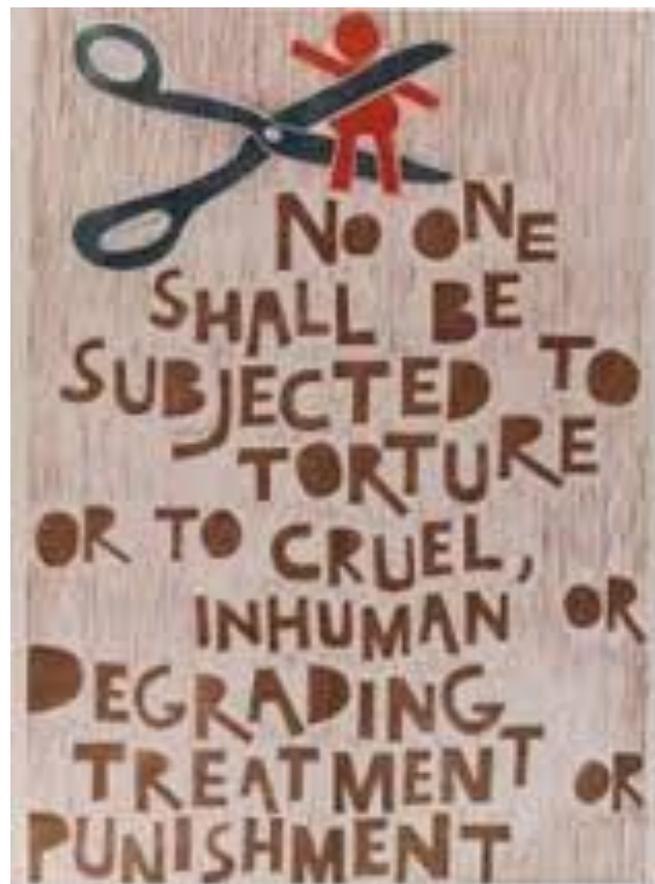


RADICAL TEACHER

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Teaching the Transformative Agenda of the Universal Declaration of Human Rights

by Gillian MacNaughton and Diane Frey



Article 5 of the Universal Declaration of Human Rights. (UN/DPI Photo/ Artwork by Brazilian artist Octavia Roth (c) Octavia Roth)

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Neoliberalism has dominated the world for over three decades and now permeates our laws, policies, and practices at the international, national, and local levels. At the international level, the International Monetary Fund, the World Trade Organization, and the European Union all support trade liberalization, privatization of public services, and the primacy of markets over people. At the national level, the United States, the United Kingdom, China, and many other countries similarly support this neoliberal agenda, despite the violations of human rights that result from, for example, austerity measures imposed on those worse off to subsidize the risks taken by those with the greatest wealth. Many of our students have grown up in this neoliberal context and fail to recognize that the current world order was created by our laws, policies, and practices, and that this world order is not inevitable.



Indeed, neoliberalism has become so ingrained that it has become invisible and many of us no longer notice when new agendas conflict with international human rights laws and principles to which almost all countries in the world have committed themselves. In this context, the Universal Declaration of Human Rights (UDHR) enshrines a transformative agenda—a framework for moving from a world order designed by a few elites for their own benefit to a world order for the benefit of everyone.

Adopted in 1948, immediately after World War II, to implement one of the four goals of the new United Nations Organization, the norms and aspirations elaborated in the UDHR provide a framework for a radically different world than the one we have today. Although the United States initially played a central role in supporting the UDHR—Eleanor Roosevelt chaired the UN Commission on Human Rights responsible for drafting the instrument—the content of the UDHR is not well-known in this country. Indeed,

myths about “international human rights” abound. It is not uncommon in the United States, for example, for people to believe that human rights are about abuses that occur in other countries, not here in the United States. This belief is often linked to the perception that human rights are largely about war crimes, genocide, apartheid, and criminal prosecutions for such gross violations of human rights. Otherwise, human rights, as understood in the United States, are often limited to individual civil rights, such as freedom of speech, and freedom of religion, as well as the prohibitions against slavery and torture. Little is known in the United States—or in much of the rest of the world for that matter—about, for example, the right to the benefits of science (article 27), the right to human rights education (article 26), or the right to periodic holidays with pay (article 24), which are enshrined in the UDHR as well as other international human rights instruments.

Anglo-American countries have traditionally focused on individual civil and political rights, while largely ignoring economic, social, and cultural rights, as well as collective rights (Neier 2006). The UDHR, in fact, includes a full array of individual, family, community, societal, and international level rights. Individual rights include, for example, the right to freedom of opinion (article 19) and the right to be free of hunger (article 25). Family rights include the right to protection of the family as the fundamental unit of society (article 16) and the right to an adequate standard of living for a family (article 25). Community rights include the right to form trade unions (article 23) and the right to participate in the cultural life of the community (article 27). The rights of the people of a nation include the right to a government that represents the will of the people (article 21). Finally, article 28 of the UDHR—addressing the rights of all of humanity—provides: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

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Much of this holistic vision of human rights in the UDHR has been lost after decades of neoliberal governance. In this article, we revisit the content of the UDHR, beginning with the right to a social and international order in which everyone’s rights can be realized, and consider other key provisions that conflict with neoliberalism, including the rights to the benefits of science, to full employment and decent work, to progressive realization of free higher education, to nondiscrimination on the grounds of economic status and to solidarity. We also share some activities that we use in the classroom and online to make the transformative agenda of the UDHR visible to students and demonstrate how far we have strayed from the aspiration of a world in which everyone enjoys his/her human rights. The article

concludes that teaching the holistic vision of the UDHR in a neoliberal world is a radical human rights curriculum.

Before delving into the less well-known provisions of the UDHR, we should introduce ourselves and the context of our teaching. Diane Frey is a social scientist with a PhD from the London School of Economics (LSE) in International and Comparative Employment Relations. Gillian MacNaughton is an international human rights lawyer with a DPhil in Law from the University of Oxford. Together we have taught undergraduate and graduate students in Europe at LSE, Oxford and the University of Sarajevo, and in the USA at Northeastern University, Brandeis University, the University of Massachusetts Boston, the National Labor College, Harvard University Extension School, and San Francisco State University. The students in our courses have been diverse and come from many countries around the world. For example, up to 80 percent of the students in the course on human rights-based approaches to development at Brandeis University were from developing countries. The class in Sarajevo was the least diverse in that all students came from European countries. We mention this diversity because it has played an important role in teaching the holistic vision of the UDHR. The following ideas for teaching the transformative agenda of the UDHR have been successful in all these contexts, despite the varied understandings and misunderstandings of human rights across countries and regions.

The Right to a Social and International Order

Many introductory courses in human rights begin, quite naturally, at the beginning of the UDHR and may or may not get to the economic, social, and cultural rights (ESCR) located in articles 22-27. We like to begin with a broad overview of the UDHR. We introduce it by asking students to read the full document, which is only 30 brief articles long, and then vote for the five rights that are most important to them personally. Then we take a tally—either in class if it is a small group or online with a larger group—and examine the results. Inevitably, almost all the rights in the UDHR receive at least one vote. The right to rest and leisure is one right that is often overlooked, however, while the right to education is often a highly rated right. When students discuss the reasons for the disparities, it becomes clear that the right to education may have received so much support because it is a group of students voting. On the other hand, the right to rest and leisure may not have received any votes because there are no domestic workers in the class as they generally do not get any time off to take courses. Students from different countries may also prioritize different rights. Based on the analysis that is generated in the class, students draw the conclusion that the full range of rights in the UDHR must be recognized and enforced to protect the rights of all people in all circumstances throughout their lives. In this light, students see that article 28 is the umbrella right that holds this vision of a holistic human rights framework together.

Importantly, article 28 requires transformation of institutional arrangements at both the national and the international level. In this respect, it differs from the traditional understanding of human rights, which imposes obligations on national governments to respect, protect, and fulfill the human rights of the people within their specific jurisdictions. The enforcement of human rights at the national level is certainly crucially important to the realization of human rights in every country. All members of the United Nations are bound under the UN Charter to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (article 55(c)). These human rights and fundamental freedoms are detailed in the UDHR, which applies to all UN members, and in international human rights treaties, which apply to all those states that ratify them. Enforcement of the UDHR at the international level is carried out by the Universal Periodic Review under which each country must report to the UN Human Rights Council every four years on the progress it has made in implementing its human rights obligations under the UDHR and the human rights treaties to which it is a party. In this way, the UN human rights system emphasizes the responsibility of nation states for the advancement of human rights within their jurisdictions.

However, nation states are often limited in what they can do to advance the human rights of their residents due to international rules and pressures. For example, the global trading system created under the World Trade Organization includes the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. Under this agreement, countries must abide by patent laws that protect the profits of pharmaceutical corporations and prevent the majority of people in the world from having access to affordable medicines to address life-threatening and painful health conditions. Although the TRIPS agreement ostensibly has public health exceptions for essential medicines—so-called “flexibilities” to allow policy space for countries to access affordable medicines—the pressure brought to bear by industry and their host countries upon those that seek to exercise these public health exceptions has made it almost impossible to use them (Forman and MacNaughton 2015). This is just one example of how the international regime limits what countries can do to advance the human rights of their residents.

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The stark contradiction here is that all UN members have the obligation to uphold the rights in the UDHR, and, on the other hand, the same countries create international regimes that effectively make it impossible for them to do so. Strangely, even international policy on poverty eradication and social justice is driven today by neoliberal logic. For example, under the Millennium Development Goals and the Sustainable Development Goals, economic growth is the key international policy pursued to eradicate global poverty. Thomas Pogge and Mitu Sengupta calculate, however, that it would take ninety-two years at current growth rates for the poorest people, those living on \$172 per year, to double their incomes to \$344 per year (Pogge and Sengupta 2014). In other words, it is international policy to continue violations of economic and social rights for ninety-two years, despite national commitments to human rights laws that demand immediate realization of the minimum essential core of the rights to food, water, housing, and health.

The current international system established by high-income countries also (1) diminishes trade opportunities for low-income countries, (2) fuels conflicts and violent oppression through arms sales, (3) allows wealthy people and corporations to use sham transactions in jurisdictions



with low-to-zero tax rates to avoid paying their fair share of the tax burden, (4) requires populations in low-income countries to pay large debts, accumulated by elites and dictators, that were not approved by and did not benefit the population, and (5) enables the natural resource outflows from middle- and low-income countries in many cases where there is no benefit to the people of the nation (Pogge and Sengupta 2014). All of these practices violate human rights standards, and yet, they operate outside the regular supervision of the UN human rights mechanisms, which focus on nation state responsibility for human rights within their jurisdictions. The WTO, Big Pharma, and Swiss banks do not report to the Human Rights Council on their progress in implementing human rights obligations and are not party to any of the international human rights treaties.

Importantly, article 28 indicates that UN members intended to implement the rights in the UDHR and recognized, at the time that it was adopted, that to achieve this goal would require structural transformation to both the domestic social order and the international regime (Marks 2009; Eide 1999). Indeed, the structural approach of article 28 requires actively changing the power relations within domestic and international structures so that they promote, rather than undermine, realization of the full

panoply of human rights (Marks 2009). In Asbjørn Eide's view, the UDHR was formulated in general terms initially to provide countries with broad policy space to transform their internal systems; however, gradually this space would diminish as rights were given more substance (Eide 1999). Today, it is clear that to achieve a social and international order in which everyone could realize their human rights would require a total transformation of global ideology, power, policy, and practice. In that respect, article 28 may be the most radical provision in the UDHR.

Economic, Social Rights and Cultural Rights

To understand how far we have come from the aspiration of "a common standard of achievement for all peoples and all nations," as expressed in the preamble to the UDHR, it is helpful to examine some of the explicit rights that have been made invisible by the neoliberal world order. The overwhelming majority of human rights abuses in the world are violations of economic, social, and cultural rights (ESCR). For example, globally 2,000 children under the age of five die every day from diarrhea; ninety



percent of these deaths are directly linked to contaminated water, lack of sanitation, or inadequate hygiene (UNICEF 2013). One in every nine people on the planet does not have enough food to lead a healthy life (World Food Program 2015). About 863 million people are living in urban slums and this number is rising steadily (UN Habitat 2014). Yet, ESCR—the rights to nutritious food, clean water, safe housing, equal education, universal healthcare, and decent work—continue to be marginalized as they are of concern only to marginalized populations. Teaching human rights with a focus on ESCR, thus, brings the course into line with (1) the most widespread human rights abuses globally, and (2) international standards that require prioritizing the human rights of those most disadvantaged (Chapman 2009: 14).

Importantly, ESCR have received little attention in Anglo-American jurisdictions since the adoption of the UDHR. First, the Cold War resulted in an emphasis on civil and political rights in the West. Then neoliberalism set in just as the Cold War came to an end. As a result, ESCR have never received the attention in the West that they garnered during the drafting of the UDHR. The list of ESCR that are often overlooked—in human rights courses as well as in policy-making—is long. We focus on three rights that

demonstrate the impact of neoliberalism. This choice of rights depends largely on the context. In Bosnia, we usually focus on the right to decent work, as there has been almost 60% unemployment for youth in the years we taught at the University of Sarajevo (World Bank 2013: 23). In the United States, we often look at the right to progressively free higher education, as students here are acutely aware that it becomes progressively more expensive every year. The right to the benefits of science—as broadly understood to mean knowledge about the world—is especially relevant to all university students.

The Right to the Benefits of Science

Article 27(1) of the UDHR guarantees the right “to share in scientific advancement and its benefits.” Although there was no precedent for such a right in any contemporaneous constitutions, there was unanimous agreement among the drafters to adopt this provision. The USSR delegate, Pavlov, explained that “the benefits of science were not the property of a chosen few, but the heritage of mankind” (Morsink 1999: 219). The Cuban delegate, Pérez Cisneros, noted that not everyone was gifted enough to play a part in scientific advancement but that everyone should have the right to share in the benefits of science. The French delegate, Cassin, agreed, and following a brief discussion, the new right to the benefits of science was adopted unanimously (Morsink 1999). The dominance of neoliberalism over the past several decades has hollowed the core of this right by transforming science into a commercial endeavor.

When the UDHR was drafted in the post-World War II period, science was largely perceived as a public good, the government played a key role in sponsoring scientific research, and there was great optimism about scientific advancement and its potential for improving human life (Chapman 2009). At that time, the idea that the benefits of science belonged to everyone was well accepted. Chapman tells us: “According to the then dominant model of science, scientists engaged in research were motivated primarily by the desire to advance basic knowledge, receive professional recognition, contribute to human welfare and in the process further their careers” (Chapman 2009: 8). They were not inclined to patent their discoveries or use them for other economic benefits (Chapman 2009). Beginning in the 1980s, this orientation to scientific research was increasingly displaced by market-oriented considerations (Chapman 2009).

The commercialization of research has resulted in numerous changes to the research enterprise, and, therefore, the potential for enjoyment of the right to the benefits of science. First, the U.S. Congress adopted laws in the 1980s allowing scientists to own private patents they developed using government funds, greatly expanding the potential for researchers and others to profit from publically supported scientific inquiry (Chapman 2009). The profit motive has increasingly influenced the determination of research priorities, methodology, and values. This reorientation means that research is not based on the needs of people or even scientific curiosity, but rather caters to the desires of the wealthy. Simply speaking,

people living in poverty, who might benefit most from scientific advancement, are not profitable. As Chapman states: “With market-driven science, important areas of research are neglected, and promising research findings may not be translated into new products or, even if they are, brought to market” (Chapman 1999: 9). Even more fundamentally, scientific inquiry is now a private industry—generating objectives, methodologies, outcomes, data sharing and interpretation—based on the goal of producing profits for shareholders rather than benefits for humans.

The Right to Full Employment and Decent Work

Article 23(1) of the UDHR states that “[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.” This bundle of work rights is often simplified to the right to “full employment and decent work.” Importantly, the right to protection against unemployment in the UDHR derives from the UN Charter article 55(a), which obligates UN members to promote higher standards of living and full employment. As the UN Charter prevails in the event of any conflict between the obligations of UN members under any other agreement, the duty to promote full employment is an obligation of the highest order in the international legal regime (UN Charter 1945, article 103). At the time that the UDHR drafting committee—the UN Commission on Human Rights—adopted the right to protection against unemployment, there was tremendous unemployment as the war had just come to an end, soldiers were returning home, and industry was in the process of retooling for peacetime. “The presumption of the right so stated was that countries would aim at full employment, as Article 55 of the Charter bids them to do” (Morsink 1999: 162). The idea of full employment was indeed a natural extension of New Deal policy tools implemented in the United States during the Great Depression, such as the public works projects, which directly employed (mostly) men in government-funded projects to address unemployment (UNDP 2010).

Under the current neoliberal regime, there has been a complete turnabout on state policy for unemployment. Today, in times of economic recession, international



players pressure states to adopt so-called austerity measures, which prevent the government from increasing social spending when it is most needed. Indeed, austerity measures often involve cutting government staff or at least hiring freezes. Exactly at the crucial time when the ESCR, especially the right to protection against unemployment, should come into play, the state withdraws from direct action on securing these rights and instead focuses on creating conditions for private investment with the rhetoric of trickle down employment growth. The proposed Sustainable Development Goal 8 on full employment and decent work for the post-2015 international development agenda enshrines this neoliberal perspective by reducing the human rights to full employment and decent work to job opportunity growth conditioned on economic growth. Experience in many countries around the world, however, demonstrates that government can take action to protect against unemployment even in the absence of economic growth (UNDP 2010)—and under international human rights, have ethical and legal obligations to do so.

Economic policies designed to create optimum private investment conditions have also contributed to the hollowing out of the UDHR's vision of full employment for those who are fortunate enough to have work. Globally, fewer than one in four persons who are employed have standard employment relationships with stable full-time waged employment (ILO 2015: 13). In fact, a majority (sixty percent) of all wage and salaried workers are either in part-time or temporary forms of work (ILO 2015: 13). Employment growth is increasingly and persistently in non-standard work such as informal and unpaid family work. The government's duty to ensure the realization of the right to full employment and decent work for all, as envisioned in the UDHR in 1948, has been transformed into policies to improve markets and investment climates rather than people's lives.

The Right to Progressive Realization of Free Higher Education

One of the human rights recognized in the UDHR that is particularly interesting to our U.S.- and U.K.- based students is the right to the progressive realization of free higher education. Article 26(1) of the UDHR recognizes the right to education, providing as well that "[e]ducation shall be free, at least at the elementary and fundamental stages" and "higher education shall be equally accessible to all on the basis of merit." The right to education is further detailed in the International Covenant on Economic, Social and Cultural Rights, which provides that "higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education." The right to progressively free higher education conflicts sharply with increasing tuition, college fees, textbooks, and other expenses related to higher education, particularly in the United States and more recently in the United Kingdom. In this respect, our students in the United States and the U.K. are subject to retrogressive measures that conflict with the human right to education. The notion that governments have undertaken obligation to progressively make higher

education free almost always comes as a surprise to students.

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These three ESCR, the right to progressively free higher education, the right to full employment and decent work, and the right to share in scientific advancement are particularly relevant to university students. And they are intricately related to each other. Due to advances in science and its applications, free elementary school—or even free high school—is no longer adequate to prepare people to participate in civic life or the job market. Thus, students often take on enormous debt to pursue higher education. High unemployment and underemployment levels, especially among youth, makes it difficult for graduates to find work at all much less able freely to choose employment that is meaningful to them and the full development of their personality, a key objective of ESCR (UDHR articles 22, 26(2)). Rather, many graduates are forced to take any employment, even if it conflicts with their own values (and human rights) to earn a salary adequate to repay student loans. In this way, neoliberalism undermines an array of inter-related human rights particularly relevant to the experiences of university students.

Nondiscrimination on the Grounds of Economic Position

A corollary to ESCR is the prohibition against discrimination on the basis of economic position. We are all familiar with nondiscrimination provisions, as are evident in university policies, state and national laws, and international human rights instruments. Article 2 of the UDHR provides: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, *property*, birth or other status." The meaning of "property" in this list is "economic position," which is made clear by the Spanish version, which states "posición económica," the French version, which states "de fortune," and the drafting history, which indicates that "property" was included in the nondiscrimination provision to ensure that all people, whether rich and poor, had the same rights (Morsink 1999; MacNaughton 2009). The same language is adopted in the European Convention on Human Rights, the American Convention on Human Rights, and many international human rights treaties. Yet, very little has been said about the meaning of discrimination on the basis of economic position and the corresponding obligations that this right might impose on governments. Indeed, in his 2015 report

to the UN Human Rights Counsel, Philip Alston, the Special Rapporteur on Extreme Poverty and Human Rights, maintained that to date the Committee on Economic, Social and Cultural Rights has done little to explore what government obligations arise from the prohibition against discrimination based on “property” or economic position (Alston 2015: 18). The rise in economic inequality both within and between countries over the past three decades makes it crucially important for UN human rights mechanisms, scholars, and practitioners to begin to define these government obligations.

Drawing on the history in other areas of nondiscrimination law, the first step is for governments to review laws and policies with a view to repealing those that have a discriminatory intent or impact on the basis of economic position. This would include laws and policies that disadvantage, for example, people who are unemployed, low-wage workers, and people living in poverty. For example, states must repeal criminal laws that target the behavior of homeless people, such as begging or sleeping in public places, and reform social benefit systems—that have onerous requirements for costly documentation to apply for benefits and conditions requiring that recipients open their homes to government searches—to comply with human rights norms (Sepúlveda Carmona 2011). The second step is to enact domestic legislation prohibiting the private sector from discriminating on the basis of economic position. For example, the state must ensure that urban transformations and redevelopment do not undermine the housing rights and employment opportunities of low-income people. The third step is for the government to take positive measures to reduce inequality on the basis of economic position. For example, the state should raise the minimum wage to comply with the right to an adequate standard of living for a family to enjoy ESCR (UDHR article 25); provide universal entitlements—such as universal early childhood education, health care, child care, school lunches—which benefit rather than stigmatize people on the basis of their economic position; unify multi-tiered systems of education, health care, and social security; and create an enabling environment to facilitate the participation of marginalized people in the decisions that affect their lives.

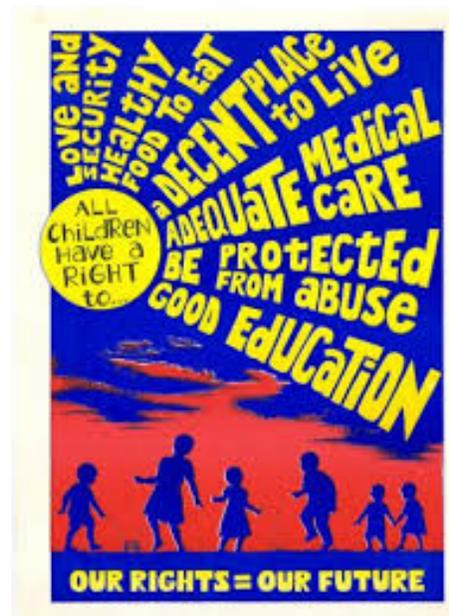
In short, the prohibition of discrimination on the basis of economic position demands substantial transformation of criminal, economic, and social policies, such that states respect, protect, and fulfill the human rights of all people, including low-income people and people living in poverty. And all of these actions—and many more—are requirements to comply with international human rights obligations to which UN members have already committed themselves. The fact that ESCR have been marginalized at the same time as the prohibition of discrimination on the

basis of economic position has been ignored is again consistent with a neoliberal agenda, which not only accepts but also promotes economic and social inequality.

The Right to Solidarity

Article 1 of the UDHR is perhaps the best known article in the instrument. It states: “All human beings are born free and equal in dignity and rights.” Although this first sentence is quoted often, the second sentence in article 1 is regularly overlooked. It provides: “They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” The “spirit of brotherhood” in article 1, along with the right to a social and international order in article 28, balances the individual freedoms in the UDHR with calls for solidarity (Glendon 1998). The drafters recognized that human beings are social beings who depend on their families, communities, and societies to enjoy their human rights and fully develop their personalities (UDHR article 22). In the world envisioned in the UDHR, governments must build infrastructures and redistribute resources to provide free education, universal healthcare, and social security to all, ensuring that all people are able to enjoy these human rights. Moreover, to ensure that these rights can be realized by people in all countries, the right to solidarity must extend beyond the borders of the nation state to influence the domestic, social, and international order. Simply, the drafters recognized that the “right to solidarity” is indeed necessary to realizing the rights in the UDHR.

Like ESCR and the prohibition of discrimination on the basis of economic position, the right to solidarity is a right that has received little attention from UN human rights mechanisms, scholars, and practitioners. As a result, the content of this right remains vague. In 2005, the UN Commission on Human Rights appointed an Independent Expert on Human Rights and International Solidarity to study this matter and prepare a draft declaration on the right to international solidarity. The Independent Expert submitted the draft declaration to the UN Human Rights Council in April 2014 (Dandan 2014), and the Council has requested that she convene regional consultations on the draft. While this indicates that some progress is being made in defining the right to solidarity, even the creation of the position of the Independent Expert was and continues to be controversial. In 2005, the mandate was created by a vote of 33 to 14, and it was most recently renewed by a vote of 33 to 14, with the United States and the United Kingdom both opposing the mandate. Moreover, the draft declaration addresses the international aspect of the right to solidarity but not the domestic implications of the right.



Conclusion

In 1948, the UDHR provided “a common standard of achievement for all peoples and all nations” (UDHR 1948: preamble). The global dominance of neoliberalism over the past three decades has unfortunately emphasized individual freedoms and marginalized ESCR and solidarity rights much as they were in the West during the Cold War. This is a skewed interpretation, however, of the founding document of the international human rights movement. The UDHR should be understood, as the drafters intended,

from a holistic perspective that views each of the rights as a necessary part of the whole. Despite the frequent refrain at the UN that all human rights are inter-related, interconnected, and interdependent, many rights in the UDHR are still largely ignored by UN human rights mechanisms, scholars, practitioners, and teachers of human rights. By exploring with students the original understanding of the UDHR and the less visible rights that it encompasses, we hope to contribute to bringing this holistic vision back into operation. In this respect, we teach the transformative agenda of the UDHR.

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