Freedom and the Rule of Law: Our Civilizational Choice between Death and Life

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Freedom in human political affairs is constituted and empowered by the rule of law. Whatever freedom might exist in human life prior to some imaginary social contract would still be a freedom that is socially constituted since what a person is cannot be separated from the social matrix that is our collective humanity. We do not have personality, intelligence, freedom, or human rights prior to society but rather each of us has these precisely because the individual and the species mutually imply one another can cannot be separated with regard to some temporal priority. The fact that every human being is a language-speaking being whose development is inseparably linked to the collective social phenomenon of language alone illustrates the truth of this fact that the individual and the species (society) mutually imply one another.¹

Socially constructed personality, intelligence, freedom and human rights are only removed from an anarchistic savagery and barbarism by the universal rule of law. Just as freedom is socially constructed so law is the rational universalization of freedom to all persons within society, with, of course, proper exceptions made for children and others incapable of understanding and abiding by the law. Society, one might say, gives rise to the free individuals who compose it and at the same time it gives rise to the universal, equitable and just laws that empower and govern the relations of these free individuals so as to maximize their flourishing and well-being. Freedom is therefore empowered by the universal rule of law directed toward equitability, justice, due-process, and individual liberties.²

The law must, of course, have checks and balances, government accountability and transparency, and constraints on official conduct built into it. This is because inherent in the power granted to the custodians of the law by the people whom they govern is a danger that the laws governing and empowering freedom will be perverted into their opposite—into laws directed at limiting and destroying freedom. This danger might be described as a political paradox of our human situation—we need laws to empower and extend freedom to all persons, yet the power of making and enforcing these laws given to government officials carries within it the danger of being perverted into its negative opposite: the power to limit and destroy freedom. Nevertheless, there is no reason why a Constitution cannot be written and a system designed that empowers freedom while ensuring that government officials themselves follow the law and the spirit of the law.

It is important to realize that these principles are universal to humanity. Personality, intelligence, freedom, and human rights emerge from society as this is concretely embodied across the globe in the multiplicity of cultural forms taken by human civilization. The emergence of personality, intelligence, freedom and rights in persons constitutes the telos of civilization—the purpose of society is to promote the flourishing of its members. If in fact some persons (such as Plato in the Republic) declared that while the purpose of society may be to promote freedom, but that freedom is manifest in a creative and productive way contributing to the project of civilization only in a few individuals, this would not be untrue.

But that does not mean that society can in any way be organized to privilege a few with a view to producing free, creative persons who contribute to civilization as a whole. For one thing, it would be an explicit contradiction and travesty to limit the freedom of many in the service of empowering the freedom of a few. It is our species-being that gives rise to freedom in each and the law must serve to empower freedom in the species, never contradicting itself by empowering freedom in only a few. And since freedom and its creative potentiality constitute one of the deepest mysteries of our human existence, the few who creatively move civilization forward can never be identified ahead of time. They will necessarily appear from all times, places, and cultures in an unpredictable fashion. What civilization can and must do is provide the empowering matrix that makes these appearances possible.

This is because freedom emerges from the richness and diversity of the human species itself. In most people, the freedom to flourish means the desire to raise a family, to enjoy family and friends, to participate in church, temple, or mosque, and
to pursue modest goals in life. These uses of freedom are fully legitimate in spite of the gigantic criticisms of “bourgeois mediocrity” leveled by some creative personalities who see that there should be deeper goals and meanings to civilization than this. Such criticisms often leave out the infinite depths of human dignity that is part of the mystery of our human situation: each person is valuable in themselves and not because of his or her accomplishments or contributions. Hans Jonas correctly argues that freedom is an emergent property of the cosmic process and that we are responsible to protect and preserve freedom and see that it does not die out within the cosmos. Freedom, embodied only in concrete individuals, is an end in itself.

However, Jonas incorrectly concludes that we might find it necessary to protect freedom through some form of non-democratic society. This conclusion contradicts the very meaning of freedom: the law must be constructed so to protect and empower the freedom of everyone in the human species. But Jonas is correct that the human project is connected with freedom emerging within the cosmos in deeply mysterious ways that we may never fully understand. Yet one thing is clear. If there is a higher destiny connected to the emergence of humanity and freedom within the cosmos, this destiny can never be realized through the present universal reign of militarism and violence led by the sovereign nation-states of the world. Only by converting our planet to nonviolence through the universal rule of enforceable democratic law will our higher destiny begin to emerge.

Historically the concern with freedom goes back to the Greek polis, although a giant theoretical step forward occurred in during the Enlightenment reflection on freedom in relation to the “social contract” of society as a whole. The realization that the law must be designed to protect and empower freedom developed through the thought of Locke, Rousseau, and Kant and gave rise to an on-going theme in political philosophy concerned to understand and articulate this demand. Right through Hegel this demand to organize law in the service of freedom was linked to the political structure of the sovereign nation-state. Within this tradition, as well, some began to understand that a society that establishes a significant degree of real equality, justice and freedom is one in which freedom is elevated from a mere “negative freedom” of trying to preserve something over and against other people and the authorities to a “positive freedom” in which the freedom of each enhances the freedom of all. Freedom is empowered and magnified by the rule of just and equitable law for all.

This movement from negative to positive freedom certainly applied to the struggle for the just and equitable rule of law within sovereign nation-states, but some advanced thinkers began to see the universal implications of these political concepts and point forward to the situation that we find ourselves in today in the early 21st century. One of these thinkers was Ernest Barker who declared:

> But no organization is absolutely justified even if it promotes the freedom of all its members—but promotes their freedom only. It may do that, and yet be inimical to a broader liberty. That is why each partial organization needs the criticism of some higher organization, and why, ultimately, all other organizations of men come to the bar of the organization of all men, if that can ever come to pass. We can imagine a high measure of general liberty under a system of national societies and national States. We can imagine a perfect liberty only in a world society and a world State.

“All other organizations of men come to the bar of the organization of all men.” The demand that the law empower and serve human freedom is universal, just as the equiprimordial derivation of personality, intelligence, freedom, and rights is shared in the mutuality between individuals and society. Freedom within individual nations can be promoted and organized under good laws only to a point, since the very fact that the freedom is contained within absolute territorial boundaries means that its universality is structurally denied, and the very fact that other sovereign nations compete on the planet for power, prestige, wealth, and resources means that the freedom within any one is restricted by the international matrix that inherently denies equality and justice to all. Immanuel Kant called this international matrix between sovereign nations, recognizing no enforceable laws above themselves, a relation of “war.”

Freedom is necessarily limited within individual sovereign states because its opposite—anarchy, chaos, power politics, violence, and arbitrary self-interest govern the relations of human beings on the Earth beyond the borders of their respective nations. Freedom, we have seen, requires the rule of just and equitable laws. But between nations there are only treaties of sovereign entities, and relations of rivalry, alliances, global struggle for economic ascendancy, for resources, and for predominance. Lawful freedom is absent from the international dimension, but that very fact seriously
impacts the ability of the nation-state to perform its governmental function of protecting and empowering freedom within its borders.

Today, we are in a technological situation of advanced weaponry that Ernest Barker could not begin to imagine. Intercontinental ballistic missiles can deliver nuclear weapons that wipe out a nation from halfway around the world in a matter of minutes. Hostile forces (so-called “terrorists”) can carry a nuclear weapon inside a suitcase into the heart of a city, with immensely destructive potential. Barker understood that “We can imagine a perfect liberty only in a world society and a world State.” It is a mistake to partition liberty off into territorial segments with absolutized borders ostensibly defending something worth preserving.

But the very structure of that defense, the militarized borders purporting to protect, turn that defense into a travesty for freedom. National security secrecy necessarily increases, and with it the internal corruption that all secrecy intrinsically engenders. There is temptation for pure violations of law within this intrinsically warlike situation: assassinations, kidnappings, torture, spying, propaganda perception management, secret meetings about power strategies, concern with leaks, a way of thinking that sees potential enemies everywhere, etc.

None of this is justifiable in the service of freedom because it is all intrinsically destructive of freedom. Philosopher of law David Luban concludes that the so-called “war on terrorism” is the ultimate repudiation of the rule of law and civilized human relationships.Ⅲ Freedom within societies necessarily dies in this environment, and freedom beyond sovereign territorial boundaries is also necessarily subverted and prevented from taking root.

The vague, utilitarian goals by which this “defense” of something is justified, are themselves intellectually and morally bankrupt. As John Finnis has shown in some detail, the idea that certain actions in the present are justified by some collective “good” envisioned in the future is bankrupt in multiple ways.Ⅴ The violation of the integrity of persons in the present through assassinations, torture, kidnapping, etc., intrinsically denies the cogency of the moral integrity of personality, freedom, intelligence, and rights that all civilized societies are bound to pursue. The end can never justify the means when the means are in direct violation of the dignity and integrity of persons.

Secondly, this utilitarian cover for war and power politics intentionally obscures the responsibility of individual persons for their actions, actions often horrifically immoral and criminal in nature. The form of this reasoning takes the choice and responsibility for actions out of the hands of the individual who performs these actions and substitutes a pseudo-objective form of reasoning that declares that “this ultimately good end requires that these means be used.” The passive voice makes it appear that an objective determination and requirement has been envisioned, when in reality this mode of reasoning is simply a propaganda cover for commanding some people to commit murder, torture, etc.

Thirdly, as Finnis points out, the generic “good” envisioned by utilitarianism does not exist. There is simply no unitary good that can be so conveniently invoked and used as a cover for their murderous activities in the present. Finnis identifies seven different primary goods recognized by human practical reason: life, knowledge, practical reason itself, sociability (friendship), play, aesthetic experience, and religion (that is, some coherent relation to the ground and meaning of existence).Ⅵ

The fact that Utilitarianism, throughout its history, has had considerable difficulty in trying to identify what this (“what is right is what promotes the greatest good of the greatest number”) is shows the cogency of Finnis’ rejoinder. It this good “pleasure”?, but then the concept of pleasure carries with it immense conceptual difficulties that, for example, led John Stuart Mill to distinguish “higher” from “lower” forms of pleasure, again leading to even further conceptual difficulties.Ⅶ There is no such thing as this unitary, collective common good, and this very fact is why the destroyers of freedom and the purveyors of war and power relationships cling to their ersatz principle of utility as a justification for their criminalized activities.

If there are a variety of incommensurable goods recognized by human practical reason, and if a flourishing life involves a person freely pursuing some unique combination of these goods, then we must organize society on the basis of positive
freedom within the context of justice and equality before the law. But society, I have shown, can no longer be some partial society within an anarchy of such partial societies, for the very structure of this global lawlessness destroys the project of freedom within each of these societies. The project of freedom necessarily involves the ascendancy of world law governing a world of freedom, justice, and equality under the supreme law of an *Earth Constitution*.

The moral imperative inherent in our human freedom—which is inseparable from our *species-being* and human civilization—is the imperative of joining together under a common *Constitution for the Federation of Earth* and placing freedom at the center of the human project. As many thinkers have pointed out, after 1945 and the invention of nuclear weapons, human beings entered their “end time.” German thinker Jürgen Moltmann puts it thus: “When the atomic bomb was invented and dropped on Hiroshima and Nagasaki in August of 1945, it was not just the Second World War that was ended. The whole human race had entered its end-time as well.”

The United Nations, founded in 1945, is basically a mere treaty of sovereign nation-states. It is incapable of legislating and enforcing world law over all nations and individuals and therefore utterly incapable of defending human freedom. Human freedom, we have seen, is inseparable from the rule of law empowering and protecting that freedom. The partial protection of the project of freedom within sovereign nation-states came to an end probably with World War I. At that time thoughtful people began to realize that the sovereign nation-state itself was the problem. This partial protection of freedom was then clearly torn to shreds by World War II, and has been a complete chimera since 1945. The UN Charter is basically a dinosaur of the pre-World War I era, a dinosaur of the illusion that somehow freedom, human rights, and the rule of law can be protected and promoted by and within sovereign national territories.

But the realization that we are in the end-time means that we cannot wait for some illusory slow evolution of the UN system to eventually give more and more credence to democracy and the participation of the people of Earth in the governing of international relations. The human project can be terminated at any time by the lawless crazies in the Pentagon or the Kremlin or elsewhere. The imperative of human life and civilization is to protect and promote freedom, and the UN Charter continues to place us in the mortal danger of destroying the project of freedom forever.

We must replace the UN Charter as soon as possible with the *Constitution for the Federation of Earth*. The *Earth Constitution* is designed to overcome the “end-time” of human existence and establish a truly new beginning for humanity. It overcomes the end-time by abolishing nuclear weapons and progressively demilitarizing the nation-states, all the while protecting and empowering freedom. In doing so it transforms the present illegitimacy of the nations, since they are simply not able to serve as protectors and promoters for freedom and the human project, into legitimate localized governmental entities who can genuinely protect and promote freedom within their respective jurisdictions.

The *Earth Constitution* is designed to empower freedom, justice, and equality through the rule of law without incurring governmental corruption or abuse. It is brilliantly written to maximize transparency, maximum diversity of participation from citizens around the world, checks and balances on government officials, and numerous other features that give the world a real hope for a decent, sustainable, just and free future on planet Earth. There can be no freedom if global poverty is not substantially eliminated, as mandated by the *Earth Constitution*, and there can be no freedom if the global ecosystem collapses. Again, here, the *Constitution* is carefully designed to ensure sustainability and the elimination of poverty, and to convert global economics, production, and consumption to sustainable forms.

The *Constitution for the Federation of the Earth*, therefore, represents not just one more option for people who want a sustainable, just, and pacified world system. It is the central option. It embodies the civilizational moral imperative that has been called for at least since World War I when it became clear that the sovereign nation-state could no longer serve as the protector and promoter of the civilizational project of freedom through law, justice, and equality. Since that time, when the Women’s International League for Peace and Freedom first called for enforceable democratic world law, human beings have been under the absolute mandate to convert—to convert immediately to democratic world government that can renew the human project and again make a decent future for humanity possible.
By establishing a descent world system that makes possible the development of personality, intelligence, freedom, and respect for human dignity in every person on Earth, we are laying the foundations for a new renaissance for humanity—a new era of creative upsurge, a realization of our higher human destiny. This renaissance is only possible if we overcome the end-time, if we get past the threat to human existence posed by the system of militarized sovereign nation-states, which is truly a demonic system of war and violence. We are in a period of absolute significance, a period of fundamental choice between self-destruction in perdition under the regime of sovereign nations and the foundation of a decent world system in peace and freedom under universal, democratically legislated laws.

The Earth Constitution crystallizes and focuses that fundamental choice into a doable and viable project. It is available for ratification and implementation now—before it is too late. It is backed by a worldwide “Earth Federation Movement” and a Provisional World Parliament that has already done extensive work laying the foundations for a transformed world system. Within it, the rule of law directed toward the protection and empowerment of human freedom is brought to relative perfection within a single document. It is time that we act. Tomorrow may indeed be too late.

Endnotes


iii See, for example, the collection of materials included in The Heidegger Controversy: A Critical Reader, Richard Wolin, ed., Cambridge: MIT Press, 1993. Heidegger’s participation in the Nazi movement appears to have been in part due to his idea that the creative activity of the few are fundamental to the progress of civilization.


v Martin, Glen T., op.cit. Chapters 4-6.


