

Udo Reifner on Sovereign Debt and Human Rights (January, 2018)

The unique genius of Professor Udo Reifner's work lies in his synthesis of broad critical theory and a praxis in debtor and consumer advocacy. In his paper, "Fundamental Freedoms and the Inability to Pay in the European Financial Crisis: Toward a Collective Human Right for Discharge of States?"¹ he draws vital connections between the exclusion and overindebtedness of persons and the exclusion and overindebtedness of states, in the context of the recent Greek debt crisis and the response of international institutions in the form of the "troika" (European Commission, European Central Bank and International Monetary Fund).

Reifner's "Fundamental Freedoms" begins by sketching the features of the Greek and broader European debt crisis: state borrowing whose gains were privatized by banks and their shareholders, while losses are being socialized via imposed austerity. The result for Greeks has been dramatic spike in youth unemployment, rising from 20% to 50% or more by 2012 in Greece, with similar rates in Spain, and in Portugal, Italy and Ireland, to more than 40%. The consequences for future of Europe are far-reaching, and include the possibility of excluding meaningful political participation for the young generation.

Property and contract rights were given primacy in the crisis, meaning the power of individual states and European institutions were marshalled to enforce creditor claims. Ad hoc creditor alliances, composed largely of European banks, acted as a sort of parliament, and the troika (European Commission, European Central Bank and International Monetary Fund) acted as the executive on behalf of these stakeholders. This new executive became a de facto European government without democratic control or accountability.

Against this new creditor supranational state Reifner argues for the fundamental human right not to be enslaved, in other words to be permitted to earn a living. "From the viewpoint of the wage earner, there is little difference between not earning at all and earning wholly for a creditor. Pauperism may be the necessary result of either." This fundamental right implies a right for an individual to discharge excessive debt that cannot be repaid. He cites the US Supreme Court 1934 decision in *Local Loan Co. v. Hunt* (292 U.S. 234 (1934)), European decisions, the UN Charter and the antislavery principles of all international human rights instruments.

Yet this human right to a discharge of enslaving debts is at odds with the more firmly constitutional (in Europe and even more so in the United States) protection of the contract and property claims of creditors. Taking the antislavery principle seriously means acknowledging a right to discharge for the overindebted individual.

But what of the citizens of the overindebted state? A human rights perspective views the state as the guarantor of rights, not the holder of rights. On the other hand, some human rights are by nature collective, such as the right of unions to organize workers. Similarly, oppressed racial and ethnic groups may have recognized human rights that are collective

¹ (2014) *Fundamental Freedoms and the Inability to Pay in the European Financial Crisis. Towards a Collective Human Right for Discharge of States?* In: Nesi, Giuseppe (ed) *Crisis and Rights in Italy and Europe*, University of Trento.

as well as individual in nature. Turning back to the unemployed and disenfranchised youth of Greece and other debtor nations, Reifner argues that there can be a collective human right to discharge of state debt. Yet, he acknowledges that casting the issue as one of human rights places authority in perhaps undemocratic courts to enact remedies.

On the other hand the creation of supra-national creditor authorities like the troika has the effect of preventing states from protecting the human rights of young people to earn a living and participate in the polity. States ought to advocate for the human rights of their vulnerable populations and demand that creditors assume with them the duty to discharge sovereign debt that defeats the rights of those populations.

Echoes of Reifner's themes are heard and felt today in the United States, where a young generation is being progressively excluded from employment, housing and full civic participation. In particular, total student loan debt has reached \$1.3 trillion, exceeding credit card debt, and the second largest category behind only home mortgages. Serious delinquent loans are approaching 10% of borrowers. Youth unemployment peaked at 20% in 2010, and is now hovering around 10% despite a very tight labor market. Young people are unable to buy homes, are barred from professional licenses by debt defaults, and find their political institutions unresponsive and worse. The sovereign debt of the United States, although not giving rise to external austerity measures imposed by supranational entities, nevertheless mandates a continual austerity, further shredding the social safety net and state support of education, and driving the upward spiral of educational debt. Professor Reifner's writing calls on us to remember not only the damage of debt, but also the political and institutional structures marshaled by creditors to inflict that damage.

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