

**INTELLECTUAL ORIGINS OF NEOLIBERAL HUMAN RIGHTS:
A REVIEW OF THE MORALS OF THE MARKET: HUMAN
RIGHTS AND THE RISE OF NEOLIBERALISM BY JESSICA
WHYTE**

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1. INTRODUCTION

The 2009 global economic crisis that unveiled the fragile foundations of the neo-liberal economic order, which was hegemonic in the imperial heartlands for more than three decades, has also led to a revival of scholarly interest in the questions of wealth inequality, neo-liberalism, and human rights. This problem was forcefully raised by renowned human rights scholar Philip Alston in his capacity as the United Nations Special Rapporteur on extreme poverty in 2015 in a report where he criticized the failure of human rights to address the grave impact widening wealth inequality is having on the realization of human rights.¹ In recent years, there have been many contributions from different writers on the question of inequality and human rights, or more broadly, the relationship between human rights and the hegemonic neo-liberal formation that has increased inequality.² In 'The Morals of the Market', Jessica Whyte offers a

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¹ United Nations Human Rights Council, 'Report of the Special Rapporteur on extreme poverty and human rights' (Un. Doc. A/HRC/29/31, 27 May 2015)

² See Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2019), Umut Ozsu, 'Neoliberalism and Human Rights: The Brandt Commission and the Struggle for a New World' 81(2018) *Law and Contemporary Problems* 139, Julia Dehm, 'Righting Inequality: Human Rights Responses to Economic Inequality in the United Nations 10(3) (2019) *Humanity* 443, Gillian MacNoughton and Diane F. Frey (eds), *Economic and Social Rights in a Neoliberal World* (Cambridge University Press, 2008).

compelling historical account of the rise of neo-liberalism and the complex interconnections between the neo-liberal project and the human rights discourse.³

The main focus of Whyte's historical account is the intellectual and conceptual history of neo-liberal thought and how neo-liberals approached the question of human rights. Since the publication of Samuel Moyn's 'The Last Utopia', which problematized the textbook narration of human rights suggesting a linear trajectory of progress, a more deconstructivist understanding that is mindful of disconnections between the contemporary human rights discourse and earlier manifestations of the rights tradition has become a part of human rights literature⁴. The contemporary human rights discourse that became prominent in the late 1970s—defined by an individualist framing, attributing prominence to civil and political liberties, being sceptical of state sovereignty, and comprising a transnational 'activist' network aiming to hold nation-states accountable for their human rights violations—has been described as a relatively novel phenomenon, having come 'seemingly from nowhere'⁵.

Writers disagree about the nature of the relationship between the neo-liberal discourse, which also rose to prominence in the late 1970s, and the contemporary human rights discourse. Some indicate a greater association⁶, while others think the links are overdrawn⁷. The nuance Whyte brings to this debate is to draw our attention further towards the

³ This is a review of the book J Whyte, *The Morals of the Market; Human Rights and the Rise of Neo-Liberalism* (London Verso Books, 2019)

⁴ S Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2012).

⁵ *Ibid.*, 3.

⁶ W Brown, 'The Most We Can Hope For': Human Rights and the Politics of Fatalism' (2004) 103:2 *South Atlantic Quarterly* 452; Susan Marks, 'Human Rights and Root Causes' 74(1) (2011) *MLR* 57, Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 2008).

⁷ See Moyn (n 2). Also see Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' 77(4) (2014) *Law and Contemporary Problems* 147.

past, to highlight the formative years of a distinct neo-liberal approach to human rights starting from the end of the Second World War, and to demonstrate possible conceptual links between this neo-liberal framing and today's hegemonic human rights narrative.

2. MONT-PELERIN SOCIETY AND HUMAN RIGHTS

'The Morals of the Market' comprises two parts. The first part, consisting of three chapters, focuses on ideas developed by early thinkers of the neo-liberal tradition. These chapters tell us the story of how these thinkers—notable figures like Austrian philosopher Friedrich Hayek, Austrian economist Ludwig Von Mises, Swiss academic William Rappard, German Ordoliberals Wilhelm Röpke, and Alexander Rustow—framed the 'neo-liberal' project, which was a response to the rise of social democracy, socialism, and anti-colonialism in the late 1940s. These thinkers of the neo-liberal Mont-Pelerin Society (MPS) saw the rise of these movements, which they dubbed 'collectivist' movements, as a threat to individual liberty and 'Western civilization'.

Neo-liberals thought that the ascendancy of different forms of collectivism that achieve social justice and greater collective good inevitably leads to totalitarianism that suppresses the individual. A main theme running throughout the book is the refusal of the idea that neo-liberalism is a crude economic doctrine that reduces man to *homo economicus*. Whyte shows that for Hayek and his MPS colleagues, morality was an important concern. They believed a competitive market society required a moral foundation and envisioned morality in individualist, anti-collectivist terms.

The founding of the MPS historically coincided with the deliberations for the adoption of the UDHR in the late 1940s. As Whyte explains, during these early days, there were more divergences between the neo-liberal and human rights discourses. The first part of the book sheds light on

three areas of contestation: the notion of a civilizational hierarchy, the status of social rights, and the anti-colonial use of human rights. Thus, the book demonstrates that despite their initial suspicion of the UDHR, neo-liberals later saw human rights as a useful language in advancing their vision of individual liberty, engaging in developing a distinct neo-liberal version of human rights.

The first chapter of the book surveys how neo-liberals depicted the advent of collectivism as a civilizational regression and debates on standards of civilization at UDHR discussions. While delegates from the non-western world at UDHR deliberations were arguing against the hierarchical notion of 'standard of civilization', MPS thinkers, on the other hand, considered individual freedom, which they held as the supreme virtue, as a trait of Western civilization. Mises depicted 'Asiatics' as 'apathetic inhabitants of stagnant societies'⁸, and Hayek considered the Christian emphasis on freedom of conscience as a foundation for individual choice required by a market society. Drawing on his experience in working at the United Nations mandate system, Rappard believed that a civilizational ethos, such as considering work as a virtue, should be inculcated in non-western societies.

On the other hand, the racial notion of the standard of civilization made a complex appearance in UDHR deliberations. Whyte explains how French and British representatives defended references to civilization, while delegates from former colonized countries backed by the socialist bloc contended. The compromised position offered by the drafting committee chair, Eleanor Roosevelt, coming from a less invested country in colonialism, reformulated the difference between western and peripheral

⁸ Whyte (n,2) ch.7.

nations as a matter of 'development' —laying foundations for a civilizational discourse 'adequate to a new era of universal rights'.

Turning to the question of social rights in the second chapter, Whyte presents an interesting account of the attack of neo-liberals on what they saw as 'weakening the concept of rights' by introducing 'positive claims for benefits'⁹. For Hayek, social rights were problematic not only because they are unenforceable through courts but also because they denote a deviation from the liberal rights tradition, which focuses on delimiting the individual domain in which private initiative, entrepreneurialism, and personal responsibility can flourish. The notion of social rights was seen as allowing the state to organize society, treating it as a single organization. Hayek saw this as leading to totalitarianism.

Social rights entered the UDHR domain through the triumph of the post-World War II welfare state across the world. Franklin Roosevelt's New Deal, which marked a rupture from *laissez-faire* economics, led to the consolidation of embedded liberalism in the United States. On the other hand, the domestic social rights traditions of Latin American countries and the intervention of the socialist bloc also influenced the inclusion of social rights. While Hayek condemned this as fusing the rights of the Western liberal tradition with ideas derived from the Marxist Russian revolution, German Ordoliberals like Ropke added a conservative flavor to the critique by denouncing the 'mass rebellion' that has produced the welfare state.

However, Whyte also draws our attention to the limitations of the social rights paradigm the UDHR envisioned. She demonstrates how United States delegates intervened to frame social rights as flexible standards rather than legal obligations, offering them a minimalist outlook and

⁹ Whyte (n,2) ch.2.

ensuring that inequality in the class society is not threatened by social rights. Following mass unemployment and the intensification of the 'social question' aftermath of the 1929 Great Depression, even neo-liberal thinkers—except for a handful of extreme examples like Von Mises, who argued against any poverty assistance scheme—recognized the legitimacy of minimal state provisioning on welfare. Ropke stood for the abolition of the welfare state 'except for an indispensable minimum'¹⁰. Hayek acknowledged the need for a minimum, market-confirming welfare policy. Whyte shows how this minimalist approach to welfare informed the ascendancy of neo-liberal poverty management strategies, which have become dominant in our times. The thought-provoking question she raises is whether drafters of the UDHR were complicit in this convergence by framing social rights in minimalist terms.

The third historical scenario presented in the book is the anti-colonial endeavour of using human rights language to further the struggle for economic self-determination, and how neo-liberals responded. Unlike writers like Samuel Moyn¹¹ or Jan Eckel¹² who are reluctant to identify the post-colonial sovereign project as a movement concerning human rights, Whyte acknowledges the presence of a post-colonial human rights project aiming to link human rights language with anti-colonial aspirations. Post-colonial leaders like Kwame Nkrumah of Ghana advanced a profound critique of the neo-colonial economic order that retained the international division of labour established through imperial conquest. Unlike the UDHR process, where the majority of third-world populations were still living under the yoke of colonialism and did not participate in deliberations, the drafting of the ICCPR and the ICESR in the 1960s involved third-world

¹⁰ Ibid.

¹¹ See Moyn, *Last Utopia* (n 4)

¹² Eckel J, *The Ambivalence of Good: Human Rights in International Politics since the 1940s* (Oxford University Press, 2019).

voices. Thus, the right to self-determination was enshrined as a human right, and ideas such as permanent sovereignty over natural resources were pushed through United Nations forums as principles of international law.

Whyte narrates how the idea of 'enlightened imperialism' advocated by certain social democrats in the West at the onset of the decolonization process was seen as inadequate by neo-liberals who saw the advent of the post-colonial project as a threat to the right of white people to access resources in the third world. This was seen as disturbing the prevailing international division of labour. In response to the Marxist-influenced thesis suggesting that imperialism is an outcome of capitalism, neo-liberals introduced a dichotomy between politics, which they depicted as a realm of violence, and commerce, which they saw as a realm of peaceful, mutually beneficial relations. Whyte explains how neo-liberal economists like William Schumpeter, Lionel Robbins, and Ropke advanced the 'sweetness of commerce' thesis, arguing that imperialism was the result of the politicization of the economy that deviated from the free trade tradition of classical liberalism.

MPS was a harsh critic of the post-colonial quest for greater independence. Whyte provides some striking examples showing the racist attitude that the fathers of neo-liberalism shared towards people in the third world. To counter the post-colonial project, neo-liberals developed a competing human rights narrative, defining human rights in market and trade-friendly terms. Since third-world people lacked the morality that is conducive to a competitive international market system, such values were to be introduced from the outside.

3. NEO-LIBERAL HUMAN RIGHTS IN PRACTICE

Having surveyed the historical origins of the neo-liberal human rights discourse in the first part, the second part of the book turns into two episodes from more recent history. The first scenario concerns the 1973 Chilean coup that toppled Salvador Allende's socialist government. Whyte explains how prominent neo-liberals like Hayek and Milton Freidman hailed Augusto Pinochet's dictatorship as a 'transitory dictatorship'. For them, human rights were about individual freedom that could only be ensured in a free market society. Therefore, the free market was seen as something that should be defended from egalitarian political movements. On this basis, neo-liberal economists like Freidman became apologists for the repressive regime of Pinochet, since the junta was eliminating collectivism from Chilean society. Thus, we see how the market-friendly notion of human rights theorized in earlier years is employed in a concrete historical context.

Furthermore, the author problematizes the involvement of human rights organizations like Amnesty International in reporting human rights abuses that happened in Chile. Having origins in the 1970s, organizations like Amnesty International and Human Rights Watch represented a new form of activism — claiming political neutrality and 'naming and shaming' governments from outside to condemn atrocities. The role of the Amnesty International, which reported disappearances and torture under Pinochet but did not speak of the neo-liberal shock therapy that made such repression necessary, has been raised before by writers like Naomi Klein¹³. Whyte brings in a more nuanced argument suggesting that the overlooking of the economic causes of repression amounts to a

¹³ N Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Picador, 2008).

reproduction of the neo-liberal logic that separates the (violent) political sphere from the (peaceful) sphere of civil society.

Whyte does not make a reductionist argument that depicts the transnational human rights movement as a mere tool of rising neo-liberalism. However, she also does not concede to the view that the movement was a simple bystander, a 'powerless companion' of neo-liberalism lacking conceptual imagination to challenge the former's ascendancy¹⁴. This insight is further developed in the final chapter, which sheds light on the case study of the workings of *Liberté sans Frontières* (LSF), an organization founded by the French chapter of Doctors Without Borders. Whyte offers a vivid account of how LSF, in a conscious manner, invoked human rights language to counter the third-world project that at the time was fighting for a New International Economic Order (NIEO). For Whyte, LSF reflects a more general phenomenon of human rights NGOs adopting neo-liberal ideas. Contesting structuralist readings of third-world poverty, which were championed by the post-colonial human rights project, LSF depicted third-world poverty as a result of internal failures. Anti-totalitarian arguments were employed to discredit post-colonial states and to initiate a split in progressive opinion in Western countries. Whyte juxtaposes the 'utopia' envisioned by the third worldist NIEO project, which also referred to human rights, against the individualist, anti-structuralist version of human rights propagated by major human rights NGOs.

4. BEYOND REDUCTIONISM

In a broader sense, 'The Morals of Market' compels the reader to carefully consider the interlinkages between the dominant human rights discourse and neo-liberalism. The narrative of the book is sober and does not make sweeping generalizations or crude reductionist claims. The author has

¹⁴ See Moyn (n 6).

also been mindful to avoid the pitfall of determinism, which might refuse to acknowledge the possibility of having different understandings of human rights.

While acknowledging that there can be different forms of human rights discourses, Whyte advances a narrative that raises substantive questions about the 'powerless companion' thesis that absolves the mainstream human rights discourse of the charge of complicity with neo-liberalism. While being careful not to make an instrumentalist claim about the role of the human rights mainstream, a claim that might look like a conspiracy theory depicting the whole discourse as a device of neo-liberalism, the book presents a more refined argument highlighting convergences at the discursive level. The most powerful insight is highlighting the convergence between detaching politics from civil society, which is the main thrust of contemporary human rights activism, and the dichotomy neo-liberals create between the violence of politics and the 'sweetness of commerce'.

Furthermore, Whyte situates her consideration in the broader international context, highlighting the significance of the contradiction between the Global North and South in understanding both neo-liberalism and mainstream human rights. As she vividly shows, neo-liberalism, from its inception, has been a racial project, involving an imperial dimension in the sense that it saw the advent of the post-colonial sovereign project as a threat to Western dominance over the world economy. Neo-liberals aimed to contain post-colonial ascendancy by transforming third-world subjectivity and inculcating values of economic freedom from the outside.

How neo-liberal human rights emerged as a counter-project to the post-colonial project for economic independence offers fresh insights to understand the role Western-dependent NGOs play in the Global South. In countries like Sri Lanka, unfortunately, the dominant trend of criticism

of the functioning of such entities has been the nationalist critique premised on cultural essentialism. Whyte's critique belongs to a different strand. The progressive, left-leaning critique of human rights that Whyte represents tends to avoid cultural reductionism and draws our attention towards the larger economic and political structures at the international level associated with the hegemonic version of human rights.

Thus, we are invited to see the mainstream human rights discourse as a historical phenomenon that was invoked in opposition to the third-world demand for reforms in the international economic order. The mainstream international human rights discourse attributes the sufferings of third-world countries to internal factors in those societies, obscuring structural factors in the international political economy that perpetuate third-world impoverishment. Local NGOs funded by international (western) capital tend to act as associates of this larger global project, advancing an individualist, apolitical, moralist discourse of moral rights, which is potent in displacing more politically informed local discourses of emancipation and social change. To understand the complexity of this phenomenon, one has to go beyond cultural considerations and have a holistic understanding of international economic and political dimensions.

As the epilogue of the book demonstrates, Whyte is not confident about recent attempts at the United Nations level (like the Philip Alston report mentioned earlier in the article) to 'reform' the human rights discourse in a way that takes the inequality problem more seriously. Though it would have been interesting to hear more from the author about the possibility of rejuvenating the human rights discourse, she does not dedicate much space in the epilogue to discuss the matter in detail. This is understandable because the scope of the book is historical, and the epilogue is a brief reflection on contemporary discussions. Certain writers, like Manfred Nowak, have argued about the potential of such rejuvenation

by contrasting the UDHR framework, reflecting the logic of the social-democratic welfare state, with the free market logic of neo-liberalism.¹⁵ In terms of distributive justice at the international level, we are yet to see a theorization of contemporary initiatives of the Global South linking human rights with their distinct interests.

These contemporary considerations are beyond the scope of Whyte's book. However, her well-researched account of the historical connections between neo-liberalism and human rights and the post-colonial and neo-liberal contestation to define human rights in the past, might offer some stimulating insights into contemporary questions from a more historically informed perspective.

¹⁵ M Nowak, *Human Rights or Global Capitalism: The Limits of Privatization* (University of Pennsylvania Press, 2017).