

## Interview - Bas de Gaay Fortman (Part One)

Written by E-International Relations

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## Interview - Bas de Gaay Fortman (Part One)

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Professor Bastiaan de Gaay Fortman – known to his students as Bas – is not only an internationally acclaimed authority on the political economy of jurisprudence, security and conflict, but a committed and inspirational activist who has struggled for decades for the cause of human rights while internalizing and integrating its moral values and principles in his personal life. Currently at the age of nearly 75 and with over 50 years of teaching experience in academia, he still reads letters and emails very meticulously, takes enquiries and requests carefully into consideration, and responds to them appropriately. You meet Bas once, you automatically want to bow a little and respect him the next time, if not upon first acquaintance!

Holding the world's only Chair in Political Economy of Human Rights at Utrecht University, Netherlands, ever since September 2000, *Professor Bas de Gaay Fortman* has authored and edited numerous books, chapters and articles including such diverse titles as *Theory of Competition Policy* (1966)[i], *Rethinking Development* (1982)[ii], *A False Start: Law and Development in the Context of a Colonial Legacy* (with Paschal Mihiyo, 1991), *God and the Goods: Global Economy in a Civilizational Perspective* (with Berma Klein Goldewijk, 1998), the article trilogy *Is Socialism Possible?* (March 1998), *Is Capitalism Possible?* (June 1998) and *Is Democracy Possible?* (September 1998), *LaboriousLaw* (2001), *Violence among Peoples in the Light of Human Frustration and Aggression* (2005), *Hermeneutics, Scriptural Politics and Human Rights: Between Text and Context* (with Kurt Martens and M. A. Mohamed Salih, 2010), and *Human Rights as 'Regulae Iuris': An Inquiry into the Dialectics of Legality versus Legitimacy* (2012).

Below is the first part of a series of exclusive interviews e-IR's *Maysam Behraves* (May) has conducted with him on

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the occasion of the paperback reprinting this year of his latest book, *Political Economy of Human Rights: Rights, Realities and Realization* (Routledge, 2012), a work he has dedicated “to my students, from all over the world (1960-2010)” and usually refers to as “PEHR”. The interview focuses upon the significant points and central arguments propounded in the book, but also strives to address key questions of broader interest and high relevance to the human rights cause/discourse in general.

**Note:** The second part of the interview can be accessed [here](#).

**e-IR:** I think we had better begin with the quite inviting title of your book, *Political Economy of Human Rights: Rights, Realities and Realization*. What does it generally seek to convey? In other words, what should a student of law, politics or economics or even a human rights activist expect to see in a work with such a title?

**Prof. Fortman:** Originally, I had the title and subtitle the other way round, referring to the manuscript as R<sup>3</sup>. Crucially, its focus is on the *realization* of (human) *rights*, which implies a strong emphasis on *realities*. Actually, it is an endeavour towards conceptualizing, institutionalizing and contextualizing human rights in a way conducive to their realization. A political economy approach is helpful here. Political economy of human rights is a way of looking behind systemic violations and structural non-implementation. Naturally, its primary contribution lies in the field of socio-economic rights. There, the core focus is acquirement: why and how people succeed or fail in acquiring what they need to sustain their daily livelihoods. Yet, its significance is not restricted to economic and social rights. Lack of implementation of civil, political and cultural rights also has to be assessed in a politico-economic context. Often non-implementation of human rights is structural, related to what might be called a *justice gap*. Thus, the work has appeared in the Routledge Frontiers of Political Economy bookseries.

**e-IR:** I’m going to be a bit more straightforward in the hope that you will not take offence, Bas. PEHR is arguably a powerful and ground-breaking work, and you’ve done a sterling job there. But, frankly, you seem to have made excessive use of non-English specialist terms and expressions (Latin, Greek, German etc), which may inconvenience an ordinary reader and, indeed, looks a bit ironical for a work that is supposedly meant to appeal to a universal audience. Do you accept the criticism and if so, should we expect a *customized* edition of the book later?

**Prof. Fortman:** I see your point, May, although I do not think the use made of “specialist” terminology has been “excessive”. You find these terms and expressions mainly in chapter 2, which combines a critique of the current international venture for “the promotion and protection of human rights” – a terminology I abhor – with a constructive approach to human rights as both modern principles of law (*regulae iuris*) and universal political standards. Please take note of the following clarification of my endeavour in the preface: “to combine rigorous juridical scholarship with political-economic analysis of rights in context .... Thus, the economy—polity—society triangle, in which *economy* includes issues of distribution, *polity* includes law and jurisprudence, and *society* includes culture and religion, constitutes the book’s core perspective”. In order not to scare off your and my readers, let me add two more comments. First, translations are usually in the main text and only rarely in a note. Second, each chapter begins with an appealing saying and an illustrative case, and there are lots of stories and clarifying examples throughout.

Yet, I don’t want to be just apologetic. There is definitely a case for a version of this text that is readable to a general public. Meanwhile, I am happy with the paperback edition that has just been published. Now, at least, this *Political Economy of Human Rights* has become affordable to “my students from all over the world”.

**e-IR:** OK, then I should rest my case! Let’s move ahead. You have understandably tried to found your concrete discussions and case explanations about human rights (HR) protection and violation in the work upon a series of original theoretical-conceptual arguments in the early chapters, the most prominent among which is perhaps what one may briefly dub **Fortman Triangles** or **Fortman’s Dignity Triangles**: “the golden triangle of human dignity manifestation” and “the golden triangle of human dignity realization”. Could you please offer us a concise but comprehensive explanation of this basically conceptual construction?

**Prof. Fortman:** With pleasure, May! Universal human dignity is the core value sustaining human rights, which manifests itself in three general principles: liberty, equality and solidarity (fellowship). These are interlinked, meaning

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*no real liberty without equality and solidarity*, and the other ways around. Effectively responding to this challenge requires policies combining human rights with human security and human development. Indeed, human rights without human security and human development is an illusion, as are human security without human development and human rights, and human development without human security and human rights.

**e-IR:** Pertinently, the Universal Declaration of Human Rights (UDHR) arguably constitutes, in a sense, your pivotal frame of reference in the work – please correct me if I’m wrong – as you appear to have generally based your intellectual endeavour throughout it upon the document, which “was written in two days in a hotel room in San Francisco by [the US First Lady] Eleanor Roosevelt and two assistants”[iii]. Don’t you think you are thus stepping upon shaky ground? After all, people, particularly those from non-Western cultures, may contend that, well, UDHR has been drafted by a Western liberal most probably out of touch with non-Western values, traditions and conventions and does not, therefore, apply to them, though it has a “universal” appeal. More specifically, this can also help subject the document to denunciation, manipulation and self-serving interpretations as demonstrated by the painful experience of governance in, say, authoritarian societies. And finally, some thinkers (the renowned Indian-British philosopher and political theorist, Bhikhu C. Parekh, for one) *really* maintain that the Declaration has a “distinctly liberal bias”, hence it “cannot claim universal validity”[iv]. What have you got to say here Bas? And above all, what should we do now? Because, on the other hand, when you take UDHR out of the whole discourse, not much is left apparently.

**Prof. Fortman:** Two points here, if I may. First, no matter how the first draft came into being, these words have gained not only universal status but also universal appeal. While this is definitely not the case in regard to all those who rule, it certainly applies to the ruled. To offer a working example, when I participated in a human rights mission to Malawi during the final period of tense opposition to Hastings Kamuzu Banda’s tyrannical regime (1992-1993), the mini copies of the Declaration that I carried with me went like hot cakes. Second, I fail to see what is specifically “liberal” about universal human dignity. Isn’t “equal in dignity” still a major challenge in the “modern West” itself? In my book, I emphasize two socio-cultural histories – or “genealogies” – of human rights: 1) Universal human dignity as a struggle against marginalization and exclusion, and 2) Inalienable individual rights as a struggle to protect all human beings against abuse of power primarily by their own government and its subordinates. The latter you may call a “Western” or rather “modern” idea, but today that idea appears to be relevant everywhere except perhaps for an isolated self-sufficient society like Bhutan.

My problem with human rights “thinkers” like Bhikhu is that they want to “re-invent” human rights, ignoring the universal global faith in equal dignity and rights as “re-affirmed” in the preambles of both the UN Charter and the Universal Declaration as well as by that global confession in Article 1 of UDHR: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

**e-IR:** Another remarkably original and imaginative conceptualization which may easily grab the reader’s attention is your argument about “downstream” and “upstream” efforts to further the universal cause of human rights worldwide. What exactly do you mean by them?

**Prof. Fortman:** I prefer this terminology to “top-down” and “bottom-up” attempts as human rights entail a struggle: with or against the prevailing current. “Downstream human rights” refers to those circles that are primarily concerned with the protection of human dignity from the perspective of international standard-setting and supervision. “Upstream human rights” focuses upon realization of the concrete freedoms and entitlements supposed to be protected by abstract rights. Let me take the right to health as an example here. People in urban slum areas like Kibera in Nairobi are not generally interested in that *right*. But what does concern them is daily protected access to safe water and sanitation, without which they are likely to fall ill. For such entitlements they might well be prepared to take “upstream”, action. In such a struggle abstract international rights may play a legitimizing part. So rather than starting from international standards and mechanisms for monitoring and supervision, the challenge rather is to start from the actual needs at the grassroots level and to connect the ensuing struggles to “downstream” human rights.

Allow me also to point to a remarkable phenomenon in China today, a country under the spell of authoritarian

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governance. Nowadays, protests there against developments threatening daily livelihoods appear to be increasingly successful. What motivates people is protection of their existing entitlements. Yet, it will not take long, I think, before mobilization against rural-urban inequalities will generate true socio-economic change. Notably, most protesters in China have not perhaps even heard of human rights. But what drives “upstream” action is not the language of human rights but the ideas and realities behind it. These will find expression in people’s own words and ways. Actually, “upstream” action for realization of human rights is just another term for emancipation. For “downstream human rights,” the challenge is to connect it to such struggles.

**e-IR:** In what ways is human rights a “laborious law” – as the title of an aforementioned article by you bears – or a taxing element in the international and national legal systems? How best should it be incorporated in the jurisdictions of sovereign states?

**Prof. Fortman:** Always and everywhere the challenge is how to protect everyone’s human dignity. In a modern society with state sovereignty and an economy based on specialization in production and exchange, the only effective option to do so is through fundamental rights. Rights are interests protected by law, and human rights signify legal protection of fundamental freedoms and basic entitlements. But that is a rather laborious endeavour since these rights assume that people themselves have already acquired those freedoms and entitlements. Let me take China as an example here. All human beings living there have an internationally recognized right to free expression (Article 19 of UDHR). Yet, in actual practice they cannot freely express themselves, as we know, nor is there any real effort towards international enforcement of such a freedom. Regarding such a situation of legitimate interests being not adequately recognized in people’s own environments, Durkheim, for one, spoke of “a right of combat”[v]. Naturally, that was not meant to justify individual or collective use of violence but to convey the legitimacy of a non-violent struggle to protect dignity, if necessary against one’s own government. External pressure may help here but basically this must be an “upstream” struggle. Where rights are not conclusive but just declared (through UN General Assembly “declarations” of human rights, the right to development, minority rights, the right to water, etc.), the law in question is “laborious” and its realization a strenuous struggle.

**e-IR:** What are the first, second and third generations of human rights? How are they connected to each other?

**Prof. Fortman:** Understandably, after the Second World War (WWII), the immediate focus was on the right to life, personal security and non-discrimination. Indeed, civil and political rights constitute the first “generation” of post-war human rights. Yet, development and the “attack on poverty” also were put on the international agenda, bringing about economic, social and cultural rights as the second “generation”. While the whole venture had been set in motion with a clear focus on individual rights, later political agendas pushed collective rights such as peoples’ self-determination and the right to a clean environment as well as the rights of collectivities such as indigenous peoples. There you have the third “generation” or, preferably, *category* of international human rights. Notably, the three categories must be seen as interdependent. What is the meaning of a right to food, for example, to people who are not free to say they are hungry, and what can the right to free speech mean to someone starving to death?

**e-IR:** How do you assess the international community’s treatment of the human rights venture in the post-WWII era? Doesn’t it appear to you that the whole struggle has often proved of secondary importance and come only next to such issues as protection of sovereignty, national security, state survival, and balance of power? Where do you think the HR project/process stands now?

**Prof Fortman:** As touched upon earlier, this is what I refer to as the “downstream” venture. It is usually called “international protection of human rights”. I abhor that terminology, as I said. Rights are interests protected by law. So protecting rights means protecting protection of interests by law. No wonder the term “soft law” happens to be quite common here. It is human beings and their fundamental dignity that ought to be protected; rights ought to be realized, of course, rather than just “protected”, whatever that may mean.

The term “soft law” is, indeed, rather typical. You are quite right: the whole international human rights venture finds itself somewhere at the far margins of the international agenda. It is only when that agenda can be translated into issues of international security that it may move towards its core. Last year, there was some hope that this could

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happen, when the Security Council listed the liberation of Libya from Gaddafi's tyrannical regime under the "Responsibility to Protect" (R2P). But in the case of Syria, the UN appears to be paralyzed once again.

Apart from its apparent lack of teeth, my trouble with the international human rights venture is the disproportional array of meetings, per diem allowances and paper it produces compared to its minimal investment in the struggle against adverse or "disabling" local environments. If you peruse the UN Development Programme's Human Development Index (HDI), Transparency International's Corruption Perceptions Index or any kind of "conflict susceptibility index", you are bound to notice that the countries which score worst in such rankings are also those in which there are *gross and systematic violations of human rights*. The point is, first, that in both emphasis and investment there has to be a shift from the international to the local, and, second, that policies, programmes and projects would benefit from ventures combining efforts towards realization of human rights with those conducive to human security and human development.

**e-IR:** PEHR advocates a new *political economy*-oriented approach to tackling what you often highlight as a huge "human rights deficit" existing in the world and affecting people's lives, an approach centred around re-conceptualization, contextualization and realization. How do you outline such an approach? More generally, how do you think the international community should proceed to reduce and minimize the increasingly widening deficit in an age marked by uncertainty, insecurity, and austerity? What strategies do you envisage for the purpose in other words?

**Prof. Fortman:** I see that human rights deficit principally in four crucial realms of human relations: impunity of state-related perpetrators of human rights abuse, "domestic" violence directed against women and children in the first place (the "public-private divide"), the failing protection of minorities against abuse by the dominant power, and systemic violations of the rights of the poor. In PEHR, I try to answer your question particularly in regard to the rights of minorities and the rights of the poor (chapters 6 and 5 respectively). Tackling such deficits requires, again, an upstream perspective based on victims' own agency, and national as well as international advocacy and action to connect these struggles for concrete freedoms and entitlements to international human rights (downstream endeavour). Highly problematic in this connection is the common abuse of human rights in international relations, either to conceal one's own bad records just on paper ("defensive human rights") or to attack one's enemies ("offensive human rights"). A major hurdle is, moreover, the lack of a genuinely independent body to supervise implementation and realization – It is not accidental that the Universal Periodic Review (UPR) gathering, which is based on a kind of peers' review among the state representatives is called the "Mutual Praise Society". Let me also refer here to two articles of relevance on your exciting website: "Human Rights in the Context of International Relations" and "Political Economy of Human Rights: The Quest for Relevance and Realization", where I have explored these issues at almost adequate length.

**e-IR:** As my final query in this part, what are the internal challenges and flaws of the HR discourse from a juridical as well as a political economy perspective?

**Prof. Fortman:** Let me just summarize three major challenges in response to the flaws that we discussed already: 1) *Conceptualization* based on not just fundamental and inalienable citizenship rights, but first and foremost on the struggle for truly inclusive human dignity, taking article 1 of the UDHR as the constitutive foundation; 2) *Contextualization* focusing on adverse or "disabling" environments at the roots of structural non-implementation of human rights; and 3) *Operationalization* of human rights as not just legal resources but political instruments too, meant to function as fundamental standards of legitimacy, and their institutionalization not just from a protective angle but also as a basis for advocacy and action aimed at social change.

**e-IR:** Thank you very much indeed for your time Bas. I will leave the discussion here, planning, however, to get back to you before long, this time perhaps with more probing and practical questions including those about the role of international organizations in the advancement of HR cause, 11 September attacks, US-led invasions into Afghanistan and Iraq and their human rights implications at the international level, the HR dimensions of the lingering 2008 financial crisis, the political-economy dynamics of the Arab Spring etc.

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### Notes

[i]. De Gaay Fortman, B. 1996, *Theory of Competition Policy: A Confrontation of Economic, Political and legal Principles*, Amsterdam: North-Holland Publishing Co, 1966. Reviewed by Corwin D. Edwards in *The American Economic Review*, Vol. 58, No. 1, March 1968, p. 286-289, Accessible at <http://www.jstor.org/discover/10.2307/1831713?uid=3738736&uid=2134&uid=2&uid=70&uid=4&sid=21101164853027>

[ii]. De Gaay Fortman, B. (ed.), 1982, *Rethinking Development*, The Hague: Institute of Social Studies.

[iii]. Korzec, M. 1993, "Onzin op stellen. Mensenrechten als wereldreligie", *Intermediair*, 10 December. Cited in De Gaay Fortman, B. 2011, *Political Economy of Human Rights: Rights, Realities and Realization*, London and New York: Routledge, 49.

[iv]. Parekh, B. 2000, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Basingstoke, UK: Palgrave, 133.

[v]. Rawls, A. 2003, "Conflict as a Foundation for Consensus: Contradictions of Industrial Capitalism in Book III of Durkheim's 'Division of Labor'", *Critical Sociology* (295-335), 298.