

What are rights? Some lessons from struggle

In August 1838, a young man called Frederick Bailey escaped from slavery in Baltimore on the east coast of the United States. Less than three weeks later, walking through his new home city of New Bedford, Massachusetts, he spotted a pile of coal that had been delivered to the street in front of a house. Bailey offered his services to carry it safely away into storage. Once the job was done, the lady of the house put into his hand two silver half-dollars.

More than four decades later, Bailey (who by then had become internationally famous as the orator, writer and antislavery activist Frederick Douglass) was still barely able to express the exhilaration that he had felt as he received the money. Suddenly, he had fully understood “that I had no master who could take it from me – that it was mine – *that my hands were my own*, and could earn more of the precious coin.” (1)

In October 2016, a young indigenous Kichwa leader from the Ecuadorian Amazon stood up in a crowded auditorium in the country’s capital, Quito, with a seemingly different message.

Patiently, the young man repeated to the audience (who were discussing anticapitalist strategy) something his indigenous brothers and sisters had been trying to explain for years. Indigenous peoples not only did not see themselves as owning land, trees, and rivers. They also did not see individual humans as owning what they did in everyday life. People’s hands were *not* their own. They were part of *pachamama*. (2)

More than 175 years, many thousands of kilometres, and almost unimaginably different heritages separate these two warriors for liberation in the Americas. What also separates them are the rights they strove for. For Douglass, acquiring a right to sell his own labour was an unambiguous step toward justice. For the Kichwa activist, it was more urgent to affirm the right to defend his people against the expansion of precisely that kind of private property.

But are these two activists really so different? If they could meet, would they not be able to understand each other?

One thing they might agree on is what rights actually are. For neither Douglass nor the Kichwa activist are rights a single, harmonious heritage that all human beings are born with or are waiting to achieve. Different rights prevail at different times and in different places. Fighting for one right often means fighting against another. And the fights are always just one part of bigger political struggles.

To acquire the property right to his own work and cancel out the right of his former owner to it, Douglass had to flee from Maryland to Massachusetts. To help others get that right took decades of hard political campaigning and a civil war. Even today it is not secure, as the US increasingly turns to using its enormous, disproportionately black prison population as slave labour, while new forms of slavery are on the rise elsewhere as well. (3)

The Kichwa leader's efforts to keep more of his own community's life activities from being turned into private property in the first place meanwhile puts him at the cutting edge of contemporary political opposition to capitalism itself, which is founded on unending attempts to divide the earth into humanless nature (resources, ecosystem services, protected areas) and natureless humans whose labour time is available for sale.

Unavoidably, the fate of the struggle that the Kichwa leader spoke for is tied to that of nonindigenous urban dwellers who are today trying to reconstruct working-class defences against efforts to make them more and more dependent on business. To contest the conversion of human activity into private property is also to contest private control over the extra-human nature that sustains it. In the end, forest issues are always labour issues. Labour issues are often forest issues as well. It is no coincidence that Karl Marx, the great modern critic of the creation of wage labour, began his activist career defending German forest commons where villagers collected berries and firewood against enclosure by the state. (4) (5)

Frederick Douglass would have understood that too. Prior to the slavery that cleared North and South American forests to make way for an emerging world of factory workers and housewives – a slavery that the slaves so often tried to escape, often into the forests themselves – were the commons and territories co-crafted by indigenous peoples from which those forests emerged. (6)

No wonder, then, that when intellectuals show up in today's rural communities in Benin, India or Samoa to urge them to assert theoretical "human rights" recognized by some state or UN body, many local activists prefer to change the subject to the defence and rebuilding of concrete commons practices: communal land, communal seed sharing, communal sharing of work. (7) They know that the best defence of the rights they need against the encroachment of hostile rights lies in the rough ground of living "customary" practices that involve land, work and forest preservation alike. Talk about rights means nothing without the cultivation of spaces needed to defend life and livelihood.

Private companies know this too. For more than a century, their advocates have played dirty politics in order to make sure that a US constitutional amendment that was intended to grant equal rights to freed slaves after the US Civil War is interpreted in practice as giving the same rights to corporations. Now private firms are moving to guarantee themselves even more such rights. They invest millions in international campaigns and treaty negotiations and deploy limitless violence to replace existing commons with regimes that give them legal rights to agricultural seeds, forest carbon, intellectual property, and hypothetical "future profits". Even Facebook is now mobilizing technology and the law to try to give itself private rights to our personal information that will trump any previous rights we might have thought we had over it.

Whether fortunately or unfortunately, however, no rights are ever won or lost for good. Many social movements are currently agitating to roll back private property

rights invented during earlier eras of capitalism. At the same time, they are looking with a more critical eye at some rights that they themselves fought for previously.

Twenty years ago, for example, it might have made sense for activists to try to institutionalize a right to “free prior informed consent” (FPIC) that would allow communities to block unwanted encroachments on their lands by development projects. But times have changed. Having lost their battle to stop FPIC outright, corporations coopted it instead. Today, FPIC has largely morphed into what Alexander Dunlap calls “a bureaucratic trap” that companies and governments use to deflect calls for democratic decision-making. (8) It may be time for activists to shift tack too.

It is important, then, not to fetishize rights or allow rights talk to distract from broader issues. In December 2016, an indigenous Karen leader in Mae Chaem district in Northern Thailand recalled that when government proponents of a project to measure and conserve forest carbon arrived in his village, they said nothing at all about what the project was for: creating rights to pollute that the Forest Department might someday be able to sell to industrial corporations abroad. Instead, the talk was all about what the officials described – in incomprehensible English – as “safeguards” for local residents. In such an atmosphere, it becomes impossible to discuss what really matters.

All of which suggests that before welcoming with open arms the white (or brown) expert who comes into your forest community telling you that the key to a successful struggle is to “secure your rights” (9) or adopt a “rights-based approach”, it might be prudent to ask a few questions first – as politely as possible, of course.

Questions like: “Which rights?” “How are these rights going to change things?”

And: “What else are you selling?”

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(1) Frederick Douglass, *Life and Times of Frederick Douglass*, Boston, 1893, available free at www.book4you.org/dl/1066271/17bead.

(2) The world-mother goddess worshipped by indigenous peoples in the Andes.

(3) Ava DuVernay, *13th*, video available at <http://123hulu.com/watch/qd7Qy1xK-13th.html>.

(4) Peter Linebaugh, *Stop, Thief! The Commons, Enclosures, and Resistance*, Oakland, 2014, available free at <https://libcom.org/library/stop-thief-commons-enclosures-resistance>.

(5) Peter Linebaugh, *The Magna Carta Manifesto: Liberty and Commons for All*, Berkeley, 2008, available free at <http://provisionaluniversity.files.wordpress.com/2012/12/peter-linebaugh-the-magna-carta-manifesto-liberties-and-commons-for-all-2008.pdf>.

- (6) Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners and the Hidden History of the Revolutionary Atlantic*, Boston, 2002, available free at <https://libcom.org/library/many-headed-hydra-peter-linebaugh-marcus-rediker>.
- (7) GRAIN, "What's Wrong with 'Rights'?", *Seedling*, October 2007, available free at <https://www.grain.org/article/entries/627-october-2007.pdf>.
- (8) Alexander Dunlap, "A Bureaucratic Trap: Free, Prior and Informed Consent (FPIC) and Wind Energy Development in Juchitán, Mexico," *Capitalism Nature Socialism*, June 2017.
- (9) The World Bank, *Land Tenure Policy: Securing Rights to Reduce Poverty and Promote Rural Growth*, Washington, 2011, <http://documents.worldbank.org/curated/en/437601468331908360/pdf/831990WP0LandT00Box379886B00PUBLIC0.pdf>; The Munden Project, "IAN: Managing Tenure Risk", 2016, http://rightsandresources.org/wp-content/uploads/RRI_IAN_Managing-Tenure-Risk.pdf, and "The Financial Risks of Insecure Land Tenure: An Investment View", December 2012, http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf (recommending that extractive and other corporations support policies "to secure the land rights of historic occupants" as a better way of minimizing financial risk than classic strategies of coercion or payoffs).