

NEOLIBERAL POLICIES AND HUMAN RIGHTS*

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1. THE RISE OF NEOLIBERALISM

Neoliberalism is a theory, practice and range of policies in political economy. Although neoliberal policies are based on a number of complex, technical theories, both the policies and their supporting theories are surprisingly emotive. Neoliberalism has its passionate supporters and its passionate critics. In order to present and evaluate neoliberalism as objectively as possible, therefore, we must describe, define and explain it with the utmost care.

In order to understand any policies and the theory on which they are based, it is helpful to identify the historical context in which they were first developed and put forward. The word ‘neoliberalism’ implies that it is a *new* form of liberalism. To understand ‘neoliberalism’, therefore, we must first understand what *liberalism* is.

Liberalism is a moral, political and economic theory that places the most fundamental value on the individual human being.¹ Liberals believe that what gives individual human beings this fundamental value is that they

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¹ ‘Liberalism’ has many meanings, and a complex and controversial history: see Duncan Bell, ‘What is Liberalism?’, *Political Theory*, 42 (6), 2014, 682-715. I shall confine myself to certain ideas that are now considered to be common to all, or most, forms of liberalism.

can form, seek to implement, and revise their conception of a good life. In so doing, they have the capacity to make moral choices: they are *moral agents*. Liberals believe that human beings are *rational*: they can reflect on, and evaluate the reasons for their actions.

Liberals do not believe that individuals never make foolish choices, but they believe that individuals are more likely to make the right choices for themselves than other individuals are likely to make on their behalf. Liberals believe that, generally speaking, individuals are the best judges of their own interests. Liberals also do not believe that individuals never make immoral choices. Obviously they do. Liberals believe, therefore, that individuals should live under the rule of law, which will protect the freedom of all, and prevent any individual from harming any other individual. The liberal value of individual freedom under the rule of law provides an important foundation for the theory and law of human rights.

Critics of liberalism commonly argue that liberalism is morally flawed because it gives priority to the freedom and rights of individuals rather than to their duties and responsibilities, which are given priority in many cultures. Although some formulations of liberalism – and of human rights – may be vulnerable to this criticism, it is not a necessary feature of liberalism. The most important, classic theorist of liberalism – the seventeenth-century English philosopher, John Locke – began his argument by emphasising our *duties* to God, which formed the foundation of his moral and political theory.² However, because he believed that God had created human beings as rational creatures, he argued that our duty to God required us to respect the basic rights of all other human beings. These basic rights, in Locke's theory, were the rights to life, to liberty, and to property. Thus, Locke's classic theory of basic rights derived from a fundamental belief in our duties to God and to our fellow human beings.

Locke argued that God had created the human condition in such a way that, in order to survive, human beings must *work* to extract a living from the

² To interpret Locke as a liberal is controversial from an historical point of view, but this interpretation is now common. It is justified for the purposes of contemporary political analysis, even if it is problematic for historians of political theory. See **Bell**, *op. cit.*, note 1.

natural world. However, because God has made us rational, we can, and should, use our reason to improve the quality of our work and thereby improve our standard of living. In a famous phrase, Locke wrote that God gave the world to ‘the rational and industrious’. It followed, according to his argument, that those individuals who were rational and industrious had the right to whatever property and wealth they acquired provided that, in Locke’s words, they left ‘enough and as good’ for others. Since, according to Locke, ‘God willed the preservation of Mankind’, no acquisition of property was justified if it resulted in others starving. Nevertheless, Locke’s theory of the right to property allowed considerable inequalities of wealth.³

In Locke’s time most European societies were ruled by monarchs. The dominant economic theory was that known as *mercantilism*. This theory assumed that responsibility for the economy lay with *the state*, and that the state had the right and the duty to regulate the economy for the benefit – that is to say, for the prosperity, the power and the glory – of the state.

In the eighteenth century, liberal political and economic theory challenged mercantilism on the ground that it protected privilege, corruption and inefficiency. Economic liberals argued that free markets for the production and consumption of goods and services would increase productivity, because producers would be motivated to satisfy the demands of consumers and consumers would be motivated to purchase the goods and services that they needed. Liberals assume that individuals know better than the state which goods and services they need. The most famous work of liberal economic theory was significantly entitled *The Wealth of Nations*, which was published in 1776. Its author, Adam Smith, was Professor of Moral Philosophy at Glasgow University in Scotland.⁴

Economic liberalism raises two fundamental questions for moral and political philosophy. Economic liberals believe that self-interest provides the strongest motivation for economic production and for meeting the needs of consumers. By contrast, most moral philosophies require the limitation of

³ John **Locke**, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1970 – first published in 1689).

⁴ Adam **Smith**, *The Wealth of Nations* (Harmondsworth: Penguin Books, 1986-1999 – first published in 1776).

self-interest to take due account of the interests of others. The challenge for economic liberals is to reconcile economic interest with moral obligation. They must meet this challenge if economic liberalism is to be morally valid rather than merely economically efficient. Economic liberalism also faces the challenge of *political legitimacy*. Economic liberals generally admit that free markets lead to considerable inequalities of wealth. If the free market economy is to be sustainable, it must be legitimate among those who benefit least from it – the poor. The poor could be coerced into accepting their condition, but, since liberals value freedom, they must wish to minimise coercion in society. Since market economics is driven by self-interest, it has no intrinsic moral legitimacy. Markets need a non-market source of legitimacy. Economic liberalism is therefore not a self-sufficient theory. We shall see that this problem of legitimacy is a problem also for neoliberalism.

Economic liberalism gradually won its battle against mercantilism during the nineteenth century, only to be challenged by *socialism*. Socialists criticised economic liberalism on three main grounds. Firstly, its conception of human nature was excessively *individualistic*, and ignored social relations, especially class relations. Secondly, the liberal theory of free markets ignored the presence of *power* in market transactions and the fact that individuals undertook these transactions with very unequal *resources*. Consequently, capitalist markets were not ‘free’ but, rather, exploitative. Thirdly, so-called free markets produced gross inequalities of wealth and power, which left most of the population in a state of misery. In the world pictured by economic liberalism there are free human agents exchanging goods, services and rewards. In the world pictured by socialism there is a small elite of rich and powerful capitalists exploiting and oppressing the mass of impoverished workers.

There were two main forms of socialism. The first was Marxism. Marxism argued that the economic freedom of capitalism created two main social classes: the bourgeoisie, who owned the means of production, and the proletariat, who owned only their labour power. This relationship, Marxists argued, was necessarily exploitative. However, capitalism contained a fatal contradiction. The proletariat was necessary to capitalism, but in time the ‘contradictions of capitalism’ (its enormous productive power combined with its inability to distribute its product to those whose labour made it

possible) would make its exploitative nature clear, and the proletariat would combine to overthrow capitalism and introduce communism, in which each would contribute to society according to their ability and be rewarded according to their needs. Marx himself said little about the *political form of communism*. Contrary to Marx's expectations, Marxism took a political form first in the Russian Revolution of 1917. This developed into a very authoritarian form of state control of the economy and of personal life. This was the very opposite of the form of state and economy favoured by liberals, but its supporters argued that only a powerful state could drive through rapid economic development.

Although Marxism was in theory internationalist, Soviet Communism was strongly nationalist. This ambiguous combination of internationalism and nationalism made the Soviet model of development very influential among policy-makers in less developed countries. Nationalism was very attractive to peoples recently liberated from European colonialism. State-driven economic development was attractive to state elites seeking rapid economic progress. In the late eighteenth and early nineteenth centuries economic liberalism had a rival theory and practice in economic *nationalism*. Its chief theorists had been Alexander Hamilton in the USA and Friedrich List in Germany.⁵ The Soviet model was an extreme form of centralised economic nationalism. Economic nationalism was an updated version of mercantilism, advocating state direction of the economy in the national interest. In the contemporary world neoliberalism competes with, and sometimes is combined with, state-directed economic nationalism that can be viewed as a form of neomercantilism.

The second form of socialism – commonly known as democratic socialism or social democracy – opposed the authoritarianism of the Soviet Union, but favoured state regulation of the economy for the sake both of economic development and of ensuring basic levels of welfare for all citizens. Social democracy sought to combine a form of state socialist economy with political democracy and liberal freedom. The social-democratic society became known as the *welfare state*. The most influential theorist of the welfare state was the British economist, John Maynard

⁵ See Anthony **Payne** and Nicola **Phillips**, *Development* (Cambridge: Polity, 2010).

Keynes, who argued that free markets were inherently unstable because capitalists were motivated by their own short-term interests and not by the stability of the capitalist system. State intervention was therefore necessary to save capitalism from the capitalists. Free markets, Keynes argued, led to periodic recessions that could be resolved only by government intervention to stimulate economic recovery. Keynes therefore agreed with Marx that unregulated capitalism was inherently unstable and would lead to serious periodic crises, but disagreed with Marx on the solution to this problem. Keynes was a liberal, not a socialist, but he believed that the solution to the crises of capitalism was for government to regulate the economy by stimulating demand for goods and services, thereby reviving production and restoring wealth. Keynes transformed economic liberalism by allowing an important role for the state. Keynesian economics and social-democratic politics became mutually compatible and mutually supportive.

Keynsian economics was very influential in the Western capitalist states during the Great Depression of the 1930s and the period of economic reconstruction after the end of the Second World War in 1945. Keynsian economics appealed to the political leaders of the capitalist democracies because, by offering basic welfare to the working class, it prevented the kind of revolution that had occurred in Russia. It was attractive to the working class because it offered them real gains, in contrast to the speculative gains of the Marxist revolution, and it was attractive to the capitalist class because it offered them political stability and the retention of their privileged position. The war itself convinced many that, in times of crisis, the state both should and could regulate the economy for the common good. Not all the capitalists appreciated Keynesianism, however, as it required them to make concessions, in the form of higher taxes and greater state control.

The Second World War devastated the economies of Europe. In 1944 the Western allies established two institutions to reconstruct the economies of Europe and to stabilise the international, capitalist financial system: the International Bank for Reconstruction and Development (now part of the World Bank) and the International Monetary Fund (the IMF). Both were influenced by the Keynesian principle that governments had to regulate capitalist economies to ensure the stability that was the necessary basis for recovery from crisis and for development. Since historical experience had

shown that governments could fail in this task, international institutions would assist them to stabilise the international economy in order to raise the standard of living for all. These institutions presupposed both that capitalism was the most productive form of the economy and that capitalism could remain productive only through appropriate governmental regulation and international assistance.

Keynsian economics was at the height of its influence with the governments of Western, capitalist countries when the United Nations was founded in 1945. When the United Nations adopted the Universal Declaration of Human Rights in 1948, it included not only liberal civil and political rights but also social-democratic economic and social rights. Article 25 of the Declaration states that everyone has the right to a standard of living adequate for health and well-being, including food, clothing, housing and medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond the individual's control. The Universal Declaration of Human Rights combines liberal politics with Keynsian, social-democratic economics in the form of state obligations under international law. In the aftermath of the Second World War – as the Cold War dominated world politics – two models of economic policy were dominant: the authoritarian state socialist model of the Soviet Union and the liberal, social-democratic welfare state model of the West. Classical, free-market economic liberalism was widely thought to have been responsible for the Depression of the 1930s, for the rise of fascism, and consequently for the Second World War itself, and seemed consequently to have been thoroughly discredited.

In the 1970s the sustainability of the welfare state was called into question. Western capitalist economies experienced a period of what was called 'stagflation': low productivity, high inflation, a stagnant economy, increasing unemployment and living standards under threat. In response to this crisis of the welfare state, economic liberalism enjoyed a revival. The most influential theorist of this new economic liberalism – that is, of neoliberalism – was Milton Friedman, professor of economics at the University of Chicago. Friedman had considerable influence on political decision-makers, especially President Ronald Reagan in the USA (1981-

1989) and Prime Minister Margaret Thatcher in the United Kingdom (1979-1990). Both reduced levels of taxation, especially for those with high incomes, and both weakened the power of trades unions. There were differences in their policies, due mainly to the different traditions of their two countries. Thatcher privatised a number of state-owned industries, which were already privately owned in the USA. Reagan was prepared to create a large budget deficit by increasing military expenditure in the Cold War against the Soviet Union. Both, however, applied the 'neoliberal' economic theories of Milton Friedman in the belief that a reduced welfare state and an economy dominated by private enterprise would lead to economic recovery and were thus morally and politically justified. The Keynesian goal of full employment was replaced by the goal of controlling inflation. The concern with the instability of capitalism was replaced by a concern with improving the competitiveness of the economy in the growing *global* market. These neoliberal policies included welfare cuts for the poor, and thereby raised the concern that they undermined the international legal obligations of governments to implement economic and social human rights.

Financial crises in many Latin American countries led them to seek loans from the IMF, which had abandoned its Keynesian origins and was now committed to neoliberal solutions to the problems of capitalist economies. The IMF offered loans on condition that the borrowing states privatised state-owned industries, reduced state expenditure on welfare, and promoted private economic enterprise and unregulated foreign capitalist investment. These policies made it very difficult for these states to fulfil their legal obligations under the International Covenant on Economic, Social and Cultural Rights to fulfil the basic economic human rights of their citizens. These policies were very controversial and led to a number of popular protests as the poorest citizens became unable to access the basic necessities of life. Despite the controversies caused by the introduction of neoliberal policies, neoliberalism was given further credibility for some by the collapse of the Soviet system of state socialism and by the adoption of a turn towards market economics by the government of China.

At the end of the twentieth century, both Marxism and Keynesianism seem to have been discredited, and the way appeared open for the triumph of neoliberalism. There were, however, signs that this triumph might not be

complete and might indeed be short-lived. The introduction of neoliberal policies in developing countries and in the former Communist states had produced mixed results. Social democracy was still alive in Europe, even if it had been weakened by neoliberal reforms. Some commentators have identified what they have called ‘second-wave neoliberalism’ when Bill Clinton became President of the USA from 1993 to 2001, and Tony Blair became Prime Minister of the United Kingdom from 1997 to 2007. These leaders were committed to neoliberal economic policies but sought to use them to fund improved welfare programmes. Blair’s supporters coined the term ‘third way’ to present their policies as a middle path between unregulated capitalism and over-regulated social democracy. The Blair government also passed the Human Rights Act in 1998, which has had a significant impact on human rights in the United Kingdom.

The present UK government has made drastic cuts in welfare in order to reduce the public deficit, and has promised to repeal the Human Rights Act, although its human rights policy is unclear. These developments show that welfare and human rights policies can vary within a neoliberal framework. Disillusion with neoliberalism’s complicity with the financial crisis of 2008 and the ensuing ‘austerity’ policies of neoliberal governments have highlighted the *political* cost of neoliberalism as Europe experiences challenges to its traditional political parties. There is also a revival of Keynesian economics as new evidence suggests that the inequalities produced by neoliberal economic policies slow economic growth and that cuts in welfare undermine neoliberal strategies for economic recovery.⁶

Economists disagree about the relative roles of the state and the market in the economic development of the most successful developing countries, especially the so-called ‘tiger’ economies of East Asia. Some economists have argued that, even in the USA – the ‘homeland’ of neoliberalism – the state has played an important and positive role in economic development, especially through its support for scientific and technological innovation – much of it motivated by the desire to remain the world’s dominant military

⁶ Federico **Cingano**, ‘Trends in Income Inequality and its Impact on Economic Growth’, *OECD Social, Employment and Migration Working Papers No. 163*, OECD Publishing, <http://dx.doi.org/10.1787/5jxrjncwxv6j-en>.

power. Thus, the neoliberal argument that the state is a bureaucratic obstacle to innovation, which comes through private enterprise, is not fully supported by the facts. The economic debates are not over.

Debates about economic development strategies, within nation-states and at the United Nations, had, since the end of the Second World War taken place with little or no concern for human rights. At the same time the human rights programme of the UN, national governments and non-governmental organizations (NGOs) rarely took seriously the economic implications of human rights. It is true that economic rights were included in the Universal Declaration of Human Rights and, of course, in the International Covenant on Economic, Social and Cultural Rights, but the institutions and procedures for implementing these rights were disconnected from debates and policies on economic development. The 'international community' was committed, through the UN Charter and numerous solemn pronouncements, both to international development and to human rights, but for many years there was little attempt to integrate these two international policies and their accompanying strategies.

Neoliberalism, therefore, is a recent revival of liberal economic theory that seeks to liberate capitalist economies from stagnation and lack of competitiveness. It has had some success in reinvigorating economic development in some countries, but it has also led to disastrous instability, particularly in the East Asian financial crisis of 1997 and the Western financial crisis of 2008. Its impact on human rights has been complex and controversial, but by championing free markets and requiring reduced state expenditures on welfare, it has undoubtedly had a harmful effect on the welfare of the poor and the vulnerable in several countries, especially women, children, minorities, indigenous peoples and the disabled. Neoliberalism is still influential in the global economy, but there is a growing movement to combine its economic benefits with a greater concern for human rights, especially among the global poor.

2. NEOLIBERALISM AND HUMAN RIGHTS

The relations between neoliberalism and human rights are complex and must be articulated with care because, on the one hand, neoliberalism is

widely perceived by human rights advocates and others as incompatible, both in theory and in practice, with full respect for human rights, especially economic and social rights, while, on the other hand, both neoliberalism and human rights derive at the philosophical level from certain fundamental assumptions about human nature, ethics and politics that are characteristic of liberal thought.

Neoliberalism shares with human rights a conception of the universal, free, rational individual. As there are many versions of liberalism, so there are several forms of neoliberalism.⁷ All neoliberals place a positive value on the freedom of individual. All value the freedom of individuals *as economic actors*. Some hold that individual freedom has an *intrinsic value*; others value individual freedom as the most efficient source of economic productivity; others may value individual freedom on both these grounds. These differences are important because some neoliberals believe that markets are morally neutral: they are simply means to produce and exchange goods and services, and to produce and grow the national (and, for some, the global) economy. Others believe that markets express moral values because they express, and strengthen, the value of freedom and/or because they increase general wealth and well-being in a morally justifiable way. These differences are relevant to the relations between neoliberalism and human rights, since the idea of human rights is a moral and legal concept, and not primarily an economic concept. Thus human rights advocates would insist on evaluating markets by the moral and legal standards of human rights.

However, although neoliberal philosophy values the freedom of the individual, neoliberal economics advocates freedom for *corporations*, which are forms of collective power that may be incompatible with individual freedom and human rights. Neoliberalism is opposed to strong states, but actual neoliberal states protect capitalist corporations.⁸ In practice neoliberal states are often allied with capitalist corporations and both are opposed by civil society activists exercising their human rights to freedom of association and freedom of expression.

⁷ See Raymond **Plant**, *The Neoliberal State* (Oxford: Oxford University Press, 2010).

⁸ David **Harvey**, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), 21, 36.

Neoliberals and human rights advocates broadly agree on the value of civil and political human rights. However, neoliberals reject economic and social rights on the ground that they can be fulfilled only by strong states that would unduly restrict individual freedom.

Neoliberals deny that there is any human right to welfare that cannot be produced by free, market transactions. In the neoliberal picture of free markets there are 'free' individuals making choices in their own interest: these individuals are assumed to be the best judges of their own interests, and should accept responsibility for the outcomes of their free choices. In these markets there are no relations of *power* that shape or limit the choices of market actors or shape the outcomes of their choices. Free markets exist in the textbooks of neoliberal economists, but in the real world there are inequalities of political and economic power that determine the nature of markets and the inequalities that are the outcomes of market transactions. Rich and poor are free to make agreements, but the rich are 'free' in an important sense in which the poor are not. The 'freedom' of the poor does not enable them to enjoy good lives, and this fact casts doubt on the *value* of the freedom that is the basis of neoliberalism.

The world of neoliberalism is a world of free, rational *adults*. Neoliberalism has little to say about children, their welfare, their education, or their opportunities. Neoliberalism ignores two important ways in which the policies they favour may have an impact of the welfare, or rights, of children. The first is that poor parents cannot generally afford good schools for their children; very poor parents in some countries may not be able to send their children to school at all. The second is that, when poor children become adults and enter the marketplace, they will do so at a considerable disadvantage, because they will be less well educated and, generally, less healthy and less skilled.

Some neoliberal philosophers believe that 'freedom' has an intrinsic value and that therefore *any* outcome of 'free' market choices is morally valid. They do not believe that the goodness of freedom lies in its ability to produce economic development. Others believe that economic freedom is *instrumentally* valuable in creating wealth and thereby funding other social goods. Many neoliberals believe both that freedom is intrinsically and instrumentally valuable; it is good in itself and it has good consequences.

More commonly, however, neoliberals value freedom because they believe that it is conducive to economic development, which in turn is either intrinsically good or good because it is instrumental in producing other social goods, such as the power and influence of the state; the wealth of society; or even the welfare of the people, including the poor. Neoliberals could argue that a) economic freedom is necessary to economic development, and b) economic development is necessary to the fulfilment of human rights. This line of argument is not unknown, but it is rare, and rarely developed in a serious and rigorous manner.

The most common form of neoliberalism is, ironically, similar to Marxism in that it treats economic development as the primary goal of social policy, and as the basis for all other social goods. It assumes that the central problem of all contemporary societies is economic development, and that the solution to this problem is the free market. These neoliberals emphasise the *efficiency* of markets in the production and distribution of economic goods, but are less agreed about *social justice* as a criterion of public policy.

There are at least four neoliberal approaches to social justice. The first holds that the concept of 'social justice' is meaningless or expresses no more than the subjective preferences of various individuals and/or is subject to irresolvable differences of value judgments. Since there can be no agreed social policy on social justice, the distribution of goods in society should be determined by the free actions of participants in free markets.⁹

The second neoliberal approach to social justice does not deny that the concept has meaning but does deny that it has the value attributed to it by socialists and social democrats. It holds that, if 'social justice' is made the goal of governmental policy, the result will be authoritarian and arbitrary interference with individual freedoms. The goal of 'social justice', they argue, leads to large state bureaucracies, and bureaucrats are the enemies of freedom.

The third neoliberal approach, far from denying either that the concept of social justice is meaningful or that it is valuable, maintains that free markets are the best way to achieve social justice because they reward

⁹ **Plant**, note 7 above, 86-87, 115, 121.

individuals according to their contributions to the economy and to society. This approach echoes John Locke's view that God gave the world to the 'rational and industrious'. Free markets reward those who are smart and hard-working, and this is what social justice is.

The fourth neoliberal account of social justice says that a *precondition* of the fulfilment of *any* conception of social justice is *productive efficiency*: you can't distribute economic goods fairly if you have not produced them in the first place. The most efficient way to produce goods is through economic freedom, initiative, enterprise and innovation. Some neoliberals argue that free markets benefit the poor by increasing the total wealth of society, some of which 'trickles down' to the poorest. Some economists argue, however, that neoliberalism increases inequality, benefits the rich, fails to enable wealth to trickle down to the poor, and certainly does not protect their economic and social rights. Neoliberals' claim that the increased wealth produced by free markets trickles down to the poor assumes that the poor have the *power* to take advantage of this increased wealth. However, if the poor have been deprived of access to education and health care, they will be disempowered from access to the wealth that has supposedly trickled down to them.¹⁰

Thus, neoliberals take various approaches to social justice, but none is fully compatible with economic and social human rights. Neoliberalism is based either on the value of freedom or the human right to freedom, but neoliberals distinguish between *freedom* and *ability*. For the neoliberal an individual locked in prison is not free, but a poor individual is free to become rich even if that individual is unable to become rich through lack of the necessary psychological or material resources. Neoliberals distinguish between 'freedom' and 'the value of freedom'. Social democrats and human rights advocates object that, if freedom has no value, there is no reason to value it. They value freedom, but only if it *enables* everyone to achieve at least an adequate standard of living.¹¹ For most neoliberals freedom is the most efficient means to economic development, which in turn is the best

¹⁰ **Plant**, note 7 above, 101-2, 182, 215-6, 225-8.

¹¹ The distinction between freedom and ability is discussed helpfully in **Plant**, note 7 above.

means to enhance freedom. For human rights advocates economic development is morally problematic unless it enables everyone to enjoy all their human rights.

Neoliberalism has been criticised by some political philosophers for placing at the centre of theory and policy the concept of *the self-interested individual*. Neoliberalism has thereby displaced the *republican* concept of the *virtuous citizen* who recognises a duty to put the common good before individual self-interest. When Margaret Thatcher was Prime Minister of the United Kingdom, she replaced the concept of ‘citizens’ with that of ‘taxpayers’. Citizens, in republican and democratic theory, have obligations to the common good. Taxpayers are encouraged to resent the obligation to contribute to the welfare of others.

Neoliberals seek to minimise state regulation of the economy; liberalise international trade; and privatise state-owned enterprises. It is therefore difficult to reconcile neoliberalism with international human rights law, which imposes on *states* the legal responsibility to fulfil the obligations to which they have agreed by ratifying international human rights treaties. Neoliberalism challenges international human rights law in two main ways. Firstly, it calls for a reduction of the welfare state, and thereby undermines the ability of states to fulfil their obligations to implement the economic and social rights of their citizens. Secondly, neoliberal policies have transferred several traditional state functions – for example, the management of prisons – to private companies. In international law states have the obligation to ensure that non-state actors, such as private corporations, do not violate human rights, but the transfer of responsibility from the state to such corporations makes it more difficult for states to fulfil such obligations.

Although neoliberalism is very influential in the policies that dominate the global economy, it has to compete with several other ideologies, of which *nationalism* is one of the most significant. The idea of a global free market is not fully compatible with the rival idea that states should give priority to the interests of their own citizens. Consequently, those who are apparently ardent supporters of neoliberalism contradict their own supposed principles when these threaten their national interest. Many of the economic policies of the USA and of the European Union are protectionist and thus contradict the neoliberal commitment to free trade.

The World Trade Organization (WTO) is one of the primary global institutions of neoliberalism, but is unable to curb all the protectionist policies of economic nationalism. Some development economists believe that a degree of nationalist protectionism is justified to protect the 'infant industries' of less developed countries. The World Trade Organization has also been criticised for allowing free trade to undermine human rights. This has been a particularly controversial issue when free trade is in goods that are allegedly harmful to the health of citizens of the importing countries. Even if free trade benefits the global economy overall, and even if it benefits the countries that engage in free trade, it is often harmful to the poorest citizens of those countries.

States that claim to be implementing neoliberal policies are often inconsistent in two important ways. Firstly, they are willing to strengthen state power for defence against traditional enemies and suspected terrorists. This can lead to policies that limit freedom and violate human rights. Secondly, neoliberal governments often 'outsource' public services to private companies or civil society organizations which they believe will deliver these services more efficiently. However, this delegation of state authority requires a large bureaucratic effort to ensure that these private providers of services are efficient and free from corruption. This surveillance can seriously limit the freedoms of civil society. Thus, neoliberalism increases the bureaucracy of surveillance while reducing expenditure on welfare. This can have negative effects on such important policy areas as the protection of women and children from domestic violence, health and safety at work, and environmental protection. These areas have clear implications for the protection of human rights. Neoliberal deregulation often leads to politically unacceptable social problems that have to be rectified by re-regulation. Neoliberalism in practice turns out often to be politically difficult to sustain, especially in a democracy in which citizens can protest against harmful policies.

Most neoliberals concede that markets can fail, and that states must intervene to rectify these failures. Market failures occur for two kinds of reason. The first is that what is rational for an individual or a corporation may not be rational for society. For example, it may be profitable for a factory to pollute the environment because it does not have to pay the cost of

pollution, but it is not rational for society not to control pollution. This may have to be done by the state passing anti-pollution laws. The second kind of reason that market failures occur is that individuals are not always rational. Market participants often lack the information they need to make rational decisions; even when they have the necessary information, they may misinterpret it; and, since market participants are human beings, they are influenced by 'irrational' factors such as fashion, prejudice, the authority of high-status individuals or organizations, and 'crowd behaviour' (doing what others do simply because others are doing it rather than because it is the rational thing to do). Government regulation may limit freedom, but it may also protect citizens from risky choices made by market participants. Capitalists favour free markets in principle but often turn to government for support when markets become too risky. Markets can work only in stable societies, and governments have the obligation to stabilise society when market behaviours threaten that stability

Because neoliberal policies are not self-stabilising, they are in practice limited by political counter-policies. Free markets necessarily benefit some and harm others, and those who lose will pressure governments to protect them. Both corporations and unions react in this way. Neoliberals object to non-market 'distortions' of market forces – and consequently are suspicious of democracy – but resisting market forces is as much an expression of human freedom as market economic behaviour. Social democrats argued that the welfare state encourages risk-taking because the costs of failure are less when the state guarantees a decent minimum standard of living to everyone. The economic performance of the Scandinavian societies, which have large welfare states, provides empirical evidence that welfare states and dynamic economies are mutually compatible.¹²

Neoliberalism not only produces resistance that leads to modification of those policies; it can also lead to economic disaster that can be resolved only by neo-Keynsian state intervention. The deregulation of financial markets by the US and UK governments led to so-called 'casino banking' that led to financial collapse, which could be restablished only by massive state intervention, including taking large, traditionally private corporations

¹² **Harvey**, note 8 above, 61.

(particularly, banks) into state ownership. This outcome of neoliberal policy is sometimes called ‘socialism for the rich’: the state supports high incomes for bankers while cutting welfare for the poor. This violates the spirit, and perhaps the law of human rights. According to the World Bank, the financial crisis of 2008 plunged tens of millions of people in the developing countries into poverty.¹³

Neoliberalism can be unpopular, destabilising – and also self-defeating. If a neoliberal government sells state assets to private investors, neoliberal principles cannot prevent them from selling them on to state investors. In the 1990s the neoliberal government of Margaret Thatcher in the United Kingdom privatised the electricity industry, among others. One of the largest electricity companies, EDF (Electricité de France), is mainly owned by the French state. Thus, Prime Minister Thatcher, who claimed to be selling the electricity industry to ‘the British people’, was in fact making at least part of it available to capture by a foreign government.

In the real world private actors share the economic space with states. Consequently, the boundaries between the state and the private economy can become blurred. Some of the most powerful players in the global economy are so-called sovereign wealth funds. Since some of these funds are held by states that do not respect human rights, their investments can be highly problematic for human rights. Neoliberals should disapprove of sovereign wealth funds, but actually existing neoliberal policies allow combinations of state and private investors in various forms of state-private joint enterprises, partly because they judge them to be in the national interest. Actually existing neoliberal policies therefore can violate at the same time neoliberal and human rights principles.

The concept of human rights is *universalistic*, and has been criticised from the perspective of *cultural relativism*. However, neoliberalism is equally universalistic. Critics of the neoliberal policies of the World Bank and the IMF have argued that they have failed (at least in part) precisely because they have ignored the cultures of the societies they seek to

¹³ Martin **Ravallion** and Shaohua **Chen**, ‘The Impact of the Global Financial Crisis on the World’s Poorest’, *Vox*, the policy portal of the Centre for Economic Policy Research, <http://www.voxeu.org/index.php?q=node/3520>.

influence. Some have suggested that global neoliberalism has produced a cultural reaction in some countries, which, in its extreme form, becomes terrorism. The relation between neoliberalism and terrorism, if there is any, is no doubt complex, but the predominantly neoliberal global economy produces economic winners and losers, and also produces a certain type of dominant cultural form that is resisted by some on the basis of alternative cultures. Although neoliberalism is in principle committed to human freedom, its tendency to provoke backlash protests, on economic and/or cultural grounds, can lead to authoritarian forms of government. In practice, neoliberalism is always modified by culture. Most neoliberals accept some moral limitations on free economic exchanges in practice (for example, on harmful drugs or pornography). Once the neoliberal opens the door to restrictions of economic freedom on moral grounds, the case for requiring respect for human rights can be placed on the agenda. Most neoliberals accept this, if only in a limited form. For example, if the free market would result in some people starving to death because they lack any skills that the market values, most neoliberals believe that either the state or private charities should protect their right to minimal well-being.

Some human rights – such as freedom of communication and freedom of association – may be necessary to the operation of free markets, but they may not be *produced* by free markets; they may have to be produced by the state. Nevertheless, neoliberalism, by dissolving social ties, can increase crime, encourage extremist political, nationalist and/or religious movements, and thereby weaken respect for human rights. As neoliberalism tends to destabilise society, so neoconservatism arises to restabilise society. Thus, neoliberalism and neoconservatism may become allies. Such developments may weaken commitment to human rights and become dangerous for the international community.¹⁴

Neoliberalism is predominantly a Western economic theory and political policy. It is, however, a global phenomenon, and a driver and product of globalisation. The largest economies of Asia – those of Japan, China and India – have all moved somewhat from policies of economic nationalism towards a degree of neoliberalism. Nevertheless their neoliberal

¹⁴ Harvey, note 8 above, 80-86.

economic policies are shaped by nationalism, and in each of these countries the state has played a major role in directing the economy. States therefore still play an important role in the neoliberal global economy, but they do so by developing strategies to take advantage of the neoliberal global market. China has greatly reduced poverty, but has respected neither the civil and political rights of its citizens nor the rights of workers. In Latin America neoliberal economic policies have been associated with both very authoritarian governments that have committed serious human rights violations and with liberal democracies with relatively good human rights records.

Neoliberals say that governments lack the knowledge, the competence and the motivation to intervene in the economy successfully. Yet, both in the developed West and in the developing world, government intervention has often been successful in promoting economic growth. The US National Aeronautics and Space Administration (NASA) is a state agency that has been rather successful, generating scientific and technological advances that have benefited other sectors of the economy. Similarly, US state expenditure on military science and technology has led to important advances. In the USA approximately 50 per cent of all investment in research and development is provided by the state, and this has been in sectors of the US economy that have been most successful, such as computers, aircraft, pharmaceuticals and biotechnology. State intervention has played a major role in the success of the East Asian so-called 'tiger' economies. Even neoliberals have to admit that private businesses sometimes make disastrous decisions. Also, even if decision-makers in private businesses make the best decisions in the interest of their businesses, these decisions are not necessarily in the best interest of their countries nor in the interest of protecting human rights.

It is also not clear that privatisation always brings efficiency. When the Olympic Games were held in London in 2012, security for the Games – one of the most important functions for any global sporting event - was outsourced to the private company, G4S. This company was unable to fulfil its contract, and was replaced by the British Army, who did an excellent job

at short notice. Sometimes the state is more efficient than private corporations.¹⁵

Neoliberalism has been extremely influential in recent years because both the authoritarian and democratic forms of socialism were unsuccessful in managing the dynamism of contemporary capitalism. However, neoliberalism operates in a world in which there are rival forces, especially those of nationalism and religion. It also operates in an international legal regime that accords rights to, and imposes obligations on, states. Among these obligations are those to respect, protect and fulfil the human rights of everyone. Neoliberalism has mixed consequences for the enjoyment of human rights: it can violate such rights, but it can also improve the enjoyment of rights by reducing poverty and, sometimes, by creating the economic conditions in which civil and political rights can be better protected. However, neoliberal economic policies do not have the promotion of human rights as their aim. In international law states have the obligation to adopt economic policies that respect and protect human rights. This includes the obligation to regulate private economic enterprises. There is, however, a tension between the obligations imposed by international law and the power of economic interests, especially when these are supported by nationalist sentiment and the interests of states.

Winston Churchill said that democracy was the worst form of government in the world – except for all the others. It may be that capitalism is the worst form of economy in the world – except for all the others. However, neoliberal capitalism is not the best form of capitalism. This can be shown by the fact that the most successful economies and societies in the world modify significantly the neoliberal features of their economies. The Scandinavian countries have strong welfare states and successful economies. The successful economies of East Asia have been developed by a significant amount of state intervention and control. Even the USA – perhaps the most neoliberal country on earth – deviates from neoliberal policies in order to protect vulnerable (and politically influential) sectors of its economy. The rich countries did not become rich by adopting neoliberal policies. The state

¹⁵ Szu Ping Chan, 'Timeline: how G4S's Bungled Olympics Security Contract Unfolded', *The Telegraph* (London), 21 May 2013.

played an important role in their development, and still plays an important role in their economies. The extent to which neoliberalism has displaced Keynesianism is often exaggerated: all states manage, and intervene in, their economies, and Keynesian deficit financing is common. The neoliberal ideology and policies of many governments, however, is a threat to the economic rights of the most vulnerable.¹⁶

Neoliberalism has been recommended by the governments of rich countries, and the international institutions that they influence, as policies for the development of less developed countries. It is at best doubtful that neoliberal policies are the best for economic development, and still more doubtful that they are the best for human rights. Neoliberalism works only when combined with neo-Keynsian management of the economy. Neoliberalism created the massive financial crisis of 2008. The response of the governments supposedly committed to neoliberal economic policies, was massive state intervention, including state ownership of key private corporations. This occurred even in the USA, the homeland of neoliberalism. Without the reintroduction of neo-Keynsian economic policies, the current global financial crisis would have been much worse than it has actually been.

Neoliberalism, therefore, has had some successes and some spectacular failures *as an economic theory and policy*. Its impact on human rights similarly may have had some success, but has also had some disasters. Even if neoliberalism has created increased global wealth overall, it has also made the world much more unequal, in which a few are super-rich and many millions live in extreme poverty. Inequalities of wealth support inequalities of power and leave the human rights of the poor vulnerable to oppression by the rich.

Neoliberal theorists sometimes acknowledge that free market exchanges can have negative 'externalities'. That is to say, A, a free individual, may make a voluntary agreement with B, another free individual, which benefits both A and B, but which causes harm to others, who are not parties to the agreement between A and B. Let us call these other parties X. In this scenario X is subsidising the benefits which A and B derive from

¹⁶ Harvey, note 8 above, 152.

their agreement: X is paying the cost which A and B have created but which they have not paid. If we make this example less abstract, and scale it up to the global scale, A and B are the market actors of neoliberal theory; X is the population of the world and the harm is climate change. Climate change, like neoliberalism, is largely a product of the rich countries. Climate change may well be the most important outcome – and negative externality – of neoliberal policies. Some climate change experts believe that climate change is already violating the human rights of perhaps hundreds of thousands of human beings. Neoliberalism cannot solve the problem of climate change. It is not clear who can; however, this may prove to be the most difficult human rights challenge of all.¹⁷

Neoliberalism in some form is likely to play an important role in the world economy for the foreseeable future. The challenge is to reconcile it with the human rights principles to which the international community has committed itself. This challenge has been identified and a start has been made on meeting it. There is, however, a long and difficult road ahead before we can claim success in this important endeavour that concerns the quality of life for many millions of our fellow human beings. Neoliberalism is based on the philosophical assumption that free markets are either ‘natural’ or that they are the most productive economic form. The first assumption is false. The second is problematic on two counts. The first is that the most productive economies have involved some form of mixed economy in which both states and markets play a role. The second is that productivity is not the only good; both social justice and sustainability are fundamental political goods in the contemporary era. Which form of economy we shall have in the rest of the twenty-first century depends on our *political choices*. There is nothing in either the theory or practice of neoliberalism that prevents us from giving the protection of economic and social human rights a high priority when making these political choices. The appeal of neoliberalism rests either on the belief that economic freedom is the most fundamental value or that economic freedom creates the greatest

¹⁷ For the view that governments must play the primary role in reducing the emission of greenhouse gases, see John **Broome**, *Climate Matters: ethics in a warming world* (New York: W. W. Norton, 2012), 100.

wealth, and the greatest wealth is the highest value. Neither is plausible, and neither is sustainable. No economic system can subsist, except with high levels of coercion that are incompatible with neoliberalism, if they are not legitimate. Both theory and empirical evidence indicate that relative equality, democracy and respect for human rights are sounder bases for legitimacy than markets.¹⁸

¹⁸ **Plant**, note 7 above, 267-70.