

Introduction: ‘Redistributive Human Rights?’ symposium

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We are writing this in a moment of global pandemic. Both lives and livelihoods are at stake, and the impact of decades of neoliberal restructuring on public health systems is only too clear. Despite banal assertions that Covid-19 is a great leveller, and the clichéd insistence that ‘we are all in this together,’ in reality the spread of the virus has laid bare the profound inequalities that now, as always, influence who lives and who dies. Not only are those front-line workers whose low-paid labour has been newly recognised as ‘essential’ more exposed to the virus than those who are able safely to work from home, but the same people often face the most under-resourced health systems. Meanwhile, the impact of social isolation on the world’s informal workers is likely to be devastating, as are the consequences of the virus for the millions of displaced people who live in over-crowded refugee camps. Policy decisions that have led to social exclusion, growing inequality and reduced access to free healthcare, as Jonathan Whittall of Médecins sans Frontières noted in this context, are ‘the enemy of our collective health’.²

As economists warn that we are entering the most serious economic crisis since the Great Depression, questions of redistribution are being raised in ways that would have seemed unimaginable even a year ago—from greatly enhanced unemployment payments to the implementation of forms of universal basic income by conservative governments. At the same time, governments across the world are using the pandemic to justify further restrictions on civil and political rights and to suppress manifestations of popular discontent that long-preceded this crisis. ‘It may well be the case’, as Umut Özsü writes, ‘that both neoliberalism and human rights survive the onslaught, only to be transformed as a result, perhaps unrecognizably’.³ While it is too early to know what will emerge from this crisis, the need to scrutinise the ways our societies view questions of distribution, and to re-conceptualise the relation between economic inequality and human rights, is only too clear.

The four articles in this symposium on ‘Redistributive Human Rights?’ consider the different ways in which the language and frameworks of human rights have been deployed and mobilized both to make redistributive justice claims or to contest economic inequalities, and also to close down political discussions around distributional questions and crush demands for global wealth redistribution. The symposium brings together authors writing from the disciplines of political theory, anthropology, and history, as well as law, to bring interdisciplinary lenses to bear on questions of how human rights institutional frameworks, discourses and advocacy in different contexts foreclose or open possibilities for redistributive justice. Taken together, they serve to deepen understandings of the ‘distributional imagination and political economy’ of human rights at our present historical juncture.⁴

¹ This symposium comes out of a workshop held at the University of New South Wales in January 2019. We thank the Institute for International Law and the Humanities at Melbourne Law School, the Australian Human Rights Institute at UNSW and the College of Arts, Social Sciences and Commerce at La Trobe University for their support which made this workshop possible. We are also grateful to Stephanie Falconer for her assistance finalising the pieces for publication and for the support and guidance of the LRIL editorial team, especially Gerry Simpson.

² Jonathan Whittall, ‘Vulnerable Communities Bracing for Impact of Coronavirus COVID-19 | MSF,’ Médecins Sans Frontières (MSF) International, accessed March 25, 2020, <https://www.msf.org/vulnerable-communities-are-bracing-impact-covid-19>.

³ Umut Özsü, ‘Neoliberalism, Human Rights, and the Socialist Imperative’ *Legal Form*, 21 March 2020, <https://legalform.blog/2020/03/21/neoliberalism-human-rights-and-the-socialist-imperative-umut-ozsu/>

⁴ Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018), 3.

This symposium seeks to build on and extend current debates about the relationship between human rights, neoliberalism and economic inequality. Over the past few years, there has been an active debate about whether human rights can, if deployed in more critical or structural ways, offer a useful tool in broader redistributive struggles against inequality at the national and international level.⁵ Some advocates such as Philip Alston are optimistic that a revitalised and expanded human rights regime can and indeed should ‘respond meaningfully to the threat posed by extreme inequality’.⁶ In contrast, Samuel Moyn has argued that human rights have operated as a ‘powerless companion’ to neoliberalism, incapable of preventing the neoliberal dismantling of an aspiration to equality or ‘obliteration of a ceiling on inequality’.⁷ The focus of rights frameworks on ‘minimum provision’ or ‘sufficiency’ has thus made them ‘unthreatening to a neoliberal movement’.⁸ Rather than characterising human rights as ‘prisoners of the contemporary age of inequality’,⁹ other thinkers, especially those working within a broadly Marxist or Third World tradition, have sought to highlight the convergences and compatibilities of human rights and neoliberalism.¹⁰ Jessica Whyte for example, has shown how the language of human rights was used to challenge the vision of substantive equality integral to Third Worldist demands for a New International Economic Order (NIEO).¹¹ She thus rejects characterisations of mainstream human rights NGOs as ineffectual or powerless, and indicts them as ‘active, enthusiastic and influential fellow travellers’ of the neoliberal project, showing how the formulation of a distinctly neoliberal rights discourse facilitated and legitimated the dismantling of a redistributive state and provided the competitive market with a moral language.

These debates could be further deepened by interrogating the questions as to why and how, at specific moments and in specific places, human rights movements and NGOs operated as either ‘powerless companions’ or as ‘fellow travellers’ to an elitist economic agenda, as well as by excavating moments when rights movements were committed to companionships of solidarity based on building the power of the marginalized. For example, studies have shown how, in different periods of time, there have been quite divergent engagements with, and responses to, the problem of economic inequality in human rights debates.¹² Similarly, there is a need to pay more attention to the complex and varied nature of human rights movements, the historical contingency of human rights frameworks and the differing visions and forms of rights. For example, Lorenza Cotula has called for a ‘more granular analysis that consider[s] the diverse constellations of actors, agenda, arenas and approaches connecting human rights to social

⁵ See also Daniel Brinks, Julia Dehm, and Karen Engle, ‘Introduction: Human Rights and Economic Inequality,’ *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 10, no. 3 (2019): 363–75.

⁶ Alston, A/HRC/29/31, 27 May 2015, para 47.

⁷ Samuel Moyn, ‘A Powerless Companion: Human Rights in the Age of Neoliberalism,’ *Law and Contemporary Problems* 77, no. 4 (2014): 149.

⁸ Moyn (2018) xii.

⁹ *Ibid.*, 6.

¹⁰ Susan Marks, ‘Four Human Rights Myths,’ in David Kinley, Wojciech Sadurski and Kevin Walton (eds) *Human Rights: Old Problems, New Possibilities* (Edward Elgar Publishing, 2013); Uprenda Baxi, *The Future of Human Rights*, 2nd ed. (New Delhi: Oxford University Press, 2002).

¹¹ Jessica Whyte, ‘Powerless Companions or Fellow Travellers?: Human Rights and the Neoliberal Assault on Post-Colonial Economic Justice,’ *Radical Philosophy* 2 (2018): 13–29; Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso Books, 2019).

¹² See for example Julia Dehm, ‘Righting Inequality: Human Rights Responses to Economic Inequality in the United Nations,’ *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 10, no. 3 (2019): 443–59.

justice'.¹³ By critically analysing the ways in which social justice advocates mobilise both 'reactive' strategies, in response to social injustice, and 'constitutive' strategies, to normatively reconfigure human rights, it is possible to open space for democratic contestation.

However, such accounts of the political potentialities of rights need to be attentive to how any such possibilities are always already subject to systemic constraints.¹⁴ The 'form' of human rights and the forms of political and legal subjectivity they bring into being, in very material ways, 'condition[s] the possibilities' of the substance or content of such rights.¹⁵ There is therefore a real danger in utopian accounts that treat human rights as 'free-floating, disconnected from the structures of contemporary capitalism, unmoored from the historical conditions and defeats that brought them into being'.¹⁶ Any account of the redistributive possibilities of rights needs to be attentive to the historical, political and economic conditions in which rights frameworks function. To the limited extent that human rights frameworks have at specific moments critically engaged with the problem of inequality, this is arguably 'reflective of their historical context and the extent to which a broader critique of the inequalities of the global political economy was being advanced ...at a particular time'.¹⁷

Two of the pieces in this symposium take up this task of understanding the conditions under which a narrow, neoliberal and anti-redistributive understanding of human rights has been consolidated and become hegemonic, especially within institutional settings. In doing so, they extend the two predominant accounts that have traced the history of human rights and inequality, namely Samuel Moyn's *Not Enough: Human Rights in an Unequal World* and Jessica Whyte's *Morals of the Market: Human Rights and the Rise of Neoliberalism*, by focusing on post-Cold War developments, which were addressed only briefly in the abovementioned texts. Roland Burke, in 'The 1993 World Conference on Human Rights and the Retreat of a Redistributive Human Rights Vision', provides an evocative and richly descriptive account of the Vienna conference, drawing on state and non-state archival material. In doing so, his article also provides one of the first detailed treatments of the Vienna conference in the historiography of human rights, which, as he notes, remains 'often cited, sometimes celebrated, but little studied'. Burke draws attention to the critical role this conference played in consolidating and projecting to the world a human rights agenda where redistributive concerns, and social and economic rights, retained a 'nominal parity' but were functionally marginalised. Situated a decade after the 'breakthrough' of human rights in the late 1970s – after redistributive struggles and demands for a New International Economic Order (NIEO) had been overtaken by the Third World debt crisis and imposed austerity and structural adjustment in much of the world, and in the immediate aftermath of the fall of the Berlin Wall and the self-proclaimed triumph of liberal international and economic globalisation – the Vienna conference marked also, as Burke shows, an important 'waypoint in mapping the arc of the human rights language'. His close analysis of the Vienna conference thus 'reveals the forces and dynamics which diminished the utility of human rights for pursuing economic and social justice'— especially the dismantling of the distributive or even economic planning

¹³ Lorenzo Cotula, 'Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up,' *Georgia Journal of International and Comparative Law* 48, no. 2 (2020): 3 (SSRN pdf).

¹⁴ Susan Marks, 'False Contingency,' *Current Legal Problems* 62, no. 1 (2009): 1; Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, 30.

¹⁵ Ben Golder, 'Theorising Human Rights' in Anne Orford and Florian Hoffman (eds) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016), 698.

¹⁶ Whyte (2019) 31.

¹⁷ Dehm (2019) 443.

functions of the state, which were replaced by a constrained vision of the state as the guarantor and facilitator of expanded market relations.

Kári Ragnarsson's contribution, 'Humanising not Transformative?: The UN Committee on Economic, Social and Cultural Rights and Economic Inequality in OECD Countries 2008-2019', provides a detailed analysis of how, in the wake of the Global Financial Crisis, this important human rights committee has taken up concerns about economic inequality in constrained ways. Through a detailed examination of a number of key General Comments, on questions of work, business activities and non-discrimination, he shows that 'while economic inequality instinctively seems highly relevant to these themes, the issue was not addressed'. He then considers the Committee's concluding observations for OECD countries 2008-2019 to ask how they took up questions of neoliberalism, inequality and austerity. Ragnarsson tells a story of 'missed opportunities' where the Committee at first failed to consider the human rights implications of economic inequality. Subsequently, even when the Committee engaged more directly with questions of economic inequality, it treated such inequality as an instrumental concern due to its potential 'adverse effect on socio-economic rights' rather than as 'intrinsically important'. His critical reading of these debates and documents suggests that the way inequality has been taken up within UN human rights institutions risks simply 'legitimizing' or 'humanising' neoliberalism, rather than promoting a more 'transformative understanding' premised on the need for radical reorganisation of the deeper structures of the economy.

The two other contributions to the symposium pay attention to contestations over the forms and limits of human rights. In 'Against 'Ideological Neutrality': On the Limits of Liberal and Neoliberal Economic and Social Rights,' Zachary Manfredi begins to theorise what a socialist human rights project might involve. Although careful not to simply redeem mainstream programs of human rights, he brings to the surface the 'latent egalitarian potential of economic and social rights when those rights are conceived of within a socialist political imaginary'. In the background of his argument is a 'suspicion ... that much recent left scepticism about human rights is informed by an interpretation of the limitations of the post-Cold War political context'; in the very different context of our present, he poses questions about how a leftist program that was not limited to resisting neoliberal hegemony but actually had power to enact programs of governance and forms of social order might engage with rights. In making his argument, he takes seriously the diagnosis by neoliberal thinkers, particularly Friedrich von Hayek, that economic and social rights reflect an egalitarian imaginary of a society that has responsibilities to provide for the basic needs of its members. He contrasts Hayek's fear that such 'collectivist' redistributive assumptions threaten the 'spontaneous order' of the market and the liberal political order he takes it to be premised on, with the insistence by mainstream human rights advocates that economic and social rights neither impose redistributive obligations nor require the institution of a particular socioeconomic system. Manfredi's argument is based on a close reading of economic and social rights commentary from the 1980s and 1990s, especially Philip Alston and Gerard Quinn's 1987 article in defence of economic and social rights.¹⁸ Manfredi notices how in the course of these debates, advocates of social and economic rights promoted a narrow understanding of such rights, as part of a broader attempt to 'assuage neoliberal concerns' and thus make 'economic and social rights safe for *both* neoliberals and mainstreams liberals with a more social democratic orientation'.

¹⁸ Philip Alston and Gerard Quinn, 'The Nature and Scope of States' Parties Obligations under the International Covenant on Economic, Social, and Cultural Rights' 9 *Human Rights Quarterly* 156 (1987).

Finally, Randi Irwin, in her contribution, entitled ‘Self-determination and Human Rights: Blocking Resource Extraction and Appeals to Corporate Social Responsibility in a Non-Self-Governing Territory’, draws on anthropological fieldwork conducted in the Western Saharawi refugee camps. She highlights the distinct and competing deployments of rights language by the Saharawis seeking to challenge Moroccan-led natural resource extraction in Western Sahara, on the one hand, and by the Moroccan state, seeking to justify and legitimate resource extraction through human rights and corporate social responsibility discourses, on the other. Irwin’s contribution makes visible tensions between the articulation of collective rights of a *people*, particularly that of self-determination and associated control over resource extraction, and frameworks focused on the individual rights accorded to members of the population of a specific territory. These different articulations and frameworks of rights stem from divergent histories and configure duty bearers, rights holders, and stakeholders differently, with implications for what responsibilities are owed by whom and to whom. ‘[The] tensions and antagonisms between these competing forms of human rights,’ Irwin contends, ‘is clearly illuminated in the differing configurations of rights-bearers’. She describes forms of advocacy and popular education in the Saharawi refugee camps, including large-scale protests and human signs, through which collective claims as rights-bearers are articulated. In contrast, she shows that the Moroccan state also deploys the language of human rights to affirm ‘its commitment to supporting a unified population with equal access to cultural, economic, and social rights’, in ways that erase claims to collective minority rights, demands for a long-postponed referendum and political and economic self-determination. By paying attention to these ongoing struggles, Irwin illuminates how different rights frameworks operate in practice to ‘issue counter-claims to identity, history, and property’, and she also highlights the collective mobilization and organisation that is necessary in order for a particular articulation of rights to become dominant within such a contested terrain.

Let us briefly return to the pandemic with which the world is grappling and under whose dread pall this introduction was written. At the time of writing, there are over two million confirmed cases of the virus worldwide and over one hundred and thirty thousand deaths (of course, given the systemic shortages of clinical testing kits and the very real limitations of data gathering, the numbers are in reality significantly higher – and climbing). The economic costs are even harder to quantify and will endure for generations. Again, at the time of writing, and to take the indicative example of a developed Western capitalist economy structured by deep inequalities of race and class, over seventeen million people have registered for unemployment insurance in the United States alone. Lives and livelihoods are inextricably linked.

None of our authors, as prescient as they each are, wrote their articles with a global health emergency and a consequent global depression in prospect. Rather, they were in dialogue with a set of pre-existing ideas and debates about the limits of human rights as either a legal framework or a political project for responding to economic inequality. As we have seen, some emphasise the possibility of human rights and the doubled, ambivalent nature of a discourse which, for all its flaws, nevertheless holds out the prospect of systemic or emancipatory change. Others accentuate the structural limitations and serial disappointments of a human rights discourse that (occasionally) promises much but routinely delivers very little when it comes to economic distribution. Their nuanced and detailed interventions, which we have just summarised and articulated, stand on their own and clearly have not only an enduring intellectual interest but a very pressing political relevance to the world today.

That our current world today, and for the foreseeable future, is viewed through the lens of the virus, indeed that we now live differently and talk a different language (‘social distancing’,

‘flattening the curve’) does not detract from the urgency of their contributions. Human rights is one of the available languages for conceptualising and responding to the effects of the pandemic (and its inequalities). Will its terms be used to contest not only the xenophobia and racism activated by the virus and the authoritarian policing powers hastily composed to combat it, but also to instantiate new forms (as the Office of the High Commissioner for Human Rights has it) of ‘solidarity and cooperation’? And will this latter response extend not only to the hortatory ‘respect for human rights across the spectrum, including economic, social, and cultural rights’,¹⁹ but, more critically, to a reckoning with the ways in which the decades-long neoliberal capture of the health, welfare and education systems have exposed millions to various forms of human rights-compliant precarity? Much remains to be thought about and, as all our contributors emphasize, fought for, in the years to come. We are pleased to present the following four articles that not only speak to extant debates about human rights and economic redistribution, but also provide us new ways of thinking about our rapidly evolving present.

¹⁹ United Nations Office of the High Commissioner of Human Rights, ‘COVID-19 Guidance’ <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>