these actions centred on self-defence and retaliation.²⁰ In short, human rights were a heavily contested concept.

16. T. Evans, *The Politics of Human Rights: A Global Perspective* (London: Pluto Press, 2001), p. 23.

17. A. Rosas and J. Helgensen, “Introduction”, in A. Rosas and J. Helgensen (eds.), *Human Rights in a Changing East–West Perspective* (London: Pinter, 1990), p. 1; P. Hunt, *Reclaiming Social Rights: International and Comparative Perspectives* (Aldershot: Dartmouth, 1996), p. 7.

18. M. Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity Press, 2002), p. 47.

19. K. Feste, *Expanding the Frontiers: Superpower Intervention in the Cold War* (New York: Praeger, 1992), p. 1.

20. See F.K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (London: Kluwer, 1999); T. Franck and M. Rodley, “After Bangladesh: The Law of Humanitarian Intervention by Military Force”, *American Journal of International Law*, Vol. 67 (April 1973), pp. 275–305.

With the end of the Cold War and the transition of most of the former socialist countries to capitalism, the structural incompatibility between individual rights and their socio-economic systems disappeared. The adoption of policies of privatisation and the replacement of the command economy with a market economy went hand in hand with policies of democratisation and the institution of individual rights. Thus, the Russian Constitution of 1993 proclaims various civil and political rights, including the right to private property, as the foundation of the Russian state. In addition to this, the disappearance of the Cold War "geo-political straightjacket"²¹ made the sacrifice of human rights for strategic interests much less necessary. The West, which proclaimed the end of the Cold War as the victory of democracy, freedom and individual rights, invested itself with a mission to promote these ideals elsewhere around the world. Of particular significance have been the human rights policies of the United States and the United Kingdom. Thus, after the Cold War, and especially during the presidency of Bill Clinton, human rights were declared the central pillar of American foreign policy: "Advancing human rights must always be a central pillar of America's foreign policy."²² In the case of the United Kingdom, with the coming to power of a Labour government in 1997 an "Ethical Foreign Policy" was proclaimed by Robin Cook, who stated the following: "The Labour Government will put human rights at the heart of our foreign policy and will publish an annual report on our work in promoting human rights abroad."²³

Numerous human rights initiatives were also undertaken by different international organisations, including those whose initial functions had nothing to do with human rights. For example, the Bretton Woods institutions incorporated human rights into their agendas through the promotion of what they have referred to as "good governance". As the former managing director of the IMF put it, "a global economy needs global ethics, reflecting respect for human rights ... and the IMF and World Bank are part of the workforce to make a better globalization".²⁴ As Chandler observed in this respect, the IMF and the World Bank "whose mandates seem to be unrelated to human rights, have integrated these concerns and acted on them in ways unthinkable ten years ago".²⁵

The United Nations, no longer paralysed by the US–Soviet ideological rift, embarked upon global human rights promotion in a multiplicity of ways. There is no space here to discuss all the UN human rights policies and programmes.

21. A. de Waal, *Famine Crimes: Politics and Disaster Relief Industry in Africa* (Oxford: James Currey, 1997).

22. W. Clinton, "Remarks in Honour of Human Rights Day", Museum of Jewish Heritage, New York, 9 December 1997, US Department of State, available: <http://www.state.gov/www/global/human_rights/971209_clinton_humrts.html>. See also *idem*, "Remarks at Human Rights Day Presentation of Eleanor Roosevelt Human Rights Award", 10 December 1998, US Department of State, available: <http://www.state.gov/www/global/human_rights/981210_whps_dayhr.html> (all URLs accessed 5 July 2009).

23. R. Cook, "Robin Cook's Speech on the Government's Ethical Foreign Policy", *Guardian Unlimited* (12 May 1997), available: <<http://www.guardian.co.uk/indonesia/Story/0,2763,190889,00.html>> (accessed 5 July 2009).

24. H. Köhler, "Working for a Better Globalization", Remarks at the Humanizing the Global Economy conference, Washington, DC, 28 January 2002, International Monetary Fund, available: <<http://www.imf.org/external/np/speeches/2002/012802.htm>> (accessed 5 July 2009).

25. D. Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto Press, 2002), p. 8.

To mention only a few initiatives, the United Nations organised a World Conference on Human rights in Vienna in 1993, at which the Office of the UN High Commissioner for Human Rights was created, and institutional foundations laid for UN partnership with NGOs. This was soon followed by partnership with business firms within the framework of the Global Compact launched by Kofi Annan in 2000. Another important development has been the establishment by the UN Security Council of two international tribunals for trials of crimes against humanity and genocide perpetrators in Former Yugoslavia and Rwanda, which were further innovations by the United Nations. These two ad hoc tribunals stimulated proposals to create a permanent court that would deal with gross violations of human rights and crimes against humanity. Such proposals materialised in the establishment in 2002 of the International Criminal Court within the framework of the United Nations. Furthermore, the UN Security Council authorised a number of military actions to enforce human rights. I will return to these instances of the use of force below in the discussion of the manner in which power has been exercised with reference to the concept of human rights.

In addition to international organisations and states, NGOs, which mushroomed after the end of the Cold War, have played an ever increasing role in human rights promotion and advocacy. If during the Cold War, as the former UN Secretary General Boutros Boutros-Ghali observed, "it was not possible to have any contact with non-governmental organisations in the Soviet Union, for example, because this would be seen as neo-imperialist intervention",²⁶ in the post-Cold War era "the decline of oppressive regimes and the rise of democracy has tempered the former automatic hostility by governments toward the activities of local and international NGOs".²⁷ Today, facilitated by developments in information and communications technology, "NGOs, lobbying for human rights ... have become serious participants in international affairs. Linked with these larger international groups ... are thousands of indigenous NGOs, gathering information on particular issues and pressing their governments to live up to international standards".²⁸ NGOs now actively participate in setting the agendas for international organisations, state governments and corporations.

With all these developments, as has already been observed by a number of scholars, human rights have become a global norm which plays a causal role in structuring the behaviour of different actors. Thus, Risse, Popp and Sikkink have argued that human rights have emerged as a global standard which increasingly governs the behaviour of individuals and states: "human rights norms ... prescribe rules for appropriate behaviour and help define identities".²⁹ Evans goes as far as saying that human rights are now hegemonic.³⁰ Donnelly argues that "regimes that do not at least claim to pursue ... popular political participation

26. Quoted in B. Crossette, "UN Leader to Call for Changes in Peace-keeping", *New York Times* (3 January 1995), p. A3.

27. L. Gordenker and T. Weiss, "Pluralizing Global Governance: Analytical Approaches and Dimensions", in T. Weiss and L. Gordenker (eds.), *NGOs, the UN, and Global Governance* (London: Lynne Rienner, 1996), p. 30.

28. *The Economist*, "The Conscience of Mankind", in a Special Survey entitled "Survey of Human Rights Law" (5 December 1998), p. 3; see also *idem*, "The Power of Publicity", in *ibid.*, p. 13.

29. T. Risse, S. Ropp and K. Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction", in T. Risse, S. Ropp and K. Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 2001), p. 8.

30. Evans, *op. cit.*, p. 18.

('democracy'), and respect for the rights of their citizens ('human rights') place their national and international legitimacy at risk".³¹ In the remainder of this section I will extend these analyses by using Foucault's categories to demonstrate how agents are increasingly evaluated and evaluate themselves with reference to the concept of human rights.

To recall the earlier discussion, Foucault places an especial emphasis on human sciences as vehicles of truth. With respect to human rights, the participation of academics in the global discourse of human rights through publications, teaching activities and political involvement has been very extensive. There is no space here to carry out a review of the academic literature on human rights. It will suffice to note that human rights have been one of the most, if not the most, widely written about subject in the last 20 years or so. Although it would be unfair to say that there is a consensus among academics on the need to promote human rights around the world, for there are many critical works on human rights, we may still acknowledge the fact the dominant majority of scientific publications is concerned with technical-instrumental questions related to the discussion of the means to implement human rights. In such literature the validity of the concept of human rights is not addressed; human rights are assumed as something self-evident and the analysis usually revolves around particular types of rights in specific places, and the means to ensure their respect. In addition to this, different training programmes, university courses and even entire degrees in human rights have mushroomed at universities around the world. It is now hardly possible to undertake a degree in politics, sociology history or International Relations without studying human rights. Furthermore, academics often perform official public missions for international organisations or states, and work for different think tanks that help develop government policies.

With this in mind let us return to the concept of power developed by Foucault. As argued above, we can infer from Foucault's work that his conception of power has two principal features: on the one hand, power is not reducible to agents that exercise it, but mediates the dominant view of what constitutes normal and acceptable agency, and is based on the prevailing conventions which determine how to deal with those who deviate from the norm; on the other hand, Foucault describes forms of power that are not based on repression, but which are positive in that they "produce" behaviour even in the absence of coercion, as agents exercise power over themselves in order to conform to the dominant norm. It is the argument of this article that these two dimensions of power described by Foucault can help us understand better the operation of the global discourse of human rights, the causal power that it has with respect to social practice. This is so because in the existing analyses, particularly in the analyses of the use of force in the name of human rights, the latter is treated in a reductionist manner as a justification invented by Western states (in the case of Realist analyses) or by Western imperialism (in the case of radical critiques) to dominate or colonise the world. Such analyses fail to inquire into the conditions that must be fulfilled for precisely human rights and not some other concept to be invoked as a justification. To put it differently, the question as to what must be the case for policies such as military interventions, the use of sanctions, or the setting of respect for human rights as

31. J. Donnelly, "Human Rights, Democracy and Development", *Human Rights Quarterly*, Vol. 21, No. 3 (1999), p. 608.

a pre-condition for economic aid to be possible, is ignored. Foucault's categories enable us to develop a more holistic analysis which treats human rights discourse as a framework which makes such policies possible and increasingly acceptable. Let us start with the examination of the exercise of power by some agents over others with respect to human rights. In what follows we will examine the following instances of the exercise of power with reference to human rights: Western states with respect to non-Western states; non-Western states with respect to non-Western states; NGOs with respect to business enterprises; and business enterprises with respect to non-Western states.

The 1990s have been described by Mary Kaldor as a "decade of humanitarian intervention".³² It started with a UN-authorized intervention in northern Iraq codenamed "Operation Provide Comfort" and undertaken by the United States, Britain and France. The objective of the intervention was to rescue Iraqi Kurds who had organised an uprising during the Gulf war and faced violent repression by the government of Hussein. In its Resolution 688 the Security Council condemned "the repression of the Iraqi civilian population in many parts of Iraq" and authorised military action "to ensure that the human and political rights of all Iraqi citizens are respected" (S/RES/0688 (1991)). "Operation Provide Comfort" lasted for three months before it was succeeded by another operation, codenamed "Poised Hammer", which involved maintaining a contingent of troops in Turkey which would be ready to act should Iraq restart the repression of Kurds "threatening to use force against Iraq if human rights are abused".³³

The Intervention in northern Iraq was followed by military action in Somalia in 1992/93, also authorised by the UN Security Council. Following reports of massive violations of human rights and widespread famine resulting from civil war that had raged in Somalia since January 1991, in December 1992 the UN Security Council authorised the deployment of a US-led force: "Expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring in Somalia, including ... [the Security Council] authorises the Secretary-General and Member States ... to use all necessary means to establish a secure environment for humanitarian relief operations in Somalia" (S/RES/794 (1992)). Although ultimately unsuccessful, this intervention contributed to the development of the practice of human rights in the post-Cold War period.

Another example of human rights enforcement is "Operation Restore Democracy" in Haiti in 1994, carried out by the United States and authorised by the Security Council. The goal of the intervention was to reinstate the government of democratically elected President Aristide which had been overthrown by the military in 1991. UN Resolution 940 authorised the use of force to stop "the continuing escalation of systematic violations of civil liberties" and to assist in "the restoration of democracy in Haiti" (S/RES/940 (1994)). A US-led force was established, codenamed "Operation Restore Democracy". It consisted of more than 15,000 US troops and a symbolic group of soldiers from other countries, such as Bangladesh, Barbados, Guyana, Ghana and Great Britain. The operation succeeded and President Aristide was returned to power.

32. M. Kaldor, "A Decade of Humanitarian Intervention: The Role of Global Civil Society", in H. Anheier, M. Glasius and M. Kaldor (eds.), *Global Civil Society 2001* (Oxford: Oxford University Press, 2001).

33. *Financial Times*, "Last Allies Pull Out of North Iraq" (16 July 1991), p. 6.

Now, if these interventions were undertaken in accordance with the principles of international law, that is, they were mandated by the United Nations, the NATO action in Kosovo in 1999 was undertaken without UN authorisation. It may be argued that such an action was rendered possible to a large extent by the growth of the global discourse of human rights, of its normative power, and by a growing acceptance at the international level that force may be used to protect human rights. In other words, it was possible for NATO to exercise its power over Yugoslavia with reference to human rights without UN authorisation, and at the same time also without significant international opposition, because in the post-Cold War world the protection of human rights was increasingly seen as legitimate. This constitutes a clear discontinuity with respect to the Cold War period in which the three cases of intervention mentioned above were not justified in terms of human rights but as acts of self-defence. To return to the Kosovo case, in March 1999, in response to Serbian military and police operations, NATO's Operation Allied Force began. The crisis in Kosovo, it was stated, represented "a fundamental challenge to the values of democracy and human rights"; NATO condemned "appalling violations of human rights and the indiscriminate use of force by the Yugoslav government" and asserted that these actions "made necessary and justified the military action by NATO".³⁴ On 3 June, President Slobodan Milosevic finally accepted peace terms and by 20 June all Serb forces had left Kosovo and security matters in the province had passed into the hands of KFOR, the international peacekeeping force.³⁵

Whereas the above cases involved the exercise of power by Western states over non-Western states, the following two cases—the intervention of the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone—involved non-Western states and their use of human rights as a justification for intervention in other non-Western states.

Thus, in response to massive violations of human rights in Liberia which resulted from the fighting between Charles Taylor's rebel group and the forces of President Doe, ECOWAS sent a military force to Liberia in April 1990, led by Nigeria. This intervention was justified by ECOWAS officials on explicitly human rights grounds: "to stop the abuses of human rights of innocent civilian nationals and foreigners, and to help the Liberian people to restore their democratic institutions".³⁶ Such a justification was confirmed by the reaction of the Bush administration which praised the willingness of ECOWAS to take the lead in dealing with the Liberian crisis and "stopping massive violations of human

34. NATO, "The Situation in and around Kosovo", Statement issued at the Extraordinary Ministerial Meeting of the NATO Council, Brussels, 12 April 1999, Press Release M-NAC-1(99)51, available: <<http://www.nato.int/docu/pr/1999/p99-051e.htm>> (accessed 5 July 2009).

35. Owing to constraints of space I do not discuss the War on Terror. However, in the wars in Afghanistan and Iraq human rights rhetoric was present right from the start. Even the attacks of 9/11 were referred to as attacks on human rights. George W. Bush, for example, stated that the "tragedies of September 11 served as a grievous reminder that the enemies of freedom do not respect or value individual human rights. Their brutal attacks were an attack on these very rights", George W. Bush, "President Proclaims Human Rights Day & Bill of Rights Week", The White House Office of the Press Secretary (9 December 2001), available: <<http://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011209.html>> (accessed 5 July 2009).

36. Quoted in C. Greenwood, "Is there a Right of Humanitarian Intervention?", *The World Today*, No. 49 (February 1993), p. 37.

rights".³⁷ In addition to this, virtually all the other African states outside ECOWAS lent their support and "explicitly approved of the intervention on human rights grounds".³⁸ In November 1992 the UN Security Council retroactively supported the intervention by ECOWAS when it adopted Resolution 788 which imposed an arms embargo on Liberia and acting under Chapter VII endorsed ECOWAS's use of force (S/RES/788 (1992)).

The ECOWAS action in Sierra Leone in 1997 was a response to the overthrow of the democratically elected President Kabbah and again human rights were invoked. ECOWAS stated that its objective was to quash the coup and "to restore democracy and human rights".³⁹ In March 1998, President Kabbah was returned to office.⁴⁰ The ECOWAS intervention in Sierra Leone was also approved retroactively by the UN Security Council. First, in its Resolution 1132 in October 1997, the UN Security Council supported the efforts of ECOWAS and established an arms and oil embargo on Sierra Leone, authorising ECOWAS to enforce it (S/RES/1132 (1997)). Then, on 22 October 1999, it adopted Resolution 1270 which authorised the establishment of a UN Mission in Sierra Leone, with a significant contribution made by ECOWAS "to promote peace and national reconciliation and . . . respect for human rights in Sierra Leone" (S/RES/1270(1999)).

Another instance of the way interchangeable agents exercise power with respect to human rights is the campaign of NGOs and different social movements which started in the early 1990s against business enterprises for various malpractices in Third World countries, such as workers' rights abuses, forced labour, employment of child labour, sexual harassment of employees, pollution of host areas and destruction of local communities.⁴¹ The most widely publicised cases were registered in the garment industry, where such giants as Nike, Gap, Adidas and others were reported as severely abusing the rights of their employees, especially at their sweatshops in East Asia.⁴² These campaigns succeeded in forcing corporations to abandon the most extreme forms of abuse, and in corporations starting the process of developing codes of good business practice which acknowledged the importance of socially responsible business practice;⁴³ by the late 1990s virtually all firms had a code of conduct.⁴⁴ Another important result of NGO campaigns was putting the operation of multinational corporations (MNCs) on the agendas

37. D. Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War", in L. Damrosch (ed.), *Enforcing Restraint* (New York: Council on Foreign Relations, 1993), p. 159.

38. W. Sandholtz, "Humanitarian Intervention: Global Enforcement of Human Rights?", in A. Brysk (ed.), *Globalization and Human Rights* (Berkeley, CA: University of California Press, 2002), p. 214.

39. *The Guardian*, "Nigeria's Intervention Puzzles West Africans" (28 June 1997), p. 17.

40. *The Independent*, "Freetown in Flames as Rebels Retreat" (13 January 1999), p. 11.

41. See I. Manokha, "Corporate Social Responsibility: A New Signifier? An Analysis of Business Ethics and Good Business Practice", *Politics*, Vol. 24, No. 1 (2004), pp. 56–64; *idem*, "Business Ethics and the Spirit of Global Capitalism: Moral Leadership in the Context of Global Hegemony", *Journal of Global Ethics*, Vol. 2, No. 1 (2006), pp. 27–41.

42. S. George, "Corporate Globalisation", in E. Bircham and J. Charlton (eds.), *Anti-capitalism: A Guide to the Movement* (London: Bookmarks, 2001); A. Cockburn, "The Price", *New York Press* (27 September 2001), available: <<http://www.nypress.com/14/39/news&columns/wildjustice.cfm>> (accessed 5 July 2009).

43. *The Economist*, "Sweatshop Wars" (25 February 1999), p. 4.

44. International Labour Organization, "Overview of Global Developments and Office Activities Concerning Codes of Conduct, Social Labeling and other Private Sector Initiatives Addressing Labour Issues", ILO doc. GB.273/WP/SDL/1.

of different international organisations. For example, the OECD adopted guidelines for multinational enterprises which stated that MNCs must "respect the human rights of those affected by their activities" and "are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities".⁴⁵

Now, what is important to note with respect to business enterprises is that many of them have gone further than just adopting responsible codes of conduct and improving their human rights record and have engaged in policies of human rights defence and promotion. For example, in April 1999, the chief executives of Reebok, Levi Strauss and Phillips sent a joint letter to Jiang Zemin, the President of China, in which they expressed their concern "about the arrest and detention of Chinese citizens for attempting peacefully to organise their fellow workers or to engage in non-violent demonstrations".⁴⁶ Another example is given by Anita Roddick of The Body Shop International who was proud to report the successes of the human rights campaign "Make your Mark" organised by The Body Shop and Amnesty International: "we collected over three million thumbprints in 34 countries in support of 12 remarkable human rights campaigners who defend fundamental human rights, often in dangerous and threatening conditions".⁴⁷ In 1999 Paul Fireman, CEO of Reebok, wrote a letter to President Habibie of Indonesia urging the release of Dita Sari, a 26-year-old activist who was serving a sentence for non-violent activities in defence of human rights. Fireman explained his action, arguing that Dita Sari's imprisonment "made it difficult for Reebok to honour their commitment to respect the human rights".⁴⁸ Another example is the way a number of companies (Adidas, H&M, IBM, IKEA, PepsiCo, Texaco) responded to human rights violations in Burma by withdrawing from the country or ceasing all business transactions with the regime. Finally, corporations have also established partnerships or networks, together with other firms (usually working in the same sector), to promote various rights. For example, BAT (British American Tobacco), along with other tobacco-producing firms, established an organisation called Eliminating Child Labour in Tobacco Growing, and has contributed to the elimination of child labour on tobacco plantations in states where it operates. Hewlett-Packard, as a member an inter-firm organisation known as Business Leaders' Initiative in Human Rights, has financed policies of human rights promotion in different countries of the world.

In other words, these examples provide another illustration of the substitutability of subjects and objects of power (corporations have been both), as well as of the second dimension of Foucault's conception of power, namely its positive dimension, the way dominant discursive structures "produce" behaviour and how agents, even in the absence of coercion, may decide to transform themselves. Once again, this is not to say that corporations now indeed do care about human rights; it is only to highlight the fact that they find it necessary to claim that they do, and to engage in practices that help promote human rights, and thereby contribute to the further development of the global human rights

45. OECD, *OECD Guidelines for Multinational Enterprises* (Paris: OECD, 2008), pp. 14, 39.

46. Quoted in J. Bennett, "Multinational Corporations, Social Responsibility and Conflict", *Journal of International Affairs*, Vol. 55, No. 2 (2002), pp. 401–402.

47. A. Roddick, *Business as Usual* (Wellingborough: Thorsons, 2000), p. 176.

48. P. Fireman, "Business Must Speak up for Human Rights", *Asian Wall Street Journal* (19 August 1999), available: <<http://208.55.16.210/Fireman.htm>> (accessed 5 July 2009).

discourse. Let us now look at some more examples of this positive aspect of power, namely how non-Western organisations, previously opposed to the idea of human rights, now develop different human rights initiatives and mechanisms. The case of international non-Western organisations provides stronger evidence than the case of individual states, for in the latter case the decision to acknowledge the adherence to human rights principles may be motivated by some immediate considerations (obtaining foreign economic aid, succumbing to pressure from some other actors, etc.), whereas summits of several member states are generally free from such considerations. Moreover, such gatherings provide an opportunity to collectively express a shared opposition or disagreement about different aspects of global politics. The fact that the following non-Western international organisations not only do not express any critique of human rights as they did during the Cold War but increasingly declare their commitment to human rights demonstrates that the second aspect of Foucault's notion of power—the way in which agents exercise power over themselves—is at play.

Thus, the African Union (AU, formerly the Organization of African Unity), beginning in 1999, has placed very strong emphasis on the promotion of human rights in Africa. At a Ministerial Summit in Mauritius in 1999 it was declared that "human rights constitutes one of the fundamental bedrocks on which development efforts should be realised".⁴⁹ To recall, during the Cold War, the position of African states was that the absence of human rights (political stability guaranteed by non-democratic regimes) was the necessary condition for development. It was also declared that "Human Rights are universal and indivisible" and that governments must "give parity to economic, social and cultural rights as well as civil and political rights".⁵⁰ Thus, civil and political rights were explicitly recognised as human rights. These commitments have been reiterated at numerous subsequent summits and conferences organised by the AU. For example, in 2000 at Lomé, Togo, the new Constitutive Act of the AU was adopted and made human rights one of the organisation's priorities. In 2003, AU officials claimed that "the primary objective of the Union translates into a wide range of goals which include ... the amelioration of democratic process and observance of human rights".⁵¹ The AU also established a special organ called the Peace and Security Council, in order to, among other things, develop "strong democratic institutions ... the observance of human rights and the rule of law".

Another non-Western organisation that has undertaken initiatives with respect to human rights is the Association of Southeast Asian Nations (ASEAN). Thus, in 1993 at a Ministerial meeting in Singapore its Member States declared their "commitment to human rights and fundamental freedoms" and decided to "coordinate a common approach to the application, promotion and protection of human rights".⁵² In 1995 the organisation, via a body called the Human Rights Standing

49. African Union, "Grand Bay Declaration and Plan of Action", 12 April 1999, available: <http://www.achpr.org/english/declarations/declaration_grand_bay_en.html> (accessed 5 July 2009).

50. *Ibid.*

51. A. Essy, "Address Delivered by Amara Essy, Chairperson of the Commission of the African Union, Second Ordinary Session of the Assembly of Heads of State and Government", Maputo, 10 July 2003, available: <<http://www.africa-union.org/latest%20news/Open%20Speech%20of%20the%20Interim%20Chairperson.pdf>> (accessed 5 July 2009).

52. ASEAN "Joint Communiqué: The 26th ASEAN Ministerial Meeting", Singapore 1993, available: <http://202.154.12.3/old/general/ads1993/26amm_93.htm> (accessed 5 July 2009).

Committee, organised a series of meetings among representatives of national human rights institutions, parliamentary human rights committees, and human rights NGOs in the region to discuss proposals for a new human rights mechanism in Southeast Asia. At all subsequent summits ASEAN has reiterated its determination to promote human rights in the region.

Similar declarations and commitments have been made by other non-Western organisations (e.g. ECOWAS, which, as we saw above, played an important role in the development of the practice of human rights enforcement; the SADC (South African Development Community); and Mercosur in Latin America). To reiterate, these initiatives have hardly produced any significant results in terms of human rights promotion and protection. However, they illustrate important changes in the position of non-Western states regarding human rights. From being opponents of human rights (or, to be more precise, of their Western conception as individual political and civil rights), they have transformed themselves into being their advocates. This constitutes a definite historic break or discontinuity, and can be explained by the development of the global discourse of human rights which has created a structure within which human rights has become a standard with reference to which agents are evaluated and evaluate themselves, increasingly finding it necessary to adhere, at least formally or officially, to this standard. And by doing so, they contribute to the further development of this discourse and of its power.

To sum up, we have identified a historical discontinuity, and have seen how in a new discursive structure power is exercised. A strictly Foucauldian analysis would have ended here. However, as already mentioned above, the limitation of Foucault's method is that it does not seek to explain changes. It also separates discourses from the economy, from the functioning of production relations. In the next section we will see how a political economy approach may complement a Foucauldian analytical framework and thereby render the analysis more complete.

A Political Economy Approach to the Global Discourse of Human Rights

As Lecourt put it in his critique of Foucault, Foucault is a theorist of the superstructure "condemned to silence over the link between ideology and the relations of production".⁵³ In this final section we will use the concept of ideology and will discuss the global discourse of human rights with respect to the relations of production. The argument focuses on the historical relationship of mutual causality between social structures of production on the one hand, and the notion of individuals' rights on the other. The nature of this relationship is analysed with the help of the concept of "ideology", used as a critical concept, or ideology in the negative sense.⁵⁴

The term "ideology" has generally been used to refer to political programmes of social classes or political parties, and this is a meaning which Jorg Larraín

53. D. Lecourt, *Marxism and Epistemology: Bachelard, Canguilhem and Foucault* (London: New Left Books, 1975), p. 207; see also N. Poulantzas, *State, Power, Socialism* (London: New Left Books, 1978).

54. J. Larraín, *Marxism and Ideology* (London: Macmillan, 1983); J. Maclean, "Belief Systems and Ideology in International Relations: A Critical Approach", in R. Little and S. Smith (eds.), *Belief Systems and International Relations* (Oxford: Blackwell, 1988); P. Allman, *Critical Education against Global Capitalism: Karl Marx and Revolutionary Critical Education* (London: Bergin & Garvey, 2001).

designates as “positive”.⁵⁵ However, there is another usage of the term, namely what Larrain calls “ideology in the negative sense”, which Marx, particularly in *The German Ideology*, uses as a critical concept to refer to “ideas which express practice inadequately”.⁵⁶ For Marx, “ideology is conceived of as a distorted form of knowledge”⁵⁷ or as “a defective way of thinking”.⁵⁸ Such a “distorted form of knowledge” is not reducible to a deliberate project of a class; ideological ideas are “encouraged to a great extent”⁵⁹ by a social reality which is “inverted”, that is, which appears different from what it really is and favours the development of ideas that express it inadequately, and which may be shared by all social classes. However, ideology necessarily serves the interests of those social forces that benefit from the existing order, for the role it plays in the negation or concealment of contradictions inevitably contributes to the reproduction of those contradictions.⁶⁰ We will see below what form ideology so defined assumes in pre-capitalist societies, how the emergence of the notion of individual rights with the rise of capitalism may be said to have led to the development of a new ideology specific to capitalism, and what causal powers and liabilities this ideology has in the context of global capitalism.

Thus, the feudal relations of production were characterised by various forms of personal/juridical dependence of producers on those appropriating the surplus of their labour, and the function of surplus extraction was carried out by means of political coercion. It was a mode of production dominated by the land and a natural economy, in which neither labour nor the products of labour were commodities. The peasants who occupied and tilled the land were not its owners, with agrarian property being privately controlled by feudal lords, who extracted surplus from the peasants by politico-legal relations of compulsion in the form of labour-service, in kind or in the form of money.⁶¹ Feudal society was thereby characterised by a juridical amalgamation of economic exploitation with political authority—property was “politically constituted”.⁶² The feudal lord, in his turn, would often be the vassal of a feudal superior, and the chain of such dependent tenures (linked to military service) would extend upwards to the peak of the system—a monarch. Political sovereignty was not focused on a single centre but was divided into particularist zones with overlapping boundaries, and no universal centre of competence.⁶³

The direct political exploitation of producers and unequal class relations of the feudal order had an ideology which helped to sustain them. This ideology involved interpreting social relations as having a divine origin and purpose with each individual performing a specific function ascribed by God: every member of society must receive the means suited to his or her function, and must claim no more. This ideology spiritualised the material by incorporating it in a divine universe,⁶⁴ or, as Larrain puts it, in feudalism

55. Larrain, *op. cit.*, p. 4.

56. *Ibid.*, p. 23.

57. Maclean, *op. cit.*, p. 309.

58. Allman, *op. cit.*, p. 47.

59. G. Lukács, *History and Class Consciousness* (London: Merlin Press, 1971).

60. Larrain, *op. cit.*, p. 28.

61. B. Hindness and P. Hirst, *Pre-capitalist Modes of Production* (London: Routledge, 1975), p. 223.

62. R. Brenner, *Merchants and Revolution: Commercial Change, Political Conflict and London's Overseas Traders, 1550–1653* (Princeton: Princeton University Press, 1993).

63. P. Anderson, *Passages from Antiquity to Feudalism* (London: Verso, 1996), p. 148.

64. R. Tawney, *Religion and the Rise of Capitalism* (London: Penguin, 1990), pp. 35–36.

ideology assumes a religious form; the justification of personal dependence is found in a sacred order which is revealed by God and which consequently cannot be altered by man. Personal dependence upon, and loyalty to, the landlord is spontaneously expressed in the ideological submission to God, from which all subordination is modeled.⁶⁵

As one Medieval English hymn verse had it, "The rich man in his castle / The poor man at his gate/God made them, high or lowly/And ordered their estate".⁶⁶ Although such ideological interpretation of social relations was shared by all classes, they necessarily benefited the ruling classes whose dominant position was seen as an outcome of a divine will. The notion of individual rights would have been inconceivable in the feudal social setting in that it would have contradicted its economic foundation—the relations of production and the manner of the extraction of surplus.

However, beginning with the late 16th and early 17th centuries, profound transformations of social relations took place in Europe, starting in England and later spreading to the rest of Europe. What is characteristic of the emerging order is the central role of the market: capitalism is a system in which goods and services are produced for profitable exchange and all economic actors are dependent on the market—workers, who must sell their labour power for a wage, and capitalists, who depend on the market to buy their inputs and to sell their outputs.⁶⁷ The function of surplus extraction is gradually transformed from being based on politico-juridical means into one carried out in the market by economic means—through a wage–labour relation—as the producer is separated from the conditions of labour and the appropriator has absolute private property in the means of production. Once producers lose free access to the means of production, labour becomes a commodity, "that very special commodity that makes capitalism possible".⁶⁸ Thereby feudal politico-juridical inequality and coercion become unnecessary for surplus extraction since it is now the economic need that compels the worker to transfer surplus labour to the capitalist in order to gain access to the means of production. In other words, the social allocation of resources and labour no longer takes place by means of political direction or religious obligation, but through the mechanisms of commodity exchange.⁶⁹ This gradually makes possible political emancipation and political equality, as political coercion is no longer necessary for surplus to be extracted from the direct producers.⁷⁰ It allows for the development of new political structures breaking with the tradition of divine right and emphasising the equality of individuals, their natural rights and their power to establish and change political authority. However, what is crucial is that political and civil liberty and equality are increasingly seen as *the* liberty and *the* equality, while the fact that exploitation and inequality exist in the market is taken for granted and objectified. In other words, a new form of ideology

65. Larrain, *op. cit.*, p. 38.

66. M. Barrett, "Ideology, Politics, Hegemony: From Gramsci to Laclau and Mouffe", in S. Žižek (ed.), *Mapping Ideology* (London: Verso, 1994), p. 253.

67. E.M. Wood, *The Origins of Capitalism: A Longer View* (London: Verso, 2002), p. 2.

68. K. Marx, *Capital*, Vol. 1 (London: Penguin, 1976), p. 270.

69. E.M. Wood, *Democracy against Capitalism: Renewing Historical Materialism* (Cambridge: Cambridge University Press, 1995), pp. 28–29.

70. Marx, *op. cit.*, pp. 270–271.

develops constituted in the view that in capitalism individuals are free and equal, freedom and equality being in fact confined to the realm of the political. Such an ideology first appears in the writings of social contract theorists such as Hobbes and Locke, while the foundations of its internationalisation are laid by Kant.⁷¹ As Rupert puts it,

capitalism's structural separation of the economic from the political may have crucial ideological effects: it enables the wage relation to take on the appearance of a voluntary exchange between abstract individuals in the market; while, at the same time, the state may appear as a class-neutral public sphere in which abstract individuals may interact as formally equal citizens pursuing an instrumental politics of self-interest.⁷²

Thus, capitalism "makes possible a form of democracy in which formal equality of political rights has a minimal effect on inequalities or relations of domination and exploitation in other spheres".⁷³ The notion of individual rights is not only compatible with the functioning of the market but also codifies some of its most fundamental elements—the right to property and the right to employment objectify the existence of private property and wage labour which constitute the key institutions of capitalism.

The ideology of freedom and equality embodied in the notion of rights has developed historically in an organic relationship with capitalism. There is no space here to examine this historical development in detail. What I wish to emphasise is that changes in the relations of production—from feudal to capitalist—must be examined to understand the emergence of the notion of natural rights. This is not to say that economic relations determine other social institutions; however, they create a setting within which certain non-economic forms are rendered possible, while others are impossible or inconceivable.

With the end of the Cold War and the collapse of the socialist alternative, the development of global capitalism rendered possible the development of the global human rights discourse. Again, the latter was not necessitated by the former; however, a global setting more conducive to the globalisation of human rights appeared with the transition of the former socialist states to capitalism. The direct causal role was played by a series of different conjunctural factors: the fact that the victory of the West in the Cold War was interpreted as the victory of freedom, which was now to be spread elsewhere; the breakthroughs in information and communications technology which made human rights abuses more difficult to conceal; and the growth of a global civil society now free from Cold War constraints.

Now the historical relation between individual rights and capitalism raises one important question: what is the nature of this relationship today in the era of global capitalism? I suggest that the global discourse of human rights today plays the role of Gramsci's moral leadership in the context of the development of a hegemonic order at the heart of which lie the interests of transnational

71. I. Manokha, *The Political Economy of Human Rights Enforcement* (London: Palgrave, 2008), pp. 86–93.

72. M. Rupert, *Ideologies of Globalization: Contending Visions of a New World Order* (London: Routledge, 2000), p. 3.

73. Wood, *Democracy against Capitalism*, *op. cit.*, p. 224.

capital. In the remainder of this section I will develop this argument in more detail.

Gramsci distinguishes between a rule based on coercion and a rule based on consent and "intellectual and moral leadership"⁷⁴ or hegemony. He argues that consent is secured by dominant social forces by means of education of subordinate groups to ensure that they share a particular world outlook and a particular set of beliefs on the one hand, and the universalisation of certain moral values and norms on the other. For Gramsci, the task of hegemonic forces is to "educate" the masses, to "produce" subordinate groups' understanding of their role in society and of society itself, to make sure that they accept the existing society "without criticism".⁷⁵ Such a "production" of consent must be complemented by a system of moral values which, once established, influences the subordinate group's "moral behaviour and the direction of [their] will".⁷⁶ In short, the establishment of a hegemony consists in "building a new intellectual and moral order, and hence the need to elaborate the most universal concepts".⁷⁷

Gramsci's concept of hegemony has been applied to the realm of the international by a number of scholars who are referred to as the "neo-Gramscians". They share the view that the last three decades have constituted a phase of transition from a post-war US hegemony to a new form of hegemonic formation centred on transnational capital.⁷⁸ The hegemonic position of highly mobile capital is institutionalised in a variety of multilateral organisations and treaties under pressure not only from transnational corporations but also "organic" intellectuals such as corporate allies in governments, inter-state organisations, and different policy-making and advisory networks, which develop neoliberal policy guidelines and reduce the role of states to ensure the working of the market mechanism. Gill argues that at the core of the emerging hegemonic formation is a nucleus which comprises the following elements: G8 state apparatuses, transnational capital, associated privileged workers and smaller firms (businesses linked as contractors or suppliers, import-export firms, and service companies such as stockbrokers, accountants, consultancies and lobbyists).⁷⁹ Competitiveness in the world market has become the ultimate criterion of state policy which justifies the gradual removal of the measures of social protection built up in the era of Keynesianism and the welfare state,⁸⁰ and a form of "new constitutionalism" or the institutionalization of neo-liberalism at the macro-level of power in the quasi-legal restructuring of the state and international political forms⁸¹ has developed. The element of consent in the developing global order, despite international civil society protests, is underlined by a relative decline

74. A. Gramsci, *Antonio Gramsci: Selections from Prison Notebooks* (eds. Q. Hoare and G. Nowell Smith) (London: Lawrence & Wishart, 1971), p. 57.

75. *Idem*, *The Modern Prince and Other Writings* (New York: Lawrence & Wishart, 1957), p. 66.

76. *Ibid.*, p. 67.

77. *Ibid.*, p. 5.

78. For more on this see Manokha, *The Political Economy of Human Rights Enforcement*, *op. cit.*; *idem*, "Al-Qaeda Terrorism and Global Poverty: New Social Banditry", *Journal of Global Ethics*, Vol. 4, No. 2 (2008), pp. 95–105.

79. S. Gill, "Globalization, Market Civilization, and Disciplinary Neoliberalism", *Millennium*, Vol. 24, No. 3 (1995), pp. 400–401.

80. R. Cox, "Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order", *Review of International Studies*, Vol. 25, No. 1 (1999), p. 12.

81. Gill, *op. cit.*, p. 412.

of class and radical politics, and a noticeable decline in the power and activity of trade unions as enterprises increasingly locate their plants in different countries which makes trade union organisation and bargaining more difficult.⁸²

The role of moral leadership in the development of consent has so far been neglected in neo-Gramscian analyses, and yet it is emphasised repeatedly by Gramsci. In addition to the arguments quoted above with respect to the need to create “a new moral order”, the role of moral leadership consists in contributing to the reproduction and objectification of the existing relations of production, for “although hegemony is ethical-political, it must also be economic, must necessarily be based on the decisive function exercised by the leading group in the decisive nucleus of economic activity”.⁸³ From these observations by Gramsci we may infer that moral leadership has two principal characteristics: on the one hand, it involves universalisable moral values, and on the other it naturalises, via these values, the existing order and its material foundations so that they are taken for granted or attain the status of “common sense”.⁸⁴

The global discourse of human rights possesses both of these dimensions. On the one hand, it has a very strong moral import. The struggle for freedom, for the liberation of the oppressed, their rescue from the hands of torturers and the persecution of the perpetrators are by their very nature morally charged actions and are usually accompanied by a significant degree of moral rhetoric. On the other hand, these moral values contribute to the objectification of the key mechanisms of the global economy, their being taken for granted and naturalisation. Now this claim needs to be substantiated, for the discourse of human rights also includes social and economic rights, which are seen by a number of analysts as having counter-hegemonic potential. It may be argued that, indeed, these rights presuppose certain constraints on the operation of capital, and a certain degree of protection of workers. However, this potential is yet to be realised for it is the political and civil rights that prevail by far in the global discourse of human rights, as has been observed by numerous commentators. Furthermore, the counter-hegemonic potential of social and economic rights needs to be treated with caution, for some of these rights not only fail to question the existence of global capitalism but also naturalise one of its most fundamental mechanisms—the wage–labour relation—by declaring such rights as the right to work, to fair wages, to equal opportunity for everyone to be promoted in his/her employment and to periodic holidays, with pay, as universal human rights. As things stand today, the present article argues that the global discourse of human rights, dominated by negative rights, contributes to the development of Gramsci’s quality of moral leadership in the context of the developing hegemony of capital.

Conclusion

This article has attempted to analyse the global discourse of human rights from a Foucauldian perspective. It has been demonstrated that this discourse has

82. See Cox, *op cit.*; see also U. Beck, *The Reinvention of Politics: Rethinking Modernity in the Global Social Order* (Cambridge: Polity Press, 1997).

83. Gramsci, *Antonio Gramsci, op. cit.*, p. 161.

84. *Idem, The Modern Prince and Other Writings, op. cit.*, p. 67.

contributed to making human rights a kind of a global standard or norm with reference to which agents are increasingly evaluated and evaluate themselves. Using two dimensions of Foucault's conception of power—the substitutability of subjects and objects of power who do not possess but exercise power with reference to the prevailing standard of behaviour, as well as the manner in which power may be exercised by agents over themselves even in the absence of external coercion—we have discussed the way in which global discourse of human rights has conditioned the behaviour of different forms of agency. We have seen how different actors have exercised power over those who were seen as not conforming to the norm: Western states with respect to non-Western states; non-Western states with respect to non-Western states; NGOs with respect to business enterprises; and business enterprises with respect to non-Western states. We have also discussed the way in which some entities—most notably business enterprises and non-Western states—have increasingly found it necessary to declare their adherence to human rights norms and to develop mechanisms and policies for their promotion, without any coercion from other actors. Even if in many cases such declarations and policies fail to produce any substantial change in terms of respect for human rights and amount to only formal commitments, it is nevertheless important to explain why these agents have suddenly sought to make such declarations and develop human rights policies. It has been argued that Foucault's analytical framework helps us understand this by designating positive forms of power, that is, power as different from repression or negation, as a productive or creative force, and by helping us to explain how dominant discursive structures may lead to changes in the behaviour of some agents. It has also been argued that by making human rights commitments and by engaging in human rights practices, agents contribute to the further growth and power of the global discourse of human rights.

A purely Foucauldian analysis would have left it there. However, as has been argued in the final section, such an analysis of the global human rights discourse would have been incomplete. It would have treated human rights in isolation from the economy, from the relations of production, and it would have left their historical development and their rapid ascendance in the post-Cold War period unexplained. The last section of the article argues that the notion of individual rights emerged with the development of capitalism and has developed in an organic relationship with it. With the help of the concept of ideology in the negative sense its causal role with respect to the development of capitalism has been described as residing in the ideological representation of political and civil liberty and equality as the liberty and inequality naturalising and objectifying the relations of power and inequality in the economy. It has then been argued that at the current historical juncture, the causal role of global human rights discourse resides in providing transnational capital with a Gramscian quality of moral leadership in the context of its developing hegemony.

It seems that a purely Foucauldian analysis of the global discourse of human rights would have ended on a positive note. After all, this global discourse contributes to the promotion of important values and ideals which are increasingly difficult to disregard without facing some form of opposition or reaction. The political economy approach that has been used here to complement the Foucauldian framework allows us to take a more critical stance towards

this discourse because of its internal relationship with the capitalist production structure. The global discourse of human rights may be said to produce an unintended consequence of contributing to the growing power of capital over the state/society complex. As such, this noble idea turns out to play a role in the reproduction of different forms of human misery and suffering affecting millions of people around the world that result from the current operation of the global economy.