

# What Could Be, But Never Has Been

Horizons of human rights and racial justice

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## Abstract

The US's authority as chief enforcer of human rights grows increasingly illusory as civil unrest brings the quotidian nature of racialised human rights violations in the US into a frame shared by authoritarian regimes. This reality animates my analysis of how an organisation I call Doctors for Humanity (DfH) finds its footing in a terrain of human rights enforcement that is shifting from a global to a domestic focus. The US is not an actual space of freedom but often represents the limit of possible freedoms. This horizon evokes something that always could be but never has been and un.masks what I analyse as a constitutive unfreedom at the heart of liberalism in American empire. To attend to human rights violations in the US is to undermine American authority and its right and responsibility to make claims about the actions of other nations. As a future physician and human rights advocate invested in racial justice, I illuminate the paradoxes of ethical action within a context where the possibility of freedom for some depends upon the unfreedom of others. To effectively police human rights from this perspective necessitates the deconstruction of the US as a space of freedom, pointing instead towards a praxis of global human rights which lives up to the concept's aspirational universality.

## Keywords

Human rights, Racial justice, Protest, Empire.

This moment, in the midst of an historic pandemic, we are confronting a profound health and rights emergency. It compels all of us—particularly health professionals, with an ethical duty to alleviate suffering and promote health and respect for human rights—to not be bystanders. We must act for justice, human rights, and public health. Right now, to be silent is to be complicit.

Doctors for Humanity, Statement on George Floyd, 30 May 2020

On 25 May 2020 in Minneapolis, Minnesota, George Floyd was murdered. For nine minutes and 29 seconds, Minneapolis police officer Derek Chauvin knelt on his neck, draining the life from George's body while he cried that he could not breathe (previously reported as 8 minutes and 46 seconds, this new figure was revealed during the trial; for more, see Levenson 2021). Captured by Darnella Frazier, a teenage girl with a smartphone, the video footage of these long minutes re-ignited a movement. After months of confinement to their homes, Americans took to the streets to protest the injustices reflected not only in George Floyd's death but also in the structural inequalities that engendered disparities in the effect of the COVID-19 pandemic on Black and Brown communities (Hardeman, Medina, and Boyd 2020). In turn, American institutions took up the cause; responses to these events entailed everything from participation in protests to institutional statements and the transformation of organisational agendas. The summer of 2020 produced fundamental shifts in American orientations to racial injustice and human rights; it felt like an awakening. From my vantage point as a human rights advocate, scholar of race and ethnicity, and physician-in-training, this article analyses the consequences of this awakening and the forms of action it engendered using as a case study a physician-focused human rights non-governmental organisation that I refer to as Doctors for Humanity (DfH). Much like other organisations, DfH formulated a response to the summer's uprisings in a context characterised by profound uncertainty about the role of the US in furthering human rights within our borders and beyond.

This uncertainty is underscored perhaps most profoundly by the summer's protests. The protests were large and vibrant. They expressed the rage and despair of people who were (and are) fed up. In many places, the gatherings involved the destruction of property and 'looting', deeply unsettling a particular American sensibility whereby the right to intact property supersedes the right to life. In response, police officers throughout the US used riot control measures to suppress the protests. The nation watched as police officers pushed protesters to the ground and assaulted them with batons, shot rubber bullets, and sprayed tear

gas. The deployment of the National Guard further evoked a sense of unease. These were the actions of a repressive authoritarian regime, familiar but more reminiscent of a different place or time. After all, do Americans not have the right to freedom of speech and assembly? Later, the events of the Capitol riots on 6 January 2021 would further emphasise the hypocrisy of the response to the George Floyd protests, clearly illustrating the uneven application of force across racial and political lines. The relative ease with which pro-Trump rioters were able to enter the US Capitol in an attempt to ‘Stop the Steal!’ stood in stark contrast to the repressive tactics used by police officers over the summer and revealed anew the realities of American state violence.

Throughout this period, images circulated on social media have served to incisively comment on the dissonance between American ideals and American reality (for more on the relationship between human rights and visual imagery, see Sliwinski 2011). One viral image depicts a dark-skinned woman crouching as a group of police officers in gas masks and full uniform walk towards her. An officer is spraying a stream of tear gas upon her huddled form as she protects her face with her arms. Superimposed on the photo is a United States flag with the stars replaced by skulls and crossbones, with white letters spelling out a message in the shape of the stripes: ‘If the United States saw what the United States is doing in the United States, the United States would invade the United States to liberate the United States from the tyranny of the United States.’ In the days since I came across this uncredited image on Facebook, other photos with the same caption have appeared, each depicting the actions of militarised police against protesters.



1. Viral image seen on Facebook, creator unknown.

After the Capitol uprisings, similar memes circulated, each reprising this critique. Meanwhile, other social media images contrasted the state response to the Capitol riots to that of the protests of the summer. Images of the military presence at the Lincoln Memorial and the injuries of protestors appeared even more sinister when juxtaposed with video footage of the Capitol police allowing rioters into the seat of American government.

## **Paradoxes of ethical action during a time of crisis**

The gap between the image of the US as a bastion of freedom and its reality inspires my central question in this Position Piece: how do you police human rights violations when your own house isn't in order? This question is somewhat tongue-in-cheek; as I will note, the US has never quite had its proverbial house in order. I ask this rhetorical question in part because I am invested in detailing the paradoxes of ethical action within a context in which the possibility of freedom for some is built through the unfreedom of others.

As the role of the US in furthering human rights across the globe becomes increasingly tenuous and diminished, human rights organisations must face the consequences of these shifts. While equality, rights, and justice have always been unevenly accessible in the US, for decades the nation has served as the watchdog and *de facto* leader in international human rights regimes. The 2016 election of Donald Trump as president, however, shattered what was left of the veneer of democracy in the US (Lieberman et al. 2019). The unexpected outcome stoked fears about authoritarian rule and genocide, which were amplified by Trump's transparent appeals to white supremacists and armed militia groups. President Trump's rise resulted in the surfacing of tensions in the liberal multicultural order that, for many, marked the years of Barack Obama's presidency.

The Trump administration employed rhetorical strategies that spoke explicitly to reactionary corners of the US. It also enacted a marked retreat of the US from international human rights affairs. Since 2016, the nation has forfeited its membership of the UN Human Rights Council and disengaged from the Inter-American Commission on Human Rights. It has both reduced its financial contributions to the UN and asserted a disinterest in participating in human rights procedures unless they further 'US foreign policy objectives', opting instead to create the Commission on Unalienable Rights, which sought to redefine human rights in a more restrictive and reactionary fashion. In April 2019, the United States revoked the visa of an International Criminal Court (ICC) prosecutor who was investigating possible war crimes by US forces and their allies in Afghanistan following repeated promises in the years prior to punish ICC officials who try to investigate US war crimes.

As many scholars have noted, the US has always walked a tightrope between its ideals for other nations and the norms it practices itself, carefully balancing discourses of ostensible freedom and practices of repression (see, for example Lowe 2015; Singh 1998; Singh 2012; Stoler 2006). Despite this constitutive contradiction, it is undeniable that a break from the nominal investment in rights marks a significant shift in the geopolitical stance of the American state.<sup>1</sup> In the wake of such transformations, human rights organisations (particularly US-based NGOs) must pivot to cope with a rapid shift in political realities—but how? What are organisations based in a nation whose government has responded with devastating inadequacy to the pandemic and hosed down peaceful protesters to do?

## **Marshalling evidence for change**

The last year has proven to be extraordinarily challenging for advocates; the COVID-19 pandemic has introduced fresh turmoil into American life and presented new and acute social, political, and economic challenges. I suggest that this significant shift requires something new of those traditionally outward-focused American NGOs who have been engaging with domestic human rights abuses increasingly over the last few months, spurred by the twin crises of COVID-19 and the George Floyd and Capitol uprisings. Such pivoting can yield novel insights. In this Position Piece, I use as a case study an organisation I call Doctors for Humanity (DfH), a US-based NGO composed of physicians, researchers, and advocates who document evidence of mass atrocities and human rights violations around the world. Displayed prominently on its website is their guiding principle: ‘Through evidence, change is possible.’ The claim that evidence makes change possible reflects an organisational emphasis on scientific rigour as the evidentiary basis for supporting political claims, whether through prosecution in criminal courts or through truth and reconciliation efforts. I first became involved in the organisation through its asylum programme, in which physician-volunteers collaborate with student-volunteer scribes to produce medical, psychological, and gynaecological affidavits that corroborate asylum seekers’ narratives. The rendering of this ‘truth from the body’ (Fassin and d’Halluin 2005) was my first foray into the evidentiary politics of DfH, whose praxis entails the meticulous collection of details which may, in the future, result in accountability for human rights violations. While the organisation cannot itself ensure justice because it lacks the ability to enforce international law, the evidence it collects is often instrumental in other rights-based processes of justice, from international criminal courts to sanctions. Its leadership often presents their work on the international stage. In short, the organisation aims to produce evidence that it can transform into a form

1 We may ask: for whom is this break surprising, new, or unprecedented? Where were its antecedents? For those living ‘in the wake’ of the plantation and the trans-Atlantic slave trade, what does this shift portend?

that comes to bear on people's lives. As such, the organisation's work relies upon a leap of faith: that apparatuses of justice will continue to exist and that their constituent mechanisms offer hope for a future in which human rights violations are increasingly rare.

DfH is primarily known for its work in other nations. While the organisation has continuously worked in the US—most prominently, the organisation forcefully lobbied against the use of torture in the wake of 9/11—its primary emphasis in recent years had been on protracted displacement and the impacts of conflict outside the US. Traditionally a non-political, non-partisan organisation, this NGO generally refrains from weighing in on American political events and has not traditionally weighed in on domestic race relations. However, as the Trump administration decreased protections for asylum seekers and divested from human rights organisations, the organisation became increasingly transparent in its critique of the then-president. In the wake of George Floyd's death, it released a statement on state violence against Black Americans that explicitly critiqued President Trump for further stoking discord and dissent. In the face of centuries of Black death at the hands of police, the organisation framed Trump's actions as illustrative of his inadequate leadership.

I am interested in this politically inflected realignment to domestic questions, particularly as this NGO traditionally has not concerned itself with state-sanctioned violence against Black people in the US; prior Black Lives Matter movements have not been remarked upon heavily by the organisation. As such, the organisation's response to George Floyd's murder and the ensuing protests are a novel site of intervention, one that suggests a shift in the political order that I associate with the impact of the election of President Trump. While the object and its site are novel, the organisation's methods remain consistent. As it would for social and/or political violations in other nations, its statement calls for 'a thorough, independent, and transparent investigation of the killing of George Floyd and other acts of police violence, for the end to impunity for perpetrators, and for the institution of effective measures to prevent future violence'.

In analysing the injustice brought upon George Floyd and the protesters who gathered in his name, DfH drew upon global expertise that brought into relation acts of state repression abroad and in the US. In the weeks following the pandemic, for instance, the organisation waged a media campaign against both George Floyd's killing and the militarised police response to the protests. They organised expert panels composed of clinicians working in the US and advocates who had studied the use of crowd control weapons (like rubber bullets) in authoritarian regimes. This juxtaposition staged an implicit critique of the US through an unsettling conflation of the US state with violent authoritarian regimes. Just as the

image above frames the US as both a perpetrator of human rights violations and an enforcer of human rights norms, this framing of the intimacy between the actions of the US and, for example, the Turkish or Syrian regimes drew attention to the wrongness of the repressive response to justified protests throughout the country. Coupled with the DfH's careful collection of evidence at the sites of protests, this series of panels brought the DfH's mission and methods to sites where they had not often been deployed.

*Through evidence, change is possible.* DfH, a science-based organisation grounded in medical evidence-making practice, grounds its faith in the power of evidence and of institutions that can take that evidence into account. Their vision of what 'change' is actually possible and thus what justice looks like hews closely to liberal regimes of recognition and redress (Thomas 2019; Brown 1995; Ticktin 2006; Clarke 2009). Extending the analogic relation of the US to other nations, then, suggests both a shared process for collecting evidence *and* for identifying forms of justice that might be possible. Its statement notes that 'we must all work together for a just society in which all of us, no matter the colour of our skin, can take a jog on a sunny day, buy food at a community deli, and sleep peacefully at night without fear of being killed by a police officer'. These quotidian rights may fall beyond the normal concerns of this NGO (DfH often deals with questions of torture, armed conflict, and genocide), but its achievement fits into its normative frame. 'Through evidence, change is possible' suggests an anticipatory politics reliant on the future transformation of the US into a space of justice—not through mass revolution, but through the introduction of institutions of accountability rooted in the law. The organisation's response to the Capitol riots reflects this concern as well; a statement released shortly after the event asserted that 'those who incited or perpetrated this violence, wanton destruction, and intimidation must be held accountable to the full extent of the law'. Importantly, they call for 'accountability' for former President Trump given his attempt to 'subvert the peaceful and rightful transfer of power' and his 'utter lack of respect for the rule of law'.

## **Horizoning work and the creation of a just future**

Doctors for Humanity's (DfH) anticipatory vision and their efforts to bring it into being may be considered a form of 'horizoning work'. Writing of the efforts of environmental researchers and wildfire fighters and trainers operating in realms of uncertainty, in which the tools of apprehending the present and future are tenuous at best, Adriana Petryna (2015, 155) writes that horizoning work entails 'a distinct kind of intellectual labour undertaken in conditions in which the fate of entire systems is at stake'. Horizoning work takes shape in domains of rapid environmental change where, for instance, the future of wildfires tests the limits of emergency response and calls for new paradigms of witnessing and thought. In

the case of DfH, however, the evidentiary methods that make change possible are not uncertain; while the political conditions are novel and unstable, the response remains the same. The organisation continues to collect their data, as always. But what we can question is the entire system within which this evidence operates. What is the future of human rights if it cannot be guaranteed that the systems that enable redress—international criminal courts, tribunals, truth and reconciliation programmes, sanctions—will still exist five years from now? How do institutions adapt their visions to rapidly changing political contexts? With the US under Trump divesting from institutions that support human rights, what is their future?

In the case of DfH, it is not clear whether its organisational philosophy or methods have kept up with the possibility of a future in which it, and organisations like it, no longer exist, although their rhetoric has shifted. The rhetorical framing of the US as an unequal society that needs to be transformed into a more equitable nation runs contrary to the normative ethos of the US as the site from which human rights norms, principles, and enforcement emanate. As an anticipatory framing, we might consider the time and space where change—in the form of justice and accountability—is *possible* as a horizon. This spatiotemporal metaphor enables us to see that human rights are always just around the corner, an asymptotic limit we are always hoping to reach but which continually eludes us. For example, while President Trump’s presidency and recent events in the US produce a more *acute* sense of constitutive injustice in the US, the historical record is unambiguous in proving that the US has always been an unequal place marked by ambiguous and uneven freedoms (Rana 2010; Ngai 2014); liberal freedom and the rights associated with it have *always* been shaky and tenuous. The events of 2020 have simply made more obvious what was already clear. Thus, the present moment represents not only a retrenchment of the rights regime (although it is that, to be sure) but also an unmasking of the constitutive ‘unfreedom’ at the heart of liberalism in the American empire. It is not that the US is *newly* similar to repressive regimes, but rather that this repression has been at the heart of US empire since its inception. As Walter Johnson notes, there are those who have long been in ‘history’s waiting room’, hoping for their freedom to arrive (Johnson 2016).<sup>2</sup>

At the same time, the US in its present form is positioned as a site of liberty and freedom. This, the horizon of human rights (to use a spatiotemporal metaphor), conjures the vision of something which always *could be*, but never *has been*, and which, in its closest forms, has been represented by the US not as an actually-existing entity but rather as the limit of what is possible on earth. We enforce from a position of superiority, as illusory as that superiority is. Acknowledging that the

2 While this is outside the scope of the essay, Johnson would also argue that the continual rearticulation of Black unfreedom is necessary for the articulation of the US and its relation to justice, as well as the cyclic crisis embedded within this relationship.

US is rapidly becoming a site of intervention for human rights practitioners reveals the human rights horizon to be a mirage. While the human rights regime (and its institutional presence) often responds to cyclic crises with putative resolutions, the more sobering reality reflected in perpetual, cyclic expressions of a more fundamental unfreedom casts the vision of a just world, which is always right around the corner, as tenuous and even illusory.

From where, then, is the human rights worker meant to direct their gaze now that the temporal-spatial linkage between the US and human rights is broken? If it is the case that 'if the United States saw what the United States is doing in the United States, the United States would invade the United States to liberate the United States from the tyranny of the United States', then what is called into question is not only the supposed 'goodness' of the US but also the rightness of its actions; for what is called into question is not only *what the United States is doing in the United States*, but also the interventionism of the US. If our strategy for combating illiberalism is invasion, then how do we liberate ourselves?

*So, how do you police human rights violations when your own house isn't in order?* The question frames solely the *present* as a crisis, obfuscating the US's long history of human rights violations in service of empire. To offer an answer: for one, we should imagine and build human rights regimes *without* empire. This new horizon for the praxis of freedom recognises America-driven human rights regimes as emblematic of a past that needs to be left behind rather than recuperated. If we are to not just liberate those who have been languishing in the waiting room of history but tear down the walls of the structure, we require a new praxis of human rights beyond the methods of US imperialism.

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