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## **The cultural politics of human rights and neo-liberalism**

**Kate Nash**

*Do human rights offer the potential to challenge neo-liberalism? I argue that rather than understanding human rights as ideology, as obscuring or legitimating neo-liberalism, it is more productive to see both human rights and neo-liberalism as hegemonic projects. In this article I explore convergences and divergences between dominant discourses and practices of human rights and neo-liberalism around key ideas 'the state', 'the individual' and 'the nation', to clear a space for appreciation of the cultural politics of human rights: divergences in constructions of responsibility and hierarchies of value of concrete individuals offer openings for challenging ideas and practices of neo-liberalism through campaigns for human rights.*

Keywords: ideology; hegemony; socialism; social democracy; state; cosmopolitan; individual

### Theorizing ideas: ideology and hegemony

Cultural politics is the contestation of ideas in practice that potentially transforms social relationships and conditions. In this article I address the question of whether discourses of human rights today hold any promise for challenging neo-liberalism, and if so, how. Are there emerging possibilities for a cultural politics of human rights to transform global capitalism? Or are such possibilities unlikely (even if always theoretically possible) because of how human rights are constructed today? In what ways do dominant discourses of human rights and neo-liberalism converge? Do they diverge? And do divergences offer openings to human rights advocates to challenge neo-liberalism only superficially? Or more fundamentally?

It is Samuel Moyn who has articulated the most influential arguments concerning the relationship between dominant ideas of neo-liberalism and human rights. In *The Last Utopia* Moyn outlines what has been called 'the displacement thesis': human rights are a distraction or displacement from more important issues of structural injustice,

thereby legitimating global neo-liberalism (O'Connell 2018). He argues that historians of human rights are misguided when they trace the origins of the contemporary regime to the Enlightenment and the French Revolution, or to the end of World War Two and the Universal Declaration of Human Rights. We should rather look to the 1970s when a specifically US vision of liberal internationalism was created, which then took off after the end of the Cold War as 'the last utopia'. For Moyn human rights today offer very impoverished utopian ideas, moral rather than political, that do not challenge the status quo. They are the 'last utopia' largely because of the collapse of socialism and social democracy, and as such they are the tools of the powerful, not the powerless (Moyn 2010).

In *Not Enough: Human Rights in an Unequal World*, Moyn refines 'the displacement thesis', developing it into what I propose to call the 'validation thesis'. In this book he explicitly links human rights to contemporary capitalism, arguing that the principal limitation of human rights is that they have adapted too well to the contemporary 'social imaginary'. The human rights movement has grown up to address state violence and persecution, not the structural injustices of global capitalism. Insofar as human rights advocates *do* take up issues of social rights, as they increasingly have done since the 1990s, Moyn argues that they address what he calls 'material inequality' *only* in terms of 'sufficiency', or absolute poverty, never the relative inequalities that are growing today as a result of global neo-liberalization.

Furthermore, human rights advocates today conceive of social rights as a matter of individual entitlements rather than as a collective project of welfare – quite unlike 'the spirit of the age' in which the Universal Declaration of Human Rights was made in the 1940s when both state socialism and social democracy were well-established as

ideals. In short, Moyn sees human rights as dominant in occupying the ‘global imagination’ at the same time and alongside massive increase in inequalities that result from neo-liberal marketisation (Moyn 2018). In effect he suggests that rather than, or perhaps as well as, *displacing* projects to engage neo-liberalism, human rights *validate* it: human rights in our times have been constructed in such a way as to be completely unthreatening to the intensification of material inequality that is the necessary outcome of neo-liberalism; and indeed, they fit very clearly with its goals and processes (especially, he says, insofar as both human rights and neo-liberalism are anti-statist and individualist (Moyn 2018: 218)). As a result of his analyses in *The Last Utopia* and in *Not Enough*, Moyn calls for a revolution in ideas, to move past human rights to clear the ground to ‘relearn the older and grander choice between socialism or barbarism’ (Moyn 2018: 220).

Moyn articulates his position in *Not Enough* explicitly in response to Marxist arguments. In particular he argues against Naomi Klein and Susan Marks who see neo-liberalism as the ‘root cause’ of both human rights violations and the rise to prominence of human rights (see Klein 2007; Marks 2013). Moyn argues that they over-generalise from the case of Chile – in which political repression and marketisation did coincide in Pinochet’s regime - and fail to spell out precisely how the two were linked even in that particular case (Moyn 2018: 179). At the same time, however, he takes seriously the Marxist concern to link ideas of human rights as ‘superstructure’ to the economic ‘base’ of capitalism (Moyn 2018: x). In fact, Moyn’s stated aim in *Not Enough* is to develop a kind of third way: ‘to stake out a moderate position between those who claim that human rights are unrelated to

political economy and distributive injustice... and those who think the human rights revolution has been a mere sham masking inhumane domination' (Moyn 2018: xi).

Beyond his statement of intent, Moyn does not engage debates over 'base' and 'superstructure'. He contents himself with arguing against the version of Marxism he sees as represented by Klein and Marks. It seems to me, however, that unconsciously or inadvertently he internalizes other Marxist ideas - perhaps inevitably if his analysis is shaped by the metaphor of 'superstructure' and 'base'. Moyn seems to share an understanding of human rights as ideas in relation to the economic base of society that Marx himself put forward in 'On the Jewish Question'. In this text, Marx posits human rights as nothing but ideology: they obfuscate and mystify the workings of capitalist social relations (1). Marx argues that human rights (then, of the French Revolution) offer only formal equality, in law and in values of individual freedom, while at the same time they embed property-ownership and capitalist competition that would lead inexorably to greater substantive inequalities and the increased oppression of the working classes (Marx [1843] 1978). In effect, in 'On the Jewish Question' Marx argues that human rights operate in three ways to support capitalism: i) they contribute to the structural conditions that are necessary for capitalism (especially through the law of private property); ii) human rights legitimate capitalism by continually (again, especially in law) validating ideals of equality as only ever formal, never substantive; iii) they obscure alternative possibilities ('human emancipation') by representing formal equality in the state ('political emancipation') as the goal of progressive politics.

As Moyn notes, it is difficult to support Marx's first point today: that human rights contribute directly to the structural conditions of neo-liberalism. There was no return in the C20th to human rights as fundamentally the protection of property, the theme of the C18th Declaration of the Rights of Man of which Marx was so critical (Moyn 2018: 175-6). The right to property is not even mentioned in the International Convention on Economic Social and Cultural Rights. And nor did human rights advocates in international institutions argue for privileging markets and private property as a way of dealing with totalitarianism and repression (though of course advocates of neo-liberalism did at the end of the Cold War) (Moyn 2018: 191). In terms of Marx's second two points, however, that human rights legitimate and obscure the fundamental violence and inequality of capitalism, Moyn's arguments for human rights as 'displacement' and 'validation' seem to come very close. The 'displacement thesis' Moyn puts forward in *The Last Utopia* resembles Marx's argument that human rights obscure radical alternatives to their unsatisfactory but somehow glamorous and compelling project: in Marx's case, human rights obscure the potential for 'human emancipation' growing in the development of the productive forces of capitalism; in Moyn's case, they obscure the necessary, partisan, political choice that is to be made between 'socialism and barbarism'. The 'validation thesis' Moyn puts forward in *Not Enough* resembles Marx's argument that human rights address only very limited forms of inequality: in Marx's case, they address only formal, legal inequality; in Moyn's case, human rights sometimes address poverty but never structural inequality. It is clear that for Marx human rights are validating of capitalism because they do not, and can not, get to the root of the matter, when what is needed is a revolution in the means of production. In Moyn's case it is less clear precisely what his 'revolution of ideas' would involve. Although Moyn often uses the

word 'socialism', he recognizes that 'actually existing' socialism was flawed in many ways, and nor does he advocate the socialization of the means of production. His ideal is more that of global social democracy; and, with the rest of us, who support this outcome he has no idea how to bring it about.

My aim in this paper is not to suggest that Moyn is a closet Marxist, and that he should come out. Nor is it to pick holes in Moyn's arguments. I appreciate his bold interventions as important and valuable to explore the significance and power of ideals of human rights in relation to neo-liberalism. What I want to suggest here is that if we are to think of human rights in relation to capitalism, the epistemological and methodological framework of ideology critique is of limited value. If there is a dominant social imaginary that links human rights and neo-liberalism, it is better approached through analysis of both human rights and neo-liberalism as hegemonic projects. 'Ideology' and 'hegemony' have their origins in Marxist theorizations of the impact of ideas on social practices and relations, and there has been much discussion of the theoretical premises and development of these approaches (2). Here I want only to note two main points that distinguish my approach from that of ideology critique and that are crucial to the analysis that follows.

Firstly, unlike ideology critique, the analysis of hegemony does not involve demystification and the revealing of a hidden truth. Where ideology critique is based on an epistemology assumed to be completely outside existing discourses – which need not be specified - analysis of hegemony involves identifying progressive possibilities and tendencies *within* existing discourses and practices. Theorists of hegemony suppose that such alternatives always exist because hegemony is never monolithic: it

is invariably in part imposed through the coercive apparatus of the state, and it is never the case that everyone fully accepts the norms encoded in dominant practices. Hegemony is always a process, a project; by definition, it can never be fully realized (3). On the contrary, consent to rule always has to be negotiated, and re-negotiated, and the persuasive arguments of a dominant hegemonic bloc at a particular time and place invariably accommodate resistant and alternative ways of thinking and ways of life that are tolerated as they are contained.

The theory of hegemony, encompassing as it does paradoxes, diversity, incompleteness and domination, is more suitable for Moyn's project of linking economic base and human rights superstructure since, as he carefully argues, the relationship between human rights and neo-liberalism is not historically singular or geographically monolithic. The spread of neo-liberal ideas in Chile was not the same as it was in Eastern Europe after the end of the Cold War, it was not the same in the US and UK as it was in India and so on. In fact, given the diversity of the settings and time-frames in which neo-liberal ideas are taken up, it is unsurprising that empirical studies actually identify 'varieties of neo-liberalism' (Cerny, Menz and Soederberg 2005). Indeed, some analysts worry whether the varieties have enough in common to be included within the same category as 'neo-liberal' (Boas and Gans-Morse 2009). For the purposes of this article, I take it that there is enough consistency in ideas of neo-liberalism to make it identifiable as such, as long as we avoid supposing that ideas are always realized in precisely the form in which they are put forward. As Grewal and Purdy have argued, what neo-liberal economic advice to governments, political rhetoric and policy-making have in common is that in contemporary political conflicts they always promote technocratic creation and/or maintenance of markets as the



solution (Grewal and Purdy 2014: 2-3). Such a definition supposes a wide variety of conflicts, arguments and consequences, and does not presuppose success for marketisation in every conflict in which it is proposed. Similarly, human rights in the contemporary era have been called ‘carnavalesque’ for the exuberant diversity of projects in which they are taken up, representing the struggles of different groups in different contexts around the world (Baxi 2006: 46; De Sousa Santos and Rodriguez-Garavito 2005). Nevertheless, there is a dominant core to this diversity: the vast majority of struggles concern repressive rather than structural violence – of states, of corporations and sometimes of civil society too (in the case of campaigns for the rights of women and LGBTQ for example). It is overwhelmingly these struggles that are taken up by INGOs like Amnesty and Human Rights Watch (4). For the purposes of our enquiry here, it is reasonable to suppose that theorizing the global spread of ideas of human rights and neo-liberalism as hegemonic allows us to understand each as having enough consistency and uniformity, at least in their dominant forms, to contribute to a transnational social imaginary without having precisely the same meanings everywhere. It is surely this messy mixture of diversity and uniformity for which Moyn is arguing in his ‘validation thesis’?

Secondly, hegemony must be analyzed as closely entwined with practices and institutions in which dominant blocs are formed and challenged. From the 1980s onwards, analyses of hegemony (principally in Cultural Studies) were developed precisely against inadequate theorizations of ‘ideology’ as ideas that express the interests of a unified, monolithic, dominant class, or as ‘superstructural’ in relation to a determining economic ‘base’ (see note 2). Moyn’s critique of human rights are far from crudely reductionist, but it does share some of the limitations of earlier models

of ideology critique in that he tends not to engage directly with how ideas operate in practice as *meanings*, across a range of different sites and forms of organization, and how they are mobilized and negotiated in everyday life as well as in policy-making and legal decisions to structure and restructure social relations. In terms of human rights, for example, Moyn sees ideas as carried in ‘the human rights movement’ – but he does not specify precisely what he means by this term. Moyn equates ‘the human rights movement’ with ‘informational politics’ of naming and shaming, the principal strategy of International NGOs (Moyn 2018: 218). But professionals working for INGOs and in IGOs are just some of the actors engaged in the politics of human rights, across a wide range of organisations working at different scales from grassroots social movements through NGOs to INGOs and IGOs and including actors within national states (see Nash 2015). It is important to analyze the meanings of human rights and neo-liberalism in relation to specific organizations and institutions, and how they justify particular structures, practices, outcomes. If ideas of human rights are to be used to challenge neo-liberalism, it seems likely they will come from across a range of sites, and surely not only from elite institutions and organizations.

There have been a good many well-cited studies of neo-liberalism over the last decades (5). There is also a vast, but perhaps less focused literature on human rights (6). Taking Moyn’s validation thesis as my starting point, and working with the theory of hegemony rather than with assumptions about ideology, I will draw on well-known analyses of ideas of neo-liberalism and of human rights (analyses of their relationship are a good deal more rare) to ascertain how they converge and also how they diverge under the three themes of ‘state’, ‘the individual’, and ‘the nation’ (7). These are key terms in both literatures. My aim is not to look only for *convergences*

but also for *divergences* in order to put Moyn's validation thesis to the test.

Theorizing dominant ideas of neo-liberalism and human rights as hegemonic rather than ideological encourages us to look not only at how human rights validate neo-liberal marketization and the intensification of inequality, but whether they also offer scope for challenging neo-liberalism as the dominant global social imaginary. To be sure, there are risks with such an approach. The methodology is broad-brush stroke, especially since few studies of neo-liberalism or of human rights involve detailed discourse analysis. Like any attempt at 'grand narrative', however provisional, it risks over-generalizing from the case studies on which it depends and over-simplifying the contestation of meanings through which dominant ideas emerge (8). However, it is not possible empirically to assess the validity of Moyn's conclusion concerning the convergence of ideas of human rights and neo-liberalism in a global social imaginary through a close reading of particular discourses and meanings of neo-liberalism and human rights, since, as we have noted, they are always variable in different contexts and at different times. Only analysis of the big picture will enable investigation of whether Moyn is right that dominant ideas of human rights and neo-liberalism converge, that human rights generally validate neo-liberalism.

### Convergences and divergences in the global social imaginary

#### *States of misfortune*

On the face of it, dominant discourses of both neo-liberalism and human rights share a common concern in freeing civil society from states. In terms of human rights, states (generally named nationally - Argentina, Hungary, the USA, the DRC) are invariably constructed as problematic where there are human rights abuses: as repressive,

corrupt or simply neglectful or inadequate. It is very easy to think of human rights in liberal terms as *against* the state. As we shall see, this is not the whole picture, and in fact, human rights require states to work. But it has been civil and political rights, which position the violating state as violent and repressive, that have dominated since the rise to prominence of human rights at the end of the Cold War, with social and economic rights playing a minor, and often more controversial role (Moyn 2010: 122-23; Ignatieff 2001).

Neo-liberal discourses that construct 'the state' as highly problematic are also very much in evidence. Again, the picture is complicated here by the fact that political economists now understand the state as necessary to neo-liberalism. But in the 1970s and 80s, during what Jamie Peck has called the 'roll back' of neo-liberalism, the Keynesian or socialist state was repeatedly constructed as ill-equipped to plan properly, too expensive, too bound up with political and professional interests compared to markets which, sensitive to rational choices made by consumers would deliver efficiency and value for money (Peck 2010). The political speeches of Margaret Thatcher and Ronald Reagan were all about 'rolling back the state'. 'Rolling back the state' was also paradigmatic in the Washington Consensus at the international level, and evident in the 'structural adjustment programmes' of the IMF and the World Bank in the 1980s (Hoogveldt 2001: 180-1). The withdrawal of the state from subsidising industries, limiting flows of capital, and providing social provision was the trademark of neo-liberal rhetoric in the 1980s. Neo-liberal constructions of antagonism towards and mistrust of 'the state' are undoubtedly less strident today. Indeed, as Leitner, Peck and Sheppard argue, in the 'roll out' of neo-liberalism since the early 1990s, it is evident that '[O]nly rhetorically does

neoliberalism mean “less state;” in reality, it entails a thoroughgoing reorganization of governmental systems and state–economy relations (Leitner, Peck and Sheppard 2007: 33). However, in dominant neo-liberal discourse, the state is invariably constructed as no more than a technical mediator for the production and maintenance of markets - rather than, as it is for socialists and social democrats, a transmitter and organiser of values of fairness and solidarity.

Though dominant ideas of neo-liberalism and human rights do converge on suspicion of ‘the state’, then, it is misleading to characterize either as simply ‘anti-state’. States are problematized, even demonized in dominant discourses of human rights and neo-liberalism, but ‘actually existing states’ are at the same time necessary both for the realization of human rights values and of neo-liberal policy. In fact, zooming in closer on projects that have aimed to realize human rights and neo-liberal ideals in practice, it is clear that they involve rather *restructuring* states – and in quite different ways.

In practice, capitalist marketization requires states. As Karl Polanyi argued in his analysis of the ‘disembedding of markets’ undertaken by free trade liberals in the C19th, it can only be done through state regulation: to ensure property rights and contracts, to guarantee ‘fair and free competition’ and to attract ‘footloose’ capital investment (Polanyi 2001). Moreover, as Peck has argued, in ‘rolling out’ neo-liberalism, and especially given that markets fail, there is continual policy-making and legislation to enable ‘market conforming’ regulation – such as that concerned with public/private partnerships, the creation of ‘quasi-markets’ in public services, and audit. There has been a massive proliferation of agencies in which experts effectively

set, monitor and enforce standards of public and private provision in everything from media and communications to public transport (Peck 2010: 23). This proliferation of authorities is evident at national and international scales, and indeed domestic and international are becoming increasingly entwined. The globalization of trade and investment is linked to the ‘stretching’ of states in global governance: states are internationalized in assemblages of networks, shared norms and procedures to harmonize regulation, share information, set global standards (see Weiss and Wilkinson 2018).

Saskia Sassen argues that in global governance the executive branch of government effectively increases its authority and influence at the expense of the legislature. In part this is a product of global governance as such: as decision-making becomes more dispersed within the state, between different regulatory bodies and across public/private boundaries, it is increasingly difficult for elected politicians to influence decision-making. And as Sassen notes, the WTO and the IMF negotiate *only* with the executive (9). Sassen argues that (in the US at any rate – which she sees as leading the world in this respect) the executive increased its ‘unitary power over public administration’ relative to other branches of the state with the implementation of Reaganomics in the 1980s. Certainly, in relation to what Will Davies calls ‘the state of market exception’ produced by the banking crisis of 2008, the power of the executive was very much in evidence in the US and UK. The US Senate did vote to authorize \$700 billion to be spent on ‘distressed assets’ in the ‘Emergency Economic Stabilization Act 2008’ – but it was exceptional legislation that was passed in just a few days as a matter of national emergency. In the UK there was no formal legislation: parliament was simply told that the Treasury would spend what was

necessary to bail out banks (the highest estimate was £1.2 trillion); while at the same time the government used anti-terrorism laws to freeze £4 billion in a failed Icelandic bank (Davies 2017). Ultimately, when the banks were ‘too big to fail’, those who put their faith in markets as the appropriate mechanism for allocating goods also put their faith in the executive as the sovereign guarantor of markets.

The realization of human rights values also requires states. ‘State parties’ are still the principal makers of international human rights treaties and conventions – even if the form of international law is now influenced at the margins by NGOs, and interpretations of International Customary Law have grown in significance. ‘State parties’ are also the main bearers of legal responsibilities to ensure respect for human rights in international law. In addition, sociologically, states remain unique in their capacities to concentrate and distribute resources of force, wealth, legitimacy. For better or worse, states are at the same time the main *violators* of human rights and the main *guarantors* of human rights (Nash 2015).

Human rights advocates at international and national levels are also trying to restructure states in global governance, though in different ways from advocates for neo-liberalism. The branch of the state that is favored by human rights advocates is undoubtedly the judiciary. Human rights encoded in international law, sometimes incorporated into national constitutions and domestic law, are typically used as a lever through which to address injustices. Cases include those (very rare) examples from international courts, like the ICC, which prosecutes individual war leaders, and (less rare) from the Inter-American and European Courts of Human Rights, in which individuals bring cases against states; cases that bring international law into national

courts (common in Europe because of the European Convention of Human Rights, possible everywhere through the use of International Customary Law as well as through bringing international human rights into national constitutions); and cases in which the rights of non-nationals are claimed through national law that encodes international standards (as in the famous prosecutions of Unocal and Shell in US courts under the Alien Tort Claims Act). Where they lead to well-publicized ‘test cases’ with implications for government policy and legislation, human rights discourses contribute to the constitutionalization of states, to judicial review which effectively circumscribes in varying detail what may be done legally by politicians, bureaucrats, soldiers and police acting ‘in the name of’ the state (Stone-Sweet 2011).

Dominant strategies associated with ideas of neo-liberalism and of human rights differ, then, in how they articulate what can be done with and through states - at least in the most publicly acknowledged and spectacular instances in which markets fail and human rights are tested in court. However, advocates of neo-liberalism and of human rights converge on the importance of ‘global governance’. In this respect they can be said to converge on the value of by-passing the messy business of political arguments and negotiation by elected representatives in legislatures. As Michael Ignatieff argues, human rights tend to be seen as necessary in order to oppose political – that is, ideological, partisan or sectarian – justifications for disrespect and violence. In this respect, human rights *delegitimize* politics as always potentially dangerous compared to transcendent, moral principles (Ignatieff 2001). Similarly, markets are constructed in neo-liberal rhetoric as transcending political projects and particular interests, as ways of exchanging and allocating goods that enable equally rational human beings to make decisions in their own interests. It is experts at creating and



regulating markets whose advice should be valued over the claims of professional politicians (see Papadopoulos 2017). Dominant discourses of neo-liberalism and human rights converge on the value of administration by experts, legal professionals and technocrats to restructure malfunctioning states.

### *Who is responsible?*

A prominent theme especially in Foucauldian inspired analyses of neo-liberalism is the discursive construction of self-regulating, enterprising individuals who exercise freedom of choice in markets in order to maximize their well-being. It is argued that constructions of the citizen-consumer responsible only for themselves (and, as feminists point out, for their families, which makes for differently gendered scenarios) produce subjects in practice who are oriented to make the best of competition and marketization in practice – or to blame only themselves where they are unsuccessful (Rose 1999; Lerner 2000; Cooper 2017). At the same time, the self-responsibilizing individual is linked to hierarchies of social and cultural value: ‘hard-working families’, ‘responsible consumers’, ‘effective parents’ and so on appear as worthy of respect in contrast to the poor and marginalized who are demonized in the media and in mainstream politics (Clarke 2008: 141).

There has been far less work on the subjectivity of people claiming human rights (even if human rights are routinely criticized as individualist). From her multi-sited ethnography of international and local institutions and organizations working on women’s rights, Merry argues that transnational human rights discourse does model an ideal subjectivity (Merry 2006). It is summarized by Radhika Coomaraswamy, the first UN Special Rapporteur on Violence Against Women, who suggests that the

kind of person constructed in international human rights law is ‘the Enlightenment individual’: a woman who defines herself as free and choosing rather than through her connection to family, community or religion (Coomaraswamy 1994). In addition, there is evidence that rather than *victimhood*, which arguably defines the recipient of humanitarian aid, the subject of human rights is constructed as heroically super-agentic (for a comparison see Wilson and Brown 2009). As Diane Meyers has argued, at least in the West it is not the ‘pathetic victim’ who is persecuted and killed for who they are (a Jew, a Tutsi, a woman) for whom we feel sympathy, but the ‘heroic victim’, who is persecuted for what they say and do (Nelson Mandela, Malala Yusafzai). The ‘pathetic victim’ is a loser, someone who passively accepts their suffering and who is not worthy of our attention and respect (Meyers 2011). From my analysis of documentaries shown at film festivals organized by Human Rights Watch and Movies that Matter (associated with Amnesty), I argue that they almost invariably construct narratives around protagonists who are ‘self-responsibilizing’. Films in these festivals construct ‘super-agentic’ heroes who are making themselves in the course of the film as subjects of human rights, even as, at the same time (and ahead of global institutions that would really guarantee their rights) they contribute to the formation of citizenship and community beyond their locations and nation-states (Nash 2018; see also Slaughter on post-colonial novels, 2007). The self-responsibilizing individual of human rights does seem to have a resonance with neo-liberal constructions of the self as responsible for making the right choices to produce themselves as ‘market-ready’. In both cases, it is individuals who take responsibility for creating the conditions of their own flourishing.

On the other hand, if there is some overlap between the self-responsibilizing subjects of neo-liberalism and human rights, they are constructed in quite different discursive contexts. Firstly, while the neo-liberal subject is situated in relation to meritocratic or entrepreneurial *competition* in which they aim to maximize their well-being and that of their families, the subject of human rights makes demands for *protection* from ongoing violations or to prevent violators benefitting from violence and hyper-exploitation. Appeals for protection are often made to transnational civil society actors, to INGOs and social movements. But invariably, given that appeals to human rights are often constructed in terms of law (already codified or not), they are also appeals to state agencies (not necessarily the victims' own in the first instance) who have signed and ratified international treaties and conventions and which are organized into international networks of governance with potentially far-reaching influence inside member states' territories (Keck and Sikkink 1998). Ultimately, human rights claims call for protection *through states*, in accordance with international agreements (10).

'Protection' is precisely what Karl Polanyi identified as key to 'the double movement', cross-class resistance to marketization destroying ways of life, in *The Great Transformation* (Polanyi 2001). Polanyi argued that movements for social protection arose against the insecurities and violence of 'freeing markets' in the nineteenth century (the liberalism that has now returned as neo) culminating in fascism, communism, and ultimately, social democracy and the welfare state in Europe in the twentieth century. To be sure, as Moyn argues, such calls as there are today for protection from markets through human rights tend to aim at a 'floor', at ensuring that people are not left without basic resources for subsistence, rather than at

a ceiling, at preventing grotesque inequalities. However, in this respect, calls for protection through human rights are not necessarily so different from calls for social protection which were made at the beginning of the welfare state. In the UK, for example, the Beveridge Report, the immense popularity of which was directly responsible for the post-war Labour government setting up universal social security, health-care and a massive programme of public housing, did not involve a rallying cry for equality as such. The Beveridge Report called rather for the abolition of ‘Want’: the welfare state should meet people’s basic minimum needs; anything more than that would be contingent on economic growth and especially (crucial to the Keynesian economics of the time) rates of employment (11). Whilst clearly there is no comparable programme of social democratic reform today, do calls for the protection of peoples’ rights represent at least openings to demands to strengthen the state against neo-liberal marketization in the twenty-first century?

Secondly, in terms of hierarchies of social value, the contexts of neo-liberal and human rights discourses also differ. Both discourses are committed to philosophical anthropologies of fundamental, formal, individual equality: neo-liberal discourse to the rational, choosing subject; human rights discourse to the human being as such. In practice, however, universal principles always have to be given meaning that is more particular, concrete and limited. As we have seen, in constructing ‘hard-working families’, ‘efficient parents’ and so on as superior to individuals who are understood to have failed to make the right choices to improve their life chances, neo-liberal discourses position some as more equal than others, as more worthy of respect in practice. Similarly, as Monika Krause has argued, although in principle all individuals have human rights, practitioners and activists routinely draw on ‘best

examples', taken-for-granted reference points that implicitly shape what is perceived to be a human right, a human rights violation, or human rights work, and which vary at different times and places (Krause 2017). I have suggested that it is the 'heroic victim' who is most valued in human rights discourse, and that they do bear a resemblance to the self-responsibilizing individual of neo-liberalism. But the catalogue of 'heroic victims', the 'poster children' of human rights today, includes individuals who are members of groups that are particularly vulnerable to violence, displacement and disrespect: women suffering violence and discrimination as a result of patriarchal traditions and law; indigenous peoples fighting for their land and ways of life; slum-dwellers fighting city planners and developers; people subject to violence because they challenge the sex/gender binary; migrants endangering their lives to escape persecution, poverty and despair.

The individuals of human rights differ from the individuals of neo-liberalism not so much, then, in terms of discourses of 'self-responsibilization' as in terms of who, ultimately, counts as an individual worthy of respect. In effect, by foregrounding the vulnerability of some individuals because of how they are positioned in relation to structures of injustices, however heroically they struggle with those conditions, discourses of human rights not only draw attention to the situations of people who otherwise tend to be disregarded, they also construct individuals as necessarily belonging to *groups*. Claims for human rights construct named groups of individuals who share a common situation as concrete subjects of rights. In this respect, human rights although fundamentally rights of individuals, validate collectivist solutions to problems that are simultaneously those of individuals *and* groups – rather than the

individual strategies validated by discourses of neo-liberalism: ‘working hard’, ‘making good consumer choices’, ‘getting ahead’.

### *Frequent traveller cosmopolitanism*

The most basic definition of a cosmopolitan person is one who is free from local, provincial, or national ideas, prejudices, or attachments; at home all over the world. In recent years, at least in academic debates, ‘cosmopolitanism’ has grown to mean something more positive: not just freedom *from* the national and local, but drawing selectively on different cultures, and having a positive attitude towards the flourishing of humanity through global citizenship as the ideal of the sophisticated, the educated, the enlightened (Appiah 2007; Vertovec and Cohen 2002).

The link between neo-liberalism and cosmopolitanism is indirect rather than direct – it goes through ideals of social and geographical mobility. Craig Calhoun has described cosmopolitanism as ‘the class consciousness of frequent travellers’ (Calhoun 2002) (12). He does not explicitly say who he includes in this category, but ‘frequent travellers’ are surely people who travel regularly by choice, and who often also choose to live in different countries for periods of time, for reasons of education, career, love, or simply for new experiences. In addition, they are highly connected across borders digitally as well as through travel, and (in the consumption of films, books, TV, food, designed products) they like to try out the best the world has to offer. In terms of social stratification, ‘frequent travellers’ certainly includes the executives of large corporations, but it also includes others who are not quite so rich (though globally we are undoubtedly highly privileged): highly skilled and trained professionals, academics, those with successful careers in the creative and media

industries and in INGOs, politicians, high-level bureaucrats and public sector consultants – all those embedded in transnational networks of governance. It is not necessary to understand cosmopolitanism as fully realized in the life-styles and mentality of ‘frequent travellers’; it is rather that mobility across borders, freedom from being tied down to particular places, and taking the best from national and local traditions has become an *ideal* for many in the twenty-first century.

Social mobility is given a particular inflection in conjunction with the dominance of discourses of neo-liberalism. In this context, meritocracy - the idea that ‘it’s not where you’re from... but where you’re determined to go’ that matters - is, as Jo Littler has argued, a marketisation of the ideal of equality (Littler 2013). Unlike socialism and social democracy, which aimed to end or at least to mitigate substantive inequalities, neo-liberalism validates *increasing inequalities*, which are seen as either a matter of bad luck (of differences in natural ability, for example) or a result of effort and hard work where everyone has the same formal chances to compete - for the best education, training, opportunities, jobs. In our times, ‘the best’ often involves mobility across borders. In a recent article in *Sociology*, researchers found that what they call ‘transnational cultural capital’, including foreign language skills and familiarity with foreign cultures and institutions is now seen by German parents as important to the future of their children in the labor market (Carlson, Gerhards and Silke 2017). It seems that a ‘good job’, one that pays well, is reasonably secure and interesting, is a job that enables one to become a ‘frequent traveller’. Cultivating the cultural capital to compete for the best jobs may mean becoming more cosmopolitan.

In contrast, the link between human rights and cosmopolitanism is direct. Human rights are a cosmopolitan ideal by definition where cosmopolitanism involves the rejection of exclusionary principles based on nationality and ethnicity and the anticipation of global citizenship in which all individuals enjoy equal rights regardless of where they happen to be born and to live (Anderson-Gold 2001: 1). The cosmopolitan ideal of human rights is mobilized especially in extreme cases of violence and injustice, but on ‘the terrain of idealism’ to articulate the value and importance of human rights is to oppose treating people differently because of ethnicity, religion, nationality.

In terms of people who cross borders, however, discourses of human rights are a good deal more complex. The success of human rights advocates in supporting people fleeing violent persecution and deprivation is highly variable. In many cases, human rights have become entangled in the management of flows of people across borders in ways that clearly violate the spirit, if not the letter, of human rights law. This is the case in Europe, widely considered the most robust system of international human rights law in the world. Administered by national states that are at the same time ‘securitizing’ borders, the application of human rights law in Europe has resulted in policing, often incarcerating, migrants, refugees and asylum-seekers in dangerous and squalid conditions that violate rights to dignity rather than enabling the equal enjoyment of freedom for all. The meaning of ‘human rights’ in relation to migration in Europe is very often ambiguous: the management of migration is so closely bound up with claims to human rights that are sometimes upheld, sometimes denied, apparently quite randomly, that no clear moral or political narrative is discernible beyond state control (Dembour and Kelly 2011). On the other hand, insofar as they



contribute to global governance and to the consolidation of transnational elites, human rights discourses surely do valorize the experiences and identities of ‘frequent traveller cosmopolitans’. Like neo-liberalism, discourses of human rights may contribute to valorizing the freedom to cross-borders as one of the most important to which we aspire today, whilst at the same time practically enabling the possibility to do so securely and regularly only for elites involved in international structures of governance, sometimes in the name of human rights.

### Significant divergences: the Treatment Action Campaign

The aim of analyzing dominant sets of ideas as hegemonic projects is to find ways of engaging with more or less worked out alternatives, discursive gaps, tensions and openings that offer a more progressive, egalitarian future. I have argued that while there is some degree of convergence between neo-liberal and human rights discourses, particularly with regard to undemocratic forms of governance and the validation of transnational elites, there are also divergences. How significant are these divergences?

The divergence I see as most significant is that while discourses of neo-liberalism construct market *competition* as the ideal of social organization, for discourses of human rights what is absolutely necessary is *protection*. ‘Protection’ in human rights discourse almost always means ‘state protection’. Because states tend to be at the same time the violators of human rights *and* the guarantors of human rights in international law, claims to human rights are generally demands to strengthen states against government sanctioned violence, incompetence, neglect or corruption. On

occasion, they are demands to extend and strengthen states to protect vulnerable groups from violence and injustices produced in response to markets.

To illustrate how human rights have been used to claim protection both against states and from states against markets we can consider the relative success of the Treatment Action Campaign (TAC) in South Africa (13). An NGO closely linked to, and organizing, grassroots movements, TAC was engaged in a multi-pronged and multi-scalar campaign to put pressure on the South African government to provide drugs to individuals to enable them to control the effects of being HIV-positive in the 2000s. TAC won a number of victories in the South African courts requiring the government to provide medication to help control the effects of being HIV-positive. However, it was not only the government that human rights activists took on in their campaigns. TAC also linked up with other organizations transnationally, including Oxfam, to protest the cost of antiretroviral drugs, and successfully persuaded transnational pharmaceutical companies to allow them to be distributed more cheaply in South Africa. In this respect, the campaign was directly involved in extending state protection against global markets, and in building up state resources to protect people against the effects of ill-health and poverty (Heywood 2009; Forbath et al. 2011). By 2013, South Africa had the most extensive treatment of HIV in the world (Wilkinson 2018).

In addition, TAC is also notable because it illustrates how, while human rights and neo-liberalism may converge in validating individuals, they diverge in precisely *which* individuals are valorized and *how*. The campaign involved the active participation of mostly black, unemployed, young people with HIV, who educated

themselves and health-workers, ‘outed’ themselves by wearing T-shirts printed with ‘HIV Positive’ to build solidarity in the face of the shaming and violence against them from their families and communities, and became involved in direct action and protests as part of the campaign. The campaign strategy, the way it targeted communities, public sector workers, courts, government, and transnational corporations, and the range of tactics that were used, was an education for the poorest and most marginalized groups in how to claim ‘the right to rights’. In this respect, while TAC could be seen as a campaign that positioned active, even heroic, individuals as self-responsibilizing, it also involved self-valorization on the part of people affected by multiple injustices, and demands for the recognition of their value as human beings, by government and society (Forbath et al. 2011).

Finally, the example of TAC also demonstrates how respect for the rights of individuals is inseparable from the necessarily collective provision of the means by which rights can be respected in practice. The South African constitutional court allows cases to be brought by NGOs, which do not have to name individuals suffering specific injustices (unlike some other judicial systems). In the most important case brought by TAC to the Constitutional Court, *Minister of Health and Others v Treatment Action Campaign*, individuals were not named as such: effectively it involved class action on behalf of all those suffering HIV who did not have access to clinical treatment. But the South African court also allows individuals to bring cases – as Irene Grootboom did in 2000, in *South Africa v Grootboom*, the outcome of which is the basis for the justiciability of social rights under the new South African constitution, and therefore also of the judgement on the government provision of healthcare to HIV sufferers. It was *Grootboom* which established that the government

must ‘progressively realize’ citizens’ social rights ‘within available resources’. The claiming of individual rights in no way precludes, in fact it may often be a condition for, the collective provision of social rights.

### A progressive cultural politics of human rights

In this article, we have considered the big picture. We have considered dominant ideas of neo-liberalism and human rights as hegemonic projects, continually in construction, rather than understanding human rights as ideological, superstructural, as obfuscating and mystifying the economic base of neo-liberalism. We have noted how dominant ideas of human rights and neo-liberalism converge: in valorizing the technocratic experts of global governance by comparison with the messy conflicts and compromises of democratic politics; in valorizing ‘self-responsibilizing’ individuals; and in cultivating a certain form of cosmopolitanism as elite mobility across borders on the terrain of idealism and in everyday life. We have also seen how dominant ideas of neo-liberalism and human rights significantly diverge.

Firstly, dominant ideas of neo-liberalism and human rights diverge in that, while the leitmotif of neo-liberalism is competition, that of human rights is protection.

Ultimately, the idealized, self-responsibilizing individuals of dominant discourses of human rights demand protection from violations through and by states, in accordance with international agreements. We have considered here the example of TAC, in which people with HIV demanded protection from the South African state. Alongside this well-documented example, there are now numerous studies of movements that are using the language of social and economic rights to try to gain protection for workers and citizens: campaigns to the right to water in Ireland, housing in Spain,

land in Brazil (see O'Connell 2018; De Sousa Santos and Rodriguez-Garavito 2005). Demands that people who are vulnerable should be protected through and by the state are antithetical to dominant ideas of neo-liberalism (even if, as we have noted, 'rolling out' neoliberalism actually requires states). Making demands for rights to state protection against structural and systemic violence is characteristic of social democracy. Such demands *oppose* neo-liberal promotion of markets as *the* solution to political, social and economic conflicts.

Secondly, constructions of self-responsibilizing individuals differ significantly in discourses of neo-liberalism and human rights. While the 'best examples' of neo-liberal individuals are citizen-consumers who exercise freedom of choice in markets to maximise their well-being, the 'poster children' of human rights are individuals who, as members of vulnerable groups, find themselves especially exposed to violence, displacement and disrespect. They demand rights to protect themselves, and at the same time *all* individuals in the group to which they belong. It is only through collective provision that individual human rights can be realized for everyone at risk from specific violations. Individual and collective rights are two sides of the same coin.

In conclusion, on the basis of this analysis, it seems that divergences in the hegemonic projects of human rights and neo-liberalism represent real possibilities for a progressive cultural politics. Moyn is surely right that human rights are *Not Enough*. He may also be right that movements for social and economic rights now emerging only address equality as 'sufficiency'. On the other hand, what evidence is there that this politics is *harmful* to greater equality, rather than *contributing to it*? Moyn asks

himself whether human rights movements could support greater equality, and suggests that, given their success in tackling political repression and violence, they could do so by transforming into socialist movements (Moyn 2018: 218). This begs the question of how such a transformation might be achieved. Should we understand political will as formed in a moment, all of a piece? Or does change happen as ideas and ideals mutate and morph, gain popularity with the spread of stories and images that appeal to hearts and minds, while others become discredited and fall into disrepute?

The Universal Declaration of Human Rights sets out a vision of global social democracy: as ‘peoples of the United Nations’, we commit ourselves to realising a range of rights, from ‘life, liberty and security’ to the ‘right to social security’ and ‘to freely participate in the cultural life of the community’. To be sure, the Universal Declaration of Human Rights was created at a specific time and place, at the UN after the Second World War, and the global context is very different now. However, it remains the case now as then that realizing global social democracy depends on how ideas are mobilized in networks and at sites at which they can make a real difference to peoples’ lives in practice. Antonio Gramsci considered himself a pessimist because of intelligence and an optimist because of will (Gramsci 2011: 299). If we understand human rights and neo-liberalism as hegemonic projects rather than in terms of ‘base’ and ‘superstructure’, and as significantly divergent rather than as only convergent, while there are good reasons for a pessimistic analysis of what has been realized so far, there are also grounds for optimism about the political possibilities of human rights. Given the proliferation of uses of human rights to demand state protection and collective provision for a variety of vulnerable groups around the world, and in the

absence of a fully worked out programme for achieving global social democracy – supposing such a thing were possible – abandoning ideals of human rights as a failed utopia is at the very least premature.

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### Notes

1. It is worth noting here that, as O’Connell argues, Marx’s position in ‘On the Jewish Question’ is not his only analysis of human rights, and even here he can be interpreted as more sympathetic to ‘political emancipation’ than the conventional reading I am giving this text (O’Connell 2018b). My argument, however, is not to do with scholarship of Marxism, but rather with how far Moyn’s understanding of human rights resembles a standard, perhaps a crude reading of Marx’s ideas about ideology.
2. I take my understanding of ‘hegemony’ from the reading of Antonio Gramsci’s concept developed by Stuart Hall, Ernesto Laclau and Chantal Mouffe (Hall 2011, 2016; Laclau and Mouffe 1985). For an excellent discussion of ideology and hegemony on which I have drawn for this article see Michèle Barrett *The Politics of Truth: From Marx to Foucault* (Barrett 1992).

3. It is for this reason that no bright line can be drawn between domination and hegemony. On this point, see the debates between Hall and Jessop in *New Left Review* (Jessop, Bonnett, Bromley and Ling 1984; Hall 1985).
  
4. Social and economic rights have tended to be associated with the Global South. Both Amnesty and Human Rights Watch now officially campaign for social and economic rights – though they tend to be more concerned with forced displacement and slavery rather than with structural inequalities. And many Northern development NGOs also now engage with social and economic rights (Gready and Ensor 2005; Nelson and Dorsey 2008; Hickey and Mitlin 2009). Since the 1990s leaders at the World Bank and the IMF have also become much more aware of human rights obligations, but, as Moyn argues, it is poverty rather than structural inequalities that they address, and generally in ways that are guided above all by procedural concerns and neo-liberalizing economic expertise (see Nash 2015: 97-101). As we shall see, however, there are also numerous social movements that now engage with social and economic rights, in the South and the North.
  
5. Key texts in political economy that we will discuss in this paper are Peck 2010; Grewal and Purdy 2014; Sassen 2007, 2008; Boas and Jordan, 2009. In addition, there is a massive Foucauldian-inspired literature on neo-liberalism, including Rose 1999; Brown 2015; Lerner 2000.
  
6. It is difficult to begin to summarize key texts in human rights over the last 20 years, which span all disciplines. Texts we will make use of in this article



include Keck and Sikkink 1998; Merry 2006; Dembour and Kelly 2011; Nash 2015; O'Connell 2018.

7. Examples of analyses of the relationship between human rights and neo-liberalism besides Moyn's work include O'Connell 2018a, 2018b; Brown 2015; Marks 2013; Nash 2015.
8. In the case of neo-liberalism, it is particularly difficult to trace meanings in practice. Clive Barnett is correct when he argues that accounts of neo-liberalism tend to be deductive, and invariably miss the specificity and on-the-ground contestations out of which marketizing logics come to seem the most logical way forward (Barnett 2009).
9. There are also other factors at work here alongside discourses of neo-liberalism: the power of the executive has undoubtedly increased in many states in the world through emergency powers, legislation or secrecy as a result of the 'global war on terror'.
10. As Timmins' comprehensive history shows, advocates of 'basic minimum', 'equality', 'selectivity' and 'universalism' have been battling it out over the British welfare state since 1948 (Timmins, 2017). Nevertheless, as in other Western European states, inequalities in Britain were generally declining between 1945 and 1975, the time period during which the welfare state was most politically secure (see Esping-Andersen and Myles 2009).

11. Of course, this is not to say that there are no links to be made between human rights and imperialism. See, for example, Douzinas 2007. However, ‘humanitarian intervention’ has only ever been exceptional as a response to human rights violations, and today it no longer seems to be on the agenda of the US or the UN, despite consensus on the ‘Responsibility to Protect’ at the World Summit in 2005.
12. Cosmopolitanism is not only elite. It can also be theorized in terms of multiculturalism, transnational social movements, digital connections, and the ‘banal cosmopolitanism’ of branding (Vertovec and Cohen 2002: 21). In terms of resonances between the ideal of cosmopolitanism, forms of mobility and dominant ideas of neo-liberalism, however, Calhoun’s theorization is important.
13. Post-apartheid South Africa has been a kind of laboratory for ideas of human rights. Human rights were massively supported after the end of apartheid in South Africa, and there was much excitement worldwide over experimentation with the judicialization of social rights (often considered non-justiciable at the time) through the new constitution. The post-apartheid constitution in South Africa gave the court expanded powers to bring the government to account if it did not take steps to ‘progressively realise’ citizens’ social rights ‘within available resources’ (see Gauri and Brinks 2009). At the same time, the post-apartheid South Africa has also been subject to neoliberalizing influences internationally and nationally (Bond 2014).

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