

Economic and Social Rights Are Not Egalitarian

Article by Samuel Moyn

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Human rights and neoliberalism both rose to prominence in the last decades of the 20th century, but what is the relationship between the two? Does an emphasis on human rights miss the bigger picture of economic justice across society? In societies still grappling with the fallout from the global financial crisis that began in 2008, determining which ideas should form the basis for a fair society remains a crucial task. We spoke with historian and law professor Samuel Moyn about economic and social rights, equality and neoliberalism, and how these concepts play out in a global world.

Green European Journal: Your latest book *Not Enough: Human Rights in an Unequal World* describes how the age of human rights coincided with the age of neoliberalism and rising inequality. Can you describe what led to this coexistence?

Samuel Moyn: The age of human rights really began in the 1970s and the breakthrough of neoliberalism occurred at the very same moment, so you could say that they are historical companions. The question is what to make of this coincidence. I argue that we should not see human rights movements as neoliberal movements, since they are advancing different values altogether. While both are based on a moral respect for individuals, they differ completely about what they see as the important entitlements. Neoliberals say that it is the freedom to enter contracts, to move capital globally, and to be free of taxation, whereas human rights activists are interested in a different set of rights, such as the freedom to express your opinion, exercise your religion, or not be subjected to torture. They both defend the right to private property, but on the practical level, I do not know of any human rights NGO that would pursue the interests of the rich and property holders. The connection lies elsewhere.

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Socialist movements and trade unions were powerful political forces well before human rights organisations emerged. Those movements kept inequality down by putting pressure on the rich for the sake of all society, including the working class. Human rights movements, on the other hand, either do not engage with distributional injustice or, if they do, only focus on the very worst off – those whose basic economic and social rights are not being honoured. This approach ignores the fair distribution of goods and services across society.

Since the age of human rights coincided in many places with increasing gaps between the rich and the rest, human rights can be said to have managed to get along with neoliberalism. Human rights activists and lawyers do not help neoliberals per se, but if you want to think in terms of a metaphor, human rights movements are trying to construct a floor of protection for the worst off, whereas neoliberals are trying to destroy any ceiling on distributional inequality.

It was obvious early on that despite respect for human rights, inequalities were growing. Why didn't anyone act on it? Was this failure due to the ideas of trickle-down economics and Washington Consensus convincing people that in the long run everyone will benefit from the rich are getting richer?

The picture is more complicated. We can distinguish between three different moments: first, the 1970s, when the world started caring about human rights; second, the 1990s when the end of the Cold War led to a re-evaluation of the idea; and third, the time of the financial crisis which drove an increased interest in inequalities.

In the first of these moments, the 1970s, human rights became famous amongst those who were turning to them because they had no better options. For example, dissidents in Eastern Europe, some of whom were still Marxists at the time, or revolutionaries in Latin America, who had similar ideas about equality, both were facing states that made it worth dropping distributional justice and focusing solely on basic civil liberties. If you look at the writings of East European dissidents in the 1970s and 1980s, they all say that the condition under which they can succeed against the Soviet Union and its allies is by not calling for social justice, but by standing up for a few basic moral values.

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Later, the years following the collapse of communism – when liberal democracy and market capitalism were unquestionable as models for new democracies – were characterised by confusion regarding human rights. Some certainly believed that the Washington Consensus would bring all good things. Others judged that there was no alternative to that program, and therefore focused less and less on distributional unfairness.

The third is the exciting moment after the financial crisis of 2008 when young people started to demand more ambitious politics. These are the people who mobilise not around human rights but the disproportionate privileges of the 1%. After the publication of Thomas Piketty's *Capital in the Twenty-First Century*, many people began to share the view that inequality was a social crisis to be reckoned with.

How did the emergence of recent movements such as Occupy Wall Street influence the human rights discourse?

Interest in economic and social rights has been increasing since the 1990s. Even in the midst of the 1990s the Washington Consensus was revised to include safety nets – at least in theory. Constitutions like the South African one in 1998 became test cases for the judicial enforcement of economic and social rights. But 2008 revealed to many activists that we cannot focus on the poor and getting everyone else to protect them without looking at the role of the rich. Human rights movements have not done that so far. These other movements are much more appealing and exciting to young people because they are interested in the whole distributional picture, not just the fate of the poor. They also name and shame the rich, rather than leaving the blame for social injustice obscure.

Human rights organisations such as Human Rights Watch mainly focus on the protection of negative rights (freedom from). Do you think that their mandates could be extended to take on positive rights (freedom to) or do we need different organisations altogether?

In most of their forms economic and social rights are only about sufficient provision for the worst off, not about the whole distributional picture in society. They are especially not about egalitarian distribution. So, positive rights cannot be said to be egalitarian – neither in theory, nor in practice.

The criticism that indicts mainstream human rights organisations for ignoring positive rights is an old, if still reasonable, one. Most human rights organisations in the Global South now champion economic and social rights – so, it is possible to do that. But the mainstream organisations in the Global North often neglect economic and social rights. Their classic explanation for this would be to say that such an organisation cannot make the state do things. They argue that negative rights, such as the right to free speech and freedom from torture, are about appeals to the state to refrain from doing something. Those could work. Whereas a right to healthcare would prescribe a state to act in a certain way, which is much harder.

Most mainstream human rights organisations are never going to treat economic and social rights with the same importance as civil liberties.

That objection has mostly been defeated; and, to some extent, the distinction between negative and positive rights has been left behind. Even a right to free speech requires the state to spend on ensuring its agents do not interfere with speech and that others do not either. But the main issue is that the standards by which we judge rights are genuinely different. If we are interested in torture, everywhere in the world all that has to happen is for states to stop torturing and to make sure that their citizens are not tortured by private actors. But if you say there is a right to healthcare or water, you also have to determine what exactly that means. How much healthcare should be provided to the citizens? When can the state say that it cannot afford it anymore? How much should the State invest in healthcare relative to other priorities? All of these worries about economic and social rights are serious, and they also make it hard to make demands related to them. The probable conclusion is that most mainstream human rights organisations are never going to treat economic and social rights with the same importance as civil liberties.

Can you explain why economic and social rights are not egalitarian?

First, let us just distinguish between the two kinds of equality: status equality and distributional equality. I could treat a person unequally because of the kind of person they are: human rights certainly say something about that kind of equality, which we could call status equality. Human rights condemn unequal treatment on the basis of race, gender, sexual orientation, and so forth. But status equality is different from distributional equality and especially equality of outcomes, which look at how income and wealth – and more broadly, the good things in life – are spread in society.

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Human rights have essentially nothing to say about inequalities of income and wealth directly. You can read all of the declarations and treaties for human rights and none of them bear on this issue. The treaties that bear on economic and social rights only look at entitlements to a certain amount of a good or service – but they do not mention equal distribution. In theory, we can even imagine that more and more economic and social rights are fulfilled while overall inequality increases. The rich could get much richer, even as the poor get only slightly better off. Human rights are just not distributively egalitarian – even on paper, let alone in practice.

But what if consider that many of our resources are finite, and that growth cannot go on without end? Wouldn't in that case the idea of sufficiency and the reality of finiteness push us towards a more equal society?

That reflects a possible outcome but it is not in line with what we generally see. Goods and services are indeed finite, but they also have a recent history of significant growth. The main question is who captures the gains of this growth. For now, every year we have many more goods and much more money as a society, and the rich capture most of it, the poor benefit somewhat, while the middle classes are stagnating.

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To put the argument another way, human rights are not about the middle class and they do not look at how the rich are taking so many of society's gains. What human rights do – and it is potentially sinister – is, by focusing on the worst-off amongst the poor, they lead us to excuse the rich for the wronging the middle.

Could this be behind rise of the populist parties?

Populist groups are not movements of, by, or for the poor. They are movements of voters who are unhappy with elites. Racism is part of the picture – but if you take the example of a place like Hungary, where essentially no migrants have been allowed in, you have to wonder if immigration actually does explain voting behaviour. In many places, it seems incredible that inequality would be left out of any diagnosis of populism. Voters perceive that they are stagnating while the rich are earning more and more as a percentage of the national income. That would lead anyone to be upset.

Human rights as such are cosmopolitan norms and are covered in several international treaties, but the extent to which someone can enjoy their human rights depends to a large degree on that person's citizenship and where they live. How would you describe the role of citizenship in this equation?

This reminds us how low human rights movements set the bar to begin with. Human rights are chiefly about protecting people and providing them with entitlements within their own state, but no movements have entitled people to move between states, except in this narrow and rare circumstance where they have a well-founded fear of persecution and are capable of getting to the border of another state.

There is this global problem and the concept of human rights does not have the tools to formulate what it is.

Millions have tried to get to the border of a European state that might admit them. Never have individuals been given by the international community a right to move, and especially not the right to address global inequality by moving – which is what probably most migrants are trying to do. This is again an immense limitation of human rights: there is this global problem and the concept of human rights does not have the tools to formulate what it is – let alone solve it.

What kind of global governance could help us mediate the current problems?

You cannot get too utopian. A proposal to create something like a global welfare structure to moderate inequalities not just within states but among them was put forward in the 1970s. That is not a prospect now, largely because of the neoliberal governance we have experienced since. In the short term, the most feasible way to tackle inequality in the world is by looking at individual states' proposals about welfare governance and scaling those up – in part because many governments have already begun to think about more progressive solutions at home. Green parties

could also drive this process, and the cooperation of different Green parties beyond borders is an excellent first step.

Global governance cannot conceivably change before at least some states have moved in a progressive direction. So the question is how will new movements square their need to win power at the national level and serve domestic constituents with a global politics that involves non-citizens? Would it be possible to convince national citizens with a cosmopolitan programme aiming at global fairness?

You teach on the trajectory of American conservatism since World War II. What role did human rights play there?

There is not a huge intersection, but it is true that most American conservatives reject international human rights, except as something that America exports to other people. The leaders in that regard have been the neoconservatives who have had their own vision of international human rights since the 1970s. This export connected with another ideology called ‘democracy promotion’ and led to the conservative idea that America would stand up for human dignity around the world, if necessary, at the point of a gun, by changing regimes in places like Iraq, or more recently Venezuela. US Secretary of State Mike Pompeo has founded a new commission to re-evaluate human rights. We will see whether the results of that inquiry provide a good answer to the question of what American conservatives currently make of the idea of human rights.

The idea that America would stand up for human dignity around the world is very conservative.

So, for now it's not really clear how Donald Trump or his team sees human rights?

Trump is a figurehead, and beneath him many different factions are at war. One faction does believe in human rights but thinks that human rights got hijacked by people who spread the right to abortion or the right to gay marriage. This faction is mostly concerned about violations of their right of religious freedom globally. But not everyone in the US conservative political scene embraces the need for human rights politics of any kind. Conservatives have pushed back against Trump not because he cares so little about human rights, but because he has challenged the traditional armed supremacy of the US in the world. When Trump withdrew from Syria, the outcry was not about the human rights violations that followed, but the ‘betrayal’ of the US’s Kurdish ally, and the credibility of America’s commitments to its partners, or stewardship of the world. Trump is pointing towards a post-imperial United States, which is exciting even when the steps he takes are ill-advised, reckless, and do little to adjust America’s foreign policy to the realities of its geopolitical decline.



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