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Neoliberal internationalism: Intellectual roots, global manifestations, and South African realities

by

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Submitted in partial fulfilment of the requirements for the degree

Master of Laws (LLM) Multidisciplinary Human Rights

In the Faculty of Law,
University of Pretoria

March 2024

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Summary

This study seeks to answer two broad questions: how did the long-termist thinking of key neoliberal thinkers help to shape the world we live in today? And to what extent can the neoliberal moral and institutional framework be utilised to facilitate a world outside of the neoliberal hegemony—are human rights (as we know them today) capable of actualising a freedom from the exploitation and violence of the markets, notwithstanding their entanglement with neoliberalism? The study attempts to answer these questions by examining the intellectual musings of a particular group of thinkers (described by Quinn Slobodian as the "Geneva School") who—against post-colonial demands for economic self-determination—were instrumental to the ideological and institutional ascendance of a particular idea of neoliberal internationalism that emphasised the need to devise legal and institutional mechanisms to constrain post-colonial sovereignty and to protect the international division of labour. It also examines the South African liberation struggle, culminating in the prevailing conditions of present-day South Africa through the lens of the intellectual history of neoliberal internationalism.

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Chapter 1: Introduction

1.1. Research problem

Several scholars, including Wendy Brown and David Harvey, have sought to articulate a comprehensive understanding of neoliberalism, positioning it as a politico-economic ideology that extends beyond inequitable macroeconomic policies and free market ideologies.[1] Brown, in particular, emphasises neoliberalism's "market-and-morals project", tracing its roots back to early neoliberal thinkers like Friedrich Hayek.[2] Her focus on Hayek prompts an examination of the methods employed by early neoliberals to propagate their ideology, aligning with the perspectives of Nick Srnicek and Alex Williams, who highlight the significance of these methods in establishing an economic, moral, and technological foundation for the spread of neoliberalism.[3]

This exploration raises two critical questions: How did the long-term thinking of early neoliberals contribute to shaping the contemporary world? And to what extent can the neoliberal moral and institutional framework, arguably characterised by a reframed and narrowed-down conception of human rights, be leveraged to envision a world beyond neoliberal hegemony? Specifically, does the current understanding of human rights offer effective means to counteract the exploitation and violence of markets, despite their entanglement with neoliberalism?

This study seeks to address these questions by delving into the intellectual discourse of a specific group of thinkers identified as the "Geneva School" by Quinn Slobodian.[4] This group, while resisting post-colonial demands for economic self-determination, played a pivotal role in advancing a particular idea of neoliberal internationalism that emphasised the necessity of devising legal and institutional mechanisms to restrict post-colonial sovereignty and safeguard the international division of labour.[5] The research also examines the South African liberation struggle, interpreting it through the lens of the intellectual history of neoliberal internationalism, with the ultimate goal of shedding light on the implications of these ideologies for present-day South Africa.

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[1] See generally W Brown *Undoing the demos: Neoliberalism's stealth revolution* (2015); W Brown *In the ruins of neoliberalism: The rise of antidemocratic politics in the West* (2019); and D Harvey *A brief history of neoliberalism* (2007).
[2] Brown (2019) (n 1).
[3] N Srnicek & A Williams *Inventing the future: Postcapitalism and a world without work* (2016).
[4] Q Slobodian *Globalists: the end of empire and the birth of neoliberalism* (2018) 7.
[5] Slobodian (n 4).

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1.2. Background and motivation

As the twentieth century drew to a close, there was a widely held belief that the principles of free-market ideology had triumphed on a global scale.[6] The significance of nation-states appeared to diminish amid the intricate dynamics of the worldwide economy.[7] In 1995, during the World Economic Forum at Davos, US President Bill Clinton remarked on the rapid and occasionally ruthless responsiveness of 24-hour markets.[8] Chancellor Gerhard Schröder, in the context of major welfare system reforms in unified Germany, referred to the "storms of globalisation", emphasising the imperative for the social market economy to either modernise or succumb to unbridled market forces.[9] Political discourse had shifted into the passive voice, with the global economy emerging as the sole actor. Alan Greenspan, the US Federal Reserve chairman, bluntly asserted in 2007 that the identity of the next president hardly mattered, as the world was effectively governed by market forces.[10]

Critics perceived this global-centric paradigm as a new empire, with globalisation supplanting colonialism.[11] Conversely, proponents envisioned a world where goods and capital, if not people, flowed in accordance with the principles of supply and demand, fostering prosperity or, at the very least, opportunities for all.[12] This governing philosophy, emphasising the dominance of market forces, earned the moniker "neoliberalism" from its critics. Neoliberals were characterised as advocates of global laissez-faire—supporters of self-regulating markets, diminished state intervention, and the reduction of all human motivation to the one-dimensional rational self-interest of *Homo economicus*.[13] Detractors claimed that neoliberal globalists conflated free-

[6] See for example T Kemp *The climax of capitalism: The US economy in the twentieth century* (2014) 13–14 and N Lichtenstein *American capitalism: Social thought and political economy in the twentieth century* (2011) 7.
[7] Slobodian (n 4) 15.
[8] Bill Clinton, Remarks to the World Economic Forum, January 26, 1995, available at https://www.govinfo.gov/content/pkg/WCPD-1995-01-30/pdf/WCPD-1995-01-30-Pg115.pdf.
[9] Regierungserklärung des Bundeskanzlers Gerhard Schröder (SPD), "Mut zum Frieden und zur Veränderung," March 14, 2003, available at http://www.documentarchiv.de/brd/2003/rede_schroeder_03-14.html.
[10] See W Streeck *Buying Time: The delayed crisis of democratic capitalism* (2014) 213.
[11] For such accounts see generally M Hardt & A Negri *Empire* (2000). See also C Raghavan, "Trade: The Empire strikes back" *SUNS—South North Development Monitor,* September 20, 1999.
[12] See TL Friedman *The world is flat: A brief history of the twenty-first century* (2005).
[13] M Brady & RK Lippert *Governing practices: Neoliberalism, governmentality, and the ethnographic imaginary* (2016) 19.

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market capitalism with democracy and harboured fantasies of a borderless, unified world market.[14]

Contrary to the prevailing narrative, this account challenges the portrayal of self-proclaimed neoliberals. It reveals that these individuals did not advocate for the autonomy of self-regulating markets. They did not equate democracy with capitalism, nor did they view humans solely through the lens of economic rationality. Their vision did not entail the elimination of the state, the dissolution of borders, or a myopic focus on individual perspectives.

In reality, the foundational insight of neoliberals aligns with the perspectives of John Maynard Keynes and Karl Polanyi: the market cannot exist in isolation and requires external conditions for its sustenance.[15] The essence of twentieth-century neoliberal thought revolves around what they termed as the meta-economic or extra-economic conditions necessary to safeguard capitalism on a global scale.[16] The study's overarching narrative illustrates that the neoliberal initiative was centred on the design of institutions, not to set markets free, but to encapsulate them. The objective was to fortify capitalism against the perceived threat of democracy, establish a framework to manage often irrational human behaviour, and restructure the post-imperial world into a realm of competing states where borders serve a crucial purpose.

How do we interpret neoliberalism, and is the term itself meaningful? For years, scepticism persisted regarding the term's substantive significance. A recent assertion even went so far as to claim that, in practical terms, "there is no such thing" as neoliberal theory.[17] However, in a notable turn of events in 2016, the International Monetary Fund (IMF) not only acknowledged neoliberalism as a cohesive doctrine but also questioned whether the policy trio of privatisation, deregulation, and liberalisation had been "oversold".[18] This declaration garnered international attention, prompting discussions about the perceived failure of neoliberalism.[19] Fortune Magazine, in

[14] Brady & Lippert (n 13) 23.
[15] See K Polanyi-Levitt "The power of ideas: Keynes, Hayek, and Polanyi (2012) 41 (4) *International Journal of Political Economy* 5 6–8.
[16] Slobodian (n 4) 2.
[17] R Venugopal "Neoliberalism as concept" (2015) 44 *Economy and Society* 165 180.
[18] JD Ostry *et al* "Neoliberalism: Oversold" (2016) 53 (2) *Finance & Development* 38.
[19] See for example, S Donnan "IMF economists put 'neoliberalism' under the spotlight", *Financial Times*, 27 May 2016. Available at https://www.ft.com/content/4b98c052-238a-11e6-9d4d-c11776a5124d and R Rowden "The IMF confronts Its N-word", *Foreign Policy*, 6 July 2017. Available at https://foreignpolicy.com/2016/07/06/the-imf-confronts-its-n-word-neoliberalism/.

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reporting on the IMF's stance, suggested that the acknowledgment of failure was a novel development.[20] Yet, the challenge to the policies associated with neoliberalism had been present, at least in rhetoric, for at least two decades prior to that.[21]

This study seeks to explore the multifaceted realm of neoliberalism and its implications for global governance. By examining neoliberalism not merely as a buzzword or an anti-liberal slogan but as a subject of archival investigation,[22] it bridges two scholarly strands that have remained oddly detached. The first strand delves into the intellectual history of the neoliberal movement, tracing its roots and examining key figures, such as those associated with the Mont Pèlerin Society (MPS). The second strand, often neglected in historical analyses, involves the study of neoliberal globalist theory by social scientists. This research acknowledges the term "neoliberalism" and its coinage at the Walter Lippmann Colloquium in 1938.[23] Notably, scholars have emphasised the importance of analysing neoliberalism as an organised group of individuals exchanging ideas within a shared intellectual framework, with a particular focus on institutions like the MPS.[24]

While there were internal rifts among neoliberal thinkers,[25] this study contends that a coherent prescription for world order can be discerned in their writings and actions. By globalising the ordoliberal principle of "thinking in orders", these thinkers proposed a set of measures to safeguard the world economy from the challenges posed by a globalised democracy in the twentieth century.[26]

Social scientists have offered insightful perspectives on the neoliberal philosophy of global ordering. Their analyses highlight efforts to insulate market actors from

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[20] B Heier “Even the IMF now admits neoliberalism has failed”, *Fortune, 3* June, 2016 available at https://fortune.com/2016/06/03/imf-neoliberalism-failing/.
[21] An expression of doubt came from Joseph Stiglitz after the Asian financial crisis of 1997. See JE Stiglitz *Globalization and Its Discontents* (2003). In the late 1990s, various critics contended that the unregulated global free market was deemed "the last utopia," a perspective that found partial agreement from international financial institutions. See A Gamble “The last utopia” (1999) 236 *New Left Review* 117. See also AE Kentikelenis *et al* “IMF conditionality and development policy space, 1985–2014” (2016) 23 *Review of International Political Economy* 543.
[22] For an account that characterises neoliberalism as such see OM Hartwich, “Neoliberalism: The Genesis of a Political Swearword,” CIS Occasional Paper 114 (2009).
[23] See MA Peters “The early origins of neoliberalism: Colloque Walter Lippman (1938) and the Mt Perelin Society” (1947) 55(14) *Education, Philosophy and Theory* 1574 1576.
[24] See M Dean “Rethinking Neoliberalism” (2012) 50 *Journal of Sociology* 150 150.
[25] See for example, Slobodian (n 4) 46–49; 108. The neoliberals frequently held strong and contrasting opinions on certain aspects pertaining to development economics and monetary policy in the global order.
[26] See S Kolev *Ordoliberalism’s embeddedness in the neoliberalisms of the 1930s and 1940s* (2019) 3.

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democratic pressures through various institutions, including the IMF, World Bank, central banks, and trade treaties.[27] This study acknowledges their rigorous work in defining the "insulation of markets" metaphorically as a specific institution-building project, challenging the nebulous understanding of neoliberalism as a mere logic or rationality.

However, the historical aspect of neoliberal theory has often taken a back seat, with intellectual luminaries like Hayek and Friedman receiving walk-on roles.[28] This study aims to fill this gap by tracing the historical origins of neoliberal globalist thinking. It questions how the ideas of neoliberal luminaries influenced global and regional governance, seeking to unravel, through the insightful perspectives of scholars like Quinn Slobodian and Jessica Whyte, the precise aspirations and motivations behind key neoliberal figures. The study locates a crucial point of origin for neoliberal globalist thinking in the epochal shift of order that accompanied the end of empire, highlighting the central role of decolonisation in shaping the neoliberal model of world governance.

In addition to scrutinising the historical roots of neoliberal globalist thinking, this study delves into the manifestation of global neoliberalism through the unique lens of “post”-apartheid South Africa.[29] While the historical narrative often spotlights prominent figures like Hayek and Friedman, this research recognises the need to expand the scope by considering the nuanced experiences of regions that have undergone significant socio-political transformations. “Post”-apartheid South Africa serves as an illuminating case study, offering a distinctive context shaped by complex historical forces. Analysing the impact of neoliberalism in this specific regional setting provides a more comprehensive understanding of how neoliberal ideologies interact with diverse historical trajectories and contemporary challenges. By incorporating this

[27] For pioneering studies of this perspective, see S Gill “Economic globalization and the internationalization of authority: Limits and contradictions” (1992) 23 *Geoforum* 269; S Gill “New constitutionalism, democratisation and global political economy” (1998) 10 *Pacifica Review: Peace, Security and Global Change* 23. For other key studies, see S Babb, *Behind the development banks: Washington politics, world poverty, and the wealth of nations* (*2009*); AC Cutler *Private Power and global authority: Transnational merchant law in the global political economy* (2003) and J Gray *False dawn: The delusions of global capitalism* (1998).

[28] See for example, Gill (1998) (n 26) and also W Bonefeld “Authoritarian liberalism: From Schmitt via Ordoliberalism to the Euro” (2016) *Critical Sociology* 13.

[29] In this work, the term 'post'-apartheid is enclosed in inverted commas to acknowledge the ongoing discourse surrounding the definitive end of apartheid and to reflect the nuanced and contested nature of this historical transition.

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perspective, the study aims to contribute to a richer and more nuanced comprehension of the global manifestations of neoliberalism.

1.3. Assumptions and starting points

During the course of this study, the following broad assumptions will frame the arguments to be made in the mini-dissertation:

- Neoliberalism constitutes more than inegalitarian macro-economic policy or free market ideology but is, rather an overarching political rationality that, among other things, prevents—and assaults the legitimacy of— “popular” sovereignty.
- The aspiration of neoliberal intellectuals to establish a global framework capable of constraining post-colonial sovereignty represents a notable manifestation of the modern imperial inclinations of European elites. This stance is a response tied to specific historical circumstances, aimed at overseeing a world continually influenced and transformed by the dynamics of an unequal global capitalist evolution.
- Contextualising neoliberalism within the broader context of global politics, imperialism, and its consequences for the sovereignty of post-colonial nations could allow for a more precise elucidation of the neoliberal conception of the state. In this context, the state is portrayed not as a menacing entity to be eliminated but rather as an essential safeguard for maintaining a competitive economic structure. However, this safeguard is contingent upon the state's effective regulation and transformation through international laws and institutions. The significance of law is pivotal within this narrative, aligning with its prominent role in the ideology of neoliberal thinkers. Therefore, this study encourages us to transcend the oversimplified contrast between excessive state authority and the promotion of free markets often used as a defence of neoliberalism.

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1.4. Research questions

(a) What constitutes the intellectual history and theoretical underpinnings of the neoliberalism movement, and how can we comprehend these aspects within the broader intellectual history of neoliberal thought?

This study examines the intellectual and institutional history of neoliberalism, particularly focusing on the Geneva School and the MPS's role in shaping neoliberal thought. Contrary to misconceptions, neoliberals did not see self-regulating markets as autonomous; instead, they aimed to encase and safeguard capitalism against the recognised threat of mass democracy.[30] The study also delves into the entanglement of neoliberalism with human rights, challenging the notion that there is no structural connection between the two. Jessica Whyte's work emphasises the political, legal, and moral dimensions of neoliberalism, revealing its influence on a new moral ordering of society.[31]

(b) How did the neoliberal aspiration for a new international politico-economic order impact the anti-colonial aspirations of the "Third World"?

The neoliberal pursuit of a new international order had a discernible impact on the realisation and trajectory of anti-colonial aspirations in the "Third World." Adom Getachew underscores the essential transnational dimension of this impact, highlighting that anti-colonial nationalists were not only builders of states but also influential "worldmakers".[32] By embracing internationalist projects, as evidenced in the ideologies of figures like Nnamdi Azikiwe, Kwame Nkrumah, Eric Williams, Michael Manley, and Julius Nyerere, anti-colonial nationalists recognised the inseparable link between (genuine) national self-determination and global equality.

The neoliberal perspective, however, posed a challenge to these anti-colonial aspirations. Neoliberals perceived post-colonial self-determination as a potential threat to Western hegemony.[33] The examination of neoliberal internationalism, therefore, sheds light on the clash between the anti-colonial vision of a "postcolonial cosmopolitanism" and the neoliberal drive for a new global order.[34] This clash is not

[30] Slobodian (n 4).
[31] J Whyte *The morals of the market: Human rights and the rise of neoliberalism* (2019).
[32] A Getachew *Worldmaking after empire: The rise and fall of self-determination* (2019).
[33] Slobodian (n 4) 5, 36.
[34] Getachew (n 32) 10.

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merely theoretical but has tangible implications, influencing how these postcolonial nations navigated their independence within the constraints of neoliberal economic frameworks and international power dynamics.

(c) What insights can we derive from the curious case of the South African liberation struggle and transition to democracy in understanding the effects (political, economic and cultural) of the neoliberal aspiration for a new international politico-economic order?

The case of the South African liberation struggle and the subsequent transition to democracy provides crucial insights into the effects of the neoliberal aspiration for a new international politico-economic order. This transformative period in 1994 (the formal end of apartheid), which Patrick Bond labels an "elite transition", marked a profound shift in South Africa's political landscape, replacing the *old* racial order with what Dale McKinley terms a new form of "class apartheid".[35] Within this context, the ANC's evolution into a “corporatised” entity aligned with large-scale capital is a defining feature, constituting a significant link to the neoliberal agenda.[36]

As Dale McKinley argues, the ANC's strategic alignment with corporate interests had multifaceted implications for the country's political, economic, and cultural fabric.[37] The ANC's role as a facilitator for an emerging African capitalist stratum seeking entry into the white-dominated economy became a distinctive characteristic of the political transition.[38] This alignment not only influenced power dynamics, shifting away from the (majority black) working class, but also resulted in the suppression of popular power and a rapid demobilisation of civil society. [39]

Moreover, this South African case serves as a microcosm reflecting the broader relationship between the unequal international system and domestic politics. The impact of neoliberal internationalism on maintaining conditions favourable to its imperialist project is vividly exemplified in the South Africa’s political and cultural trajectory post-1994. The South African context compellingly illustrates the strategic entwinement of neoliberalism with human rights and constitutionalism, effectively

[35] P Bond *Elite transition: from apartheid to neoliberalism in South Africa* (2000).
[36] D McKinley *South Africa’s corporatised liberation: A critical analysis of the ANC in power* (2017).
[37] McKinley (n 36) 4–5.
[38] McKinley (n 36) 13.
[39] McKinley (n 36) 15.

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facilitating support for the ascendancy of neoliberal rationality and contributing to the demobilisation of civil society.

The illusion of progress within the human rights framework becomes particularly evident in South Africa's 'post'-apartheid constitutionalism, where “transformative constitutionalism” emerges as a potential disruptor of *meaningful* societal change, further exposing the complex interplay between human rights and neoliberalism.

(d) How does the neoliberal politico-economic order sustain itself? And, given this account, is there any likelihood of actualising a freedom from the exploitation and violence of neoliberal hegemony?

In examining the enduring resilience of the global neoliberal order, the South African context is once again instructive. Here, the government is required to uphold the terms of bilateral investment treaties (BITs), which provide robust protection to investors. This necessity underscores the prioritisation of safeguarding investor interests, even at the expense of potentially violating the nation's constitution.[40] This scenario perpetuates a racialised organisation of capitalism, evident in cases like *Swiss Investor*[41] and *Foresti*.[42] Expanding on what will be observed in the earlier chapters of the study, these instances illuminate how the neoliberal framework strategically deploys legal frameworks to preserve global capitalism's racial hierarchies.

In considering the potential for freedom from this neoliberal state of affairs, the study only provides a preliminary or cursory examination of this complex question, perhaps highlighting the need for more in-depth research or a comprehensive study in the future. Despite the inherent limitations in scope, the analysis alludes to the idea that the potential to challenge and overcome prevailing neoliberal hegemony relies on mobilising collective action. This comprehensive strategy entails not only a theoretical

[40] As will be seen, the potential conflict with the South African constitution arises when policies or actions undertaken to uphold bilateral investment treaties (BITs) prioritise the protection of investor interests in a way that may undermine or violate constitutional principles. In the case of *Swiss Investor* and *Foresti*, a stark illustration of this scenario is evident in how the relevant BITs, designed to encourage foreign investment, hinder or run counter to the envisioned land reform initiatives outlined in Section 25 of the Constitution.

[41] The arbitration proceedings were conducted under UNCITRAL arbitration rules, and the arbitration ruling remains confidential. For more on the dispute, see LE Peterson “Swiss investor prevailed in 2003 in confidential BIT arbitration over South Africa land dispute” (2008) *Investment Arbitration Reporter* 1(13).

[42] *Piero Foresti, Laura de Carli and others v Republic of South Africa*, ICSID Case No ARB(AF)/07/1, Award (4 August 2010).

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understanding of neoliberalism's nature but also practical efforts in organising for change.

1.5. Research methodology

This research adopts a qualitative methodology centred on a comprehensive exploration of existing literature. The primary focus is on scrutinising works that delve into the ideas and contributions of key neoliberal figures. As mentioned in 1.2 above, the methodology deliberately integrates two distinct yet interconnected strands of scholarship: the intellectual history of neoliberal thought and the study of neoliberal globalist theory by social scientists. This integration seeks to unravel the intricate dynamics between the historical evolution of neoliberal ideas and their manifestations in contemporary global governance.

A notable feature of this methodology is the selective emphasis on works associated with the MPS, chosen for its pivotal role in shaping and disseminating neoliberal ideologies. This choice provides a focused lens for a more detailed examination of the theoretical foundations and practical implications of these ideologies, concentrating on key figures affiliated with the MPS (predominantly comprised of Slobodian's Geneva School)[43] to contribute depth of insight into the evolution and impact of neoliberal thought.

The research critically engages with insights derived from South Africa's liberation struggle and transition to democracy. This contextual lens serves as a unique vantage point, allowing for a more profound integration of the intellectual history and globalist theory strands, thereby contributing to a more holistic understanding of neoliberalism.

In addition to this contextual integration, thematic analysis also serves as a pivotal component of this methodology and is systematically applied to identify and interpret patterns and themes within the literature. This analytical approach provides a structured framework for understanding the underlying conceptual threads that connect various neoliberal writings and their implications.

Moreover, the selected qualitative methodology for this study places a significant emphasis on the valuable role of critique within existing literature. In addition to conducting a thorough examination of diverse viewpoints, the approach prioritises

[43] Slobodian (n 4) 126.

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critical engagement with a spectrum of perspectives. By actively seeking and rigorously scrutinising critiques and alternative viewpoints, the methodology aims to cultivate a comprehensive and well-rounded analysis of the subject matter. This deliberate emphasis on critique acknowledges its inherent value in sharpening scholarly understanding, refining arguments, and uncovering nuanced insights within the complex landscape of neoliberal thought. Grounded in the recognition of critique as a constructive force, the methodology not only enriches the research by embracing varied viewpoints but also positions itself as a vital tool for producing a thorough and insightful study within the context of neoliberalism.

1.6. Structure

Chapter 1 (Introduction) is an introductory chapter.

Chapter 2 (Thinking in world orders: Western civilisation and the culture of neoliberalism) outlines the intellectual history of the neoliberalism movement, with particular focus on laying out a political theory of neoliberalism that captures the perspectives of thinkers both renowned and obscure in their formulation of a global politico-economic order that was capable of constraining post-colonial sovereignty.

Chapter 3 ("Equality is a disorganising concept": Neoliberalism, human rights, and cultural conflict) sets out the economic, political, legal and, crucially, weaving together all the three other strands, the moral foundations of neoliberal internationalism. A key aspect of this chapter is an analysis of Jessica Whyte's exegesis of the historical and conceptual relations between human rights and neoliberalism.[44] This connection is explored to address human rights' entanglement with a new (neoliberal) political and moral ordering of society—the "morals of the market".

Chapter 4 (Neoliberalism as liberation in 'post'-apartheid South Africa) & chapter 5 (the "ethos" and victims of the neoliberal dream) uses the case of 'post'-apartheid South Africa to provide novel and important insights into the neoliberal assault not only on global aspirations for a new international politico-economic order but also on the welfare state. It also explains how the global neoliberal politico-economic order sustains itself, even in the face of growing anti-capitalist sentiment.

[44] Whyte (n 31).

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Chapter 6 is a conclusion chapter.

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Chapter 2: Thinking in world orders: Western civilisation and the culture of neoliberalism

2.1. Introduction

By the close of the 20th century, a select group of global institutions had amassed significant influence over the economic policies of nations worldwide. The International Monetary Fund (IMF) and World Bank, in particular, conditioned their assistance to member states on the implementation of extensive reforms, with profound political and social implications.[1] Whether in Africa, Latin America, or Asia, financial aid was intricately tied to actions like balancing government budgets, privatising state-owned industries, eliminating trade regulations, and reducing tariffs.[2] Simultaneously, the World Trade Organization (WTO) went beyond tackling trade barriers, extending its reach to encompass an array of domestic laws and regulations pertaining to health, safety, industrial and agricultural policies, and environmental standards.[3] Collaborating with powerful governments, central banks, and private corporations, these institutions wielded powers of "global economic governance", disrupting established norms of sovereignty intended to protect national institutions from external interference.[4]

The tale of the 20th-century origins and evolution of these global economic governance powers begins with the Bretton Woods Conference of July 1944.[5] As the Allied invasion of Western Europe unfolded, representatives from forty-four countries gathered to reshape the rules of the international monetary system.[6] The outcome was the establishment of two new institutions, the IMF and World Bank, joined shortly by the General Agreement on Tariffs and Trade (GATT).[7] This unique post-war arrangement endured for two and a half decades. However, when the Bretton Woods system collapsed in the early 1970s, the IMF and World Bank, having lost their original mandates, assumed greater control over the domestic policies of some member

[1] Q Slobodian *Globalists: the end of empire and the birth of neoliberalism* (2018) 278.
[2] J Martin *The meddlers: Sovereignty, empire, and the birth of global economic governance* (2022) 1.
[3] Martin (n 2) 1.
[4] Martin (n 2) 1.
[5] See Slobodian (n 1) 119–120.
[6] Martin (n 2) 1.
[7] Martin (n 2) 1.

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states.[8] Leveraging access to foreign capital, they enforced austerity and structural adjustment reforms, dramatically reshaping the economies and institutions of numerous countries.[9] In 1995, with the WTO replacing GATT, it began addressing issues previously deemed exclusive to sovereign states.[10]

The increasingly intrusive powers of these institutions eroded their legitimacy, facing global criticism for meddling in domestic politics and imposing neoliberal policies on states in the Global South and the former Communist Bloc. Even their supporters grappled with difficult questions about their compatibility with traditional notions of sovereignty and democracy.[11] If representative politics remained a national affair, how could institutions beyond the state legitimately make extensive demands on domestic policy? What differentiated a voluntary act of delegation to such an institution from an act of submission to the influential foreign governments and private interests setting its agendas?

These questions, which indeed have deeper historical roots dating back to the end of the First World War,[12] gained prominence and intensified during what might be referred to as the late 20th-century era of neoliberal globalisation.[13] In this period, international economic institutions played an increasingly active role in influencing the consequential domestic economic decisions of their member states. This intervention marked a crucial turning point, overseeing a significant transformation in state sovereignty and the international order, effectively reshaping the tools of informal empire according to the imperatives of a new era characterised by self-determination.[14]

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[8] Martin (n 2) 1.
[9] Martin (n 2) 2.
[10] Martin (n 2) 2.
[11] See CM Tiebout *An economic theory of fiscal decentralisation* (1961) 10. Tiebout calls for "respect for regional differences preferences" when the IMF and World Bank formulates policy considerations. See also AO Hirschman *Exit, Voice and Loyalty* (1970) 41. Hirschman emphasises the need for "competition" among public financial agencies in order to protect developing agencies, especially through facilitating "exit" agreements. For additional viewpoints on critiques voiced by advocates of public finance agencies see also A Dreher & R Vaube "The causes and consequences of IMF conditionality" (2004) 40 *Emerging Markets Finance & Trade* 26.
[12] See generally Martin (n 2). Martin is of the view, and I agree, that, in fact, the sovereignty of developing states has never been truly respected since as early as the end of the First World War, when modern international politics started to take shape.
[13] Slobodian (n 1) 13.
[14] Slobodian (n 1) 122–123.

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This chapter seeks to narrate this transformative story, providing a political history that elucidates the emergence of global neoliberal governance amidst profound shifts in the relationship between empire and global capitalism. It aims to achieve this by analysing the intellectual musings of a specific group of thinkers who played a pivotal role in the ideological and institutional ascendance of a particular notion of neoliberal internationalism that prioritised the bolstering of international institutions to create a conducive environment for the growth of international capitalism. Described by Quinn Slobodian as the "Geneva School",[15] this group included leading figures associated with the Austrian School of economics and the ordoliberalism of the German Freiburg School. These central characters—such as the Austrian School figures Ludwig von Mises and Fredrich Hayek, British economist Lionel Robbins, and German ordoliberals Wilhelm Röpke and Alexander Rüstow—were responsible for the establishment of the MPS, which has been aptly described as the "neoliberal thought collective".[16]

In assessing the influence of these neoliberal thinkers, this chapter also takes note of another parallel history. Perhaps equally notable as the rise of neoliberal thought is the fact that, in the three decades after World War II, anti-colonial revolutionaries like Julius Nyerere and Kwame Nkrumah sought to break the political and economic order that kept the "global south" in eternal subjugation.[17] Indeed, their claims went far beyond winning political independence; for them, the goal was nothing less than the reinvention of the international legal, political, and economic order—to create a world where dominated peoples would finally secure self-determination and true national independence.[18]

These anti-colonial efforts made the prevailing conception of global governance highly controversial. In a profoundly unequal world, allowing a sovereign state to open its internal affairs to outside intervention was seen as an admission of a loss of status, power, and autonomy.[19] Allowing an institution representing the interests of rival governments, central banks, or global capitalists any influence over policies of strategic significance or with important distributional and political consequences raised

[15] Slobodian (n 1) 7.
[16] P Mirowski & D Plehwe (eds) *The road from Mont Pèlerin: The making of the neoliberal thought collective* (2009) 21.
[17] A Getachew *Worldmaking after empire: The rise and fall of self-determination* (2019) 1–5.
[18] Getachew (n 17) 1–5.
[19] Martin (n 2) 8.

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significant questions—especially at a time when claims to self-determination were more influential than ever.[20]

The chapter unfolds **(2.2)** by tracing the ascendancy of self-determination in the postcolonial international order, spotlighting the accomplishments of former colonies in their quest for autonomy and the ensuing challenges to inequality in the global order. It underscores the resistance against incursions into sovereignty, notably the interference by external entities such as the IMF and Western nations in domestic policies. This resistance, essentially a global language of opposition to the unequal global politico-economic order, becomes a pivotal backdrop in the narrative. In the subsequent section **(2.3)**, the focus shifts to the emergence of neoliberalism as a counterforce to the self-determination and anti-colonial worldmaking endeavours. It examines how neoliberal ideologies envisioned robust institutions to curtail post-colonial sovereignty, which neoliberals perceived as a threat to the market oriented international order they advocated for. It delves briefly into the mechanisms these neoliberals employed to foster free market conditions in the international order.

In **2.4** the narrative progresses to neoliberalism's success in thwarting anti-colonial worldmaking efforts, emphasising the *triumph* of neoliberal ideologies rather than attributing the impact solely to internal factors within the anti-colonial movements. What generally emerges from this discussion is the framing of the ideological clash between the anti-colonial worldmakers and neoliberals as a profound struggle for shaping the future global order, with the neoliberals clearly winning the day. From this perspective, the final inquiry **(2.5)** centres on the implications of this ideological triumph for the concept of neoliberalism, particularly in terms of how it is theorised and understood in the broader context of the evolving global landscape.

2.2. Decolonisation, worldmaking, and the rise of self-determination: Redefining international politics, sovereignty, and challenging neoliberal narratives

Very few processes have the potential of fundamentally changing the way in which international politics are understood. Decolonisation is certainly one of them. Not only did the formation of new nation states lead to the redrawing of political boundaries and the creation of new political entities—a development which, at least on the face of it,

[20] Martin (n 2) 8.

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reshaped the balance of power in many regions and led to the steady integration of third world nations into international society.[21] Even more importantly, decolonisation led to the introduction of new (non-Western) voices and perspectives in world politics and has contributed to a more diverse and pluralistic understanding of international relations and global politics.[22] For this reason, a study offering a significant reproblematisation about the manner in which one understands decolonisation has significant implications on the undertaking of historicising the relationship between neoliberalism and empire and its prescriptions for modern-day global governance. Adom Getachew's book *Worldmaking after Empire: The Rise and Fall of Self Determination* presents a good starting point in the pursuit of accomplishing this task.[23]

Usually, decolonisation is understood primarily as a nation-building endeavour. Within this paradigm, the anticolonial pursuit of self-determination encompasses a dual process: first, the rejection of foreign political domination, and second, the establishment of newly sovereign nation-states.[24] Central to this perspective is the conceptualisation of empire as the "alien rule" of the colony by the metropole, resulting in the exclusion of the former from international society.[25] Decolonisation, in this framework, serves as a mechanism to overcome alien rule and secure entry into the international community.[26] According to this interpretation, those who liberated themselves from imperial subjugation essentially embraced the Westphalian national state model, signalling their aspiration to join international society.[27] Decolonisation is thus viewed, from this perspective, as evidence of the universalisation of European values.[28]

In contrast, Getachew presents an alternative and illuminating viewpoint on decolonisation. Through an examination of the thoughts and political endeavours of pivotal "Anglophone Black Atlantic intellectuals" like Nnamdi Azikiwe, W.E.B. Du Bois, George Padmore, Kwame Nkrumah, Eric Williams, Michael Manley, and Julius

[21] See M Craven "Colonialism and domination" in B Fassbender & A Peters (eds) *The Oxford handbook of the history of international law* (2012) 875.
[22] See S Pahuja *Decolonising international law: Development, economic growth and the politics of universality* (2011) 78–80.
[23] Getachew (n 17).
[24] For such an account see R Burke *Decolonisation and the evolution of international human rights* (2010) 14–26.
[25] Burke (n 24) 30.
[26] Burke (n 24) 35.
[27] Getachew (n 17) 11.
[28] Getachew (n 17) 75.

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Nyerere—as they grappled with the complexities of postcolonial sovereignty—Getachew reframes and enriches our understanding of the role of decolonisation in international politics.[29] She contends that depicting the decolonisation process as a simple shift from a world of colonial empires to an international system of states diminishes the profound impact that the imagination and process of decolonisation had in offering a new world order perspective.[30] Getachew illustrates that these influential political figures endeavoured, both individually and occasionally collaboratively, not merely to assert the national sphere against foreign rule but to actualise their unique vision of a more just, peaceful, and equitable geopolitical and economic order. More than nationalists, they were “worldmakers”.[31]

Understanding the decolonisation process as a worldmaking process, as Getachew does, illuminates a crucial aspect of international politics. It reveals how empire can be comprehended not solely as alien rule but predominantly as an international structure characterised by racial hierarchy.[32] In this context, Getachew demonstrates that influential Black Atlantic leaders did not merely perceive empire as the exclusion of the colonised from international society but rather as their "unequal integration" into the nation-state system.[33] Colonies existed within the framework of international society, yet this society was a hierarchical space based upon what WEB Du Bois called a “global color line”. This delineation meant that non-white, colonised nations received legal recognition but were concurrently saddled with "onerous obligations" and "conditional rights".[34] Rather than accepting these terms, Getachew asserts that Third World nationalism and black world-making in the era of decolonisation “took a distinct trajectory in the Black Atlantic, where imagining the world after empire drew on an anticolonial critique that began from the foundational role of New World slavery in the making of the modern world and traced the ways its legacies were constitutive of racial hierarchy in the international order”.[35] If the imperial problem extended beyond mere alien rule and exclusion to involve unequal integration, the figures scrutinised in Getachew's book argued that relying solely on nationalism would not be sufficient to

[29] Getachew (n 17) 5.
[30] Getachew (n 17) 3–8.
[31] Getachew (n 17) 3–9.
[32] Getachew (n 17) 15.
[33] Getachew (n 17) 25.
[34] Getachew (n 17) 18.
[35] Getachew (n 17) 5.

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break with empire. They reasoned that a comprehensive transformation of international society itself was imperative.

Central to the reconstruction of the world order was the reimagining of the principle of self-determination. Originally confined to peoples positioned within the higher echelons of the Western racial hierarchy, the transformation aimed to broaden the right to self-determination for all peoples, regardless of creed, so-called race, or colour.[36] In this analysis, Getachew illustrates that anticolonial nationalists didn't view self-determination merely as the integration of newly independent states into an existing hierarchical order. Instead, they saw its realisation through a transformative process, distinct from the mere universalisation of an already established principle.[37] Crucially, she demonstrates that, for anti-colonial nationalists, self-determination was perceived as a mechanism to actively pursue a distinct world order.[38] In this regard, the fundamental conceptual and theoretical breakthroughs of anti-colonial nationalists largely centred on rejecting the top-down Wilsonian principle of self-determination within a racialised Westphalian order. This confluence favoured the state as the primary unit of political recognition and community, while simultaneously obstructing and suppressing the political aspirations of Asian, African, Caribbean, and New World peoples and nation-states in the post-World War II era.[39]

Fleshing out this key strategy of anti-imperial worldmaking allows Getachew to outline her perspective on the international institutionalisation of empire. To put her ideas into practice, she highlights instances of racially unequal integration within the League of Nations. In this regard, Getachew's analysis begins by providing a historical exposition of the aftermath of the First World War and the Bolshevik revolution, during which anticolonial rebellion erupted across the colonised world.[40] It is in this context, Getachew claims, that Woodrow Wilson, on behalf of the Allied nations, sought to "contain the threat of revolution" by appropriating the language of "self-determination in the service of Empire".[41] The League redefined imperialism by imposing unequal obligations on its colonised members. This became glaringly evident in the case of

[36] Getachew (n 17) 11.
[37] Getachew (n 17) 73–74.
[38] Getachew (n 17) 77–79.
[39] Getachew (n 17) 42–43, 78–79.
[40] Getachew (n 17) 37–39.
[41] Getachew (n 17) 39–40.

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Ethiopia, which the League accepted as a member but subjected to intrusive "international oversight" requirements because of the presence of unfree labour in the country.[42] Italy would subsequently exploit the League's rhetoric to portray its 1935 invasion of Ethiopia as a humanitarian intervention. As highlighted by Getachew, the Italo-Ethiopian War and the League's inadequate response served as a textbook illustration of the West's application of a racialised principle of self-determination. This event triggered a transformation in the thought and activism of Black Atlantic intellectuals.[43]

These scholars placed slavery at the core of their understanding of the imperial international order. They employed an expanded definition of enslavement to encompass both transatlantic chattel slavery and the persistent exploitation of the colonised working class by imperial powers.[44] The interim period spanning the ratification of the Universal Declaration of Human Rights (UDHR) in 1948 to the adoption of the human rights covenants in 1966 appears, initially, as a time marked by a cascade of rights claims.[45] Successful anti-colonial movements brought about profound changes in both the composition of the United Nations (UN) and the dynamics of human rights discourse.[46]

In 1955, representatives from twenty-nine African and Asian nations convened in Bandung, Indonesia, asserting that the right of peoples and nations to self-determination was a prerequisite for the complete enjoyment of all fundamental human rights.[47] Ghana, in 1957, became the first sub-Saharan African nation to achieve independence. The subsequent “Year of Africa” in 1960 witnessed seventeen additional African nations, including Nigeria, gaining independence, with its delegate taking pride in contributing to the drafting of human rights covenants.[48] This period marked a significant departure from the early days of UDHR drafting, when delegates

[42] Getachew (n 17) 54–55.
[43] Getachew (n 17) 58–61.
[44] Getachew (n 17) 78.
[45] See J Whyte *The morals of the market: Human rights and the rise of neoliberalism* (2019) 104.
[46] Whyte (n 45) 104.
[47] Asian-African Conference, ‘Final Communiqué of the Asian-African Conference of Bandung’ (Djakarta: Centre Virtuel de la Connaissance sur l’Europe, 24 April 1955) 6.
[48] See P Adesina “Why 1960 was a turning point for Africa”, *BBC Culture*, 24 August 2022. Available at https://www.bbc.com/culture/article/20220823-images-of-the-moment-a-continent-flourished.

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from colonial powers sought to defend civilisational hierarchies and exclude their colonial subjects from human rights considerations.[49]

However, amidst what Lynn Hunt describes as the “bulldozer force of the revolutionary logic of rights”,[50] anti-colonialists began to recognise that their newfound freedom and formal sovereignty did not necessarily translate into the independence for which they had fervently fought.[51] Shortly before the adoption of the human rights covenants, Kwame Nkrumah, the first president of independent Ghana, introduced the term "neo-colonialism" to characterise the subtle mechanisms that sustained colonial patterns of exploitation even after the formal attainment of independence.[52] Nkrumah contended that formal sovereignty did not free former colonies from the unequal economic relations of the colonial era or bestow upon them political control over their territories. In his view, a “state in the grip of neo-colonialism” was not the master of its own destiny.[53]

Nkrumah emphasised several mechanisms of neocolonialism, such as the dominance of international capital in the world market, exploitative practices related to international aid and aid conditionality, and the moral influence wielded by US labour organisations, missionaries, and non-governmental organisations (NGOs).[54] Neocolonialism, as Upendra Baxi observed, surfaced at a time when struggles for independence appeared to be gaining traction.[55] The opposition to neocolonialism materialised through fresh calls for economic rights, encompassing demands for the right to development and "Permanent Sovereignty Over Natural Resources”.[56]

This struggle for economic rights and sovereignty over resources was part of a broader global context marked by evolving post-war economic paradigms.[57] Within a decade

[49] Whyte (n 45) 104.
[50] L Hunt *Inventing human rights: A history* (2007) 168.
[51] Hunt (n 50) 168.
[52] K Nkrumah *Neo-colonialism: the last stage of imperialism* (1966).
[53] Nkrumah (n 52) x.
[54] Nkrumah (n 52) 243.
[55] U Baxi *The Future of Human Rights* (2008) 51.
[56] Resolution 1803 on Permanent Sovereignty Over Natural Resources was adopted by the UN General Assembly in December 1962, ‘Permanent Sovereignty over Natural Resources, General Assembly Resolution 1803 (XVII)” available at https://legal.un.org/avl/ha/ga_1803/ga_1803.html#:~:text=Resolution%201803%20(XVII)%20provides%20that,principles%20contained%20in%20the%20resolution. This was one of a series of resolutions that sought, in the words of Sundhya Pahuja paraphrasing Nkrumah, "to re-assert the 'political kingdom' over the economic". See S Pahuja, *Decolonising international law: development, economic growth, and the politics of universality* (2011) 86.
[57] Whyte (n 45) 105.

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of the adoption of the UDHR, Swedish social democrat Gunnar Myrdal envisioned the transformation of the emerging welfare state in "advanced nations" into a comprehensive "welfare world".[58] However, this ambitious dream collided with the harsh reality of colonial exploitation. Concurrently with the UDHR's adoption, the UK's Minister of Economic Affairs, Sir Stafford Cripps, proclaimed that Britain's survival depended on the "quick and extensive development" of its African resources.[59] The necessity to enhance production in the colonies made the UK wary of extending economic rights.[60] For anti-colonialists familiar with the disjunction between universal ideals and colonial realities, the apparent contradiction between domestic welfarism and the denial of international economic rights provided a revealing lens through which to scrutinise the post-war economic order.[61]

Kwame Nkrumah, in particular, astutely recognised that the colonies were not merely exceptions to the extension of social welfare and rights but rather the very condition enabling economic rights in the metropolis.[62] Nkrumah argued that colonial exploitation was intrinsic to the possibility of economic rights in the west.[63] In the context of post-war expectations for welfare and improved living standards, he argued that no post-war capitalist country could thrive without embracing a "welfare state" model.[64] As an increasing share of the proceeds from colonial exploitation was channelled towards the working classes for social pacification, Nkrumah observed the sacrifice of two fundamental tenets of early capitalism: the subjugation of working classes within each country and the exclusion of state control over capitalist enterprise.[65] He argued that replacing free trade with welfare states shifted the locus of class struggle to the international stage and made colonial exploitation crucial to the stability of capitalism.[66] The colonies were not mere latecomers to the welfare world; the absence of a "rights cascade" in social and economic rights was, in no small part, due to the fact that the exploitation of the colonies made these rights feasible in the

[58] G Myrdal *An International Economy: Problems and Prospects* (1956) 321.
[59] See F Cooper *Decolonization and African society: The labor question in French and British Africa* (1996) 204.
[60] Whyte (n 45) 108.
[61] Whyte (n 45) 108.
[62] Nkrumah (n 52) xii.
[63] Nkrumah (n 52) xii.
[64] Nkrumah (n 52) xii.
[65] Nkrumah (n 52) 255.
[66] Nkrumah (n 52) 255.

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"developed" world.[67] The neoliberals perceived attempts to politicise the postcolonial economic framework as a threat to both the global market and international stability.[68] They argued that this postcolonial economic initiative retained features from mid-century colonialism, diverging from the earlier free-trade policies of the British Empire in favour of economic planning. Faced with the rising wave of anticolonial sentiments, the neoliberals actively worked to redefine the parameters of the discourse on imperialism and colonialism.[69]

2.3. The historical roots of neoliberalism: from anti-Colonial worldmaking to the Mont Pèlerin Society

Against the backdrop of the significant transformations alluded to above, encompassing the strides achieved by former colonies in self-determination and the consequential challenges to global inequality, resistance to insults to sovereignty chiefly characterised by the interference[70] of external actors (institutions like the IMF and Western countries) in domestic policy, provided a global lingua franca of opposition to attempts to govern the world's capitalist economy.

Of particular note here is the fact that, when the IMF began making its first conditional loans during the Cold War, it faced questions about its legitimacy akin to those posed in earlier experiments in global economic governance.[71] The challenge lay in determining how the domestic economies of formally sovereign states could be exposed to external intervention in a manner that was compatible with self-determination and, crucially, how this could be replicated as instruments of international cooperation.[72] Undoubtedly, in an epoch characterised by imperial dominance—when the sovereignty of many nations was partial, contested, and nascent—the decision of which countries permitted external involvement in their domestic affairs became inherently linked to their relative power and status within a hierarchical international system.[73] This reality rendered the realisation of international cooperation exceptionally challenging, with accusations of "meddling" resonating

[67] Whyte (n 45) 108.
[68] Whyte (n 45) 105.
[69] Whyte (n 45) 105.
[70] See Nkrumah (n 52) 243. It is crucial to emphasise that the mentioned external interference encompasses not only economic aspects but also political, cultural, and legal dimensions.
[71] Martin (n 2) 246.
[72] Martin (n 2) 246.
[73] Martin (n 2) 5.

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strongly.[74] Many contemporary observers unequivocally saw the interventionist capacities of these institutions as rooted in imperial practices. However, a dilemma arose: Unlike the prevention of war, the governance of an interdependent global economy necessitated more than managing state-to-state relations. It seemingly demanded delving into the internal domains of nations—to regulate their budgets, currencies, or tariffs.[75]

Yet, a pivotal facet of the political genesis of these early international economic institutions has remained obscured. How could such actions be undertaken without openly replicating the patterns of informal empire and resorting to gunboat diplomacy? This section unravels the narrative of this notable innovation in international governance—one that unfolded despite widespread resistance. In explicating this, it presents a history of institutional design intertwined with the political struggles surrounding legitimacy, representation, and ideology. What set these institutions apart was the necessity to distinguish their interventionist powers from the undesirable interference historically imposed by empires upon subjugated nations, spanning from North Africa to Asia to the Caribbean. The challenge faced by these institutions was to align their powers with the legal facade of sovereign equality and the democratic principles of self-determination.[76]

Although it was previously believed that neoliberalism involved the reduction of state involvement in the face of global markets, an extensive body of literature has convincingly shown that neoliberals in fact advocate for a robust state capable of establishing and enforcing the institutional framework for economic competition. In the exploration of this well-established terrain, Slobodian's "Globalists" not only treads familiar ground but also injects substantial contributions into this scholarly discourse. Slobodian's scrutiny zeros in on the evolution of neoliberalism through the Geneva School, which evolved in response to several world-historical shifts during the 20th century. He accentuates how the foundational ideas of this neoliberal strand took shape as apprehensive liberals endeavoured to shield the global price mechanism from diverse threats, encompassing mass democracy, the disintegration of European empires, and initiatives in global mapping and planning.

[74] Martin (n 2) 5.
[75] Martin (n 2) 5.
[76] Martin (n 2) 5.

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Although the individuals examined in Slobodian's work were affiliated with different international organisations, they found a common connection in the city of Geneva. The Geneva School, comprising influential figures such as Mises, Hayek, and Röpke, drew significant inspiration from the governance structure of the Habsburg Empire. This empire successfully united diverse nationalities in Central Europe within a shared framework of free trade under the auspices of the Habsburg monarchy.[77] Inspired by this multinational political experiment, The thinkers of the Geneva School were characterised by their aspiration to craft binding global regulations for the institutionalisation of market mechanisms. This set them apart from the nationally-focused German ordoliberals, leading Slobodian to characterise the Geneva School's project as one of "ordoglobalism".[78]

The Geneva School scholars developed this ordoglobalist perspective in response to the changes in the international political economy after World War I, which they viewed with great concern.[79] The stringent economic adjustments mandated by the Gold Standard, fortified domestically through restricted democratic rights and internationally upheld by the might of the British Empire, had come apart at the seams.[80] The scholars of the Geneva School believed that various factions within bourgeois civil society started vying for political power, leveraging the state as a tool to further their individual interests.[81] The neoliberals witnessed with apprehension as states, departing from the discipline of the global market, sought to construct trade barriers.[82]

An even more disconcerting development, from the perspective of the Geneva School, arose with the process of decolonisation. During the postcolonial era, neoliberals expressed concern about newly independent nations in Eastern Europe, Africa, Asia, and Latin America transitioning from political sovereignty to economic nationalism.[83] In the mid-20th century, nations of the Global South leveraged their membership in international organisations, like the United Nations Conference on Trade and Development, to push for a restructuring of the global economic competition

[77] See P Miller-Melamed & C Morelon "What the Hapsburg Empire got right" (2019) available at https://www.nytimes.com/2019/09/10/opinion/hapsburg-empire-austria-world-war-1.html.
[78] Slobodian (n 1) 12.
[79] Slobodian (n 1) 55.
[80] Slobodian (n 1) 55–56.
[81] Slobodian (n 1) 60–62.
[82] Slobodian (n 1) 66.
[83] Slobodian (n 1) 95.

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framework. This restructuring aimed to empower poorer nations to attain specific development objectives and emancipate themselves from "dependency" relationships.[84] The neoliberals saw this rapid proliferation of self-determination policies following decolonisation—and thus the heightened risk of a “new state majority” against global imbalances and asymmetries—as a threat to liberal order.[85]

The neoliberals saw direct parallels between the politicisation of the economy in the Global North and South, and consistently opposed both. As Mises observed in 1952: “If it is right for the British to nationalise the British coal mines, it cannot be wrong for the Iranians to nationalise the Iranian oil industry”.[86] Thus, the neoliberals argued that empires could end, but only if capital rights were secured and nation-states were kept from impeding the free flow of money and goods.[87] But how to ensure this outcome in an era of decolonisation when liberation, self-determination and sovereignty were considered defining traits of statehood? In addition, the neoliberals had to grapple with the fundamental reality that the economic systems of numerous Western countries relied on unrestricted access to raw materials from an economic realm extending well beyond the political borders of post-imperial states.[88] a "free" global market, then, was not so much an alternative as it was a surrogate for empire, or what German economist Moritz Bonn called an "invisible economic empire”.[89]

As Slobodian highlights, the neoliberals exploited the fundamental incongruity between states and markets, employing the Roman Law-based dichotomy articulated by the Nazi legal scholar Carl Schmitt: "dominium", signifying rule over things, and "imperium", denoting rule over people.[90] The safeguarding of property rights across political and territorial boundaries thus emerged as one of the pivotal institutional objectives of neoliberalism.[91] The expansion of the idea of human rights was a potentially damaging addition to the language of world government.[92] But instead of outright rejecting human rights, neoliberals tended to undermine social democratic interpretations of human rights while simultaneously co-opting them to serve clearly

[84] Slobodian (n 1) 216.
[85] Slobodian (n 1) 216.
[86] Slobodian (n 1) 139.
[87] Slobodian (n 1) 220.
[88] Slobodian (n 1) 246–47.
[89] Slobodian (n 1) 97.
[90] Slobodian (n 1) 10, 138.
[91] Slobodian (n 1) 138.
[92] Slobodian (n 1) 119.

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capitalist prerogatives.[93] Indeed, as we will see in chapter 3, Neoliberals would actively support efforts to curb calls for social and economic rights while striving to establish an alternative global system where investors and corporations, rather than citizens or refugees, would be the archetypal rights-bearing subjects. The antiquated imperial legacy of the Geneva School is apparent in the various instances scattered throughout Slobodian's work, where its scholars suggest that the global division of labour between an industrialised Western core and a periphery providing raw materials, which first emerged in the early modern period, was somehow *natural* and, ultimately, *right*. Bonn, for instance, cautioned against further "industrialization in an already over-industrialized world"; the Mont Pèlerin Society expressed concerns about the "overindustrialization" of the "Global South" in the 1950s; and Röpke mocked what he referred to as "supposedly necessary industrialization" in the decolonised world.[94] Collectively, these sentiments strongly imply the extent to which the Geneva School, in significant ways, aimed to perpetuate earlier European imperial visions of global economic order through different means, institutions, arguments, and rhetoric. From the perspective of the neoliberals, "empire" was thus seen as "not an era that had ended but a task to be completed".[95]

Confronted with this dilemma, the neoliberals embarked not on dismantling the state but on establishing an international order robust enough to restrain the perceived threats of democracy and to encase the private economy within its own autonomous sphere. For the neoliberals, the necessity to discipline the state took on varied dimensions across racial lines. The decolonisation struggle in the Global South and anti-racist movements in the West intricately wove the question of the "global colour line" into distinct and competing visions of the global economic order.[96] *Globalists* emphasises that racial concerns were not unfamiliar to the Geneva School, and indeed generated significant tensions among its members. Evidently, some neoliberals were self-professed card-carrying cosmopolitans.[97] Others, such as Röpke, diverged from their colleagues by framing the threat to global capitalism posed by decolonisation in explicitly racist terms. Röpke understood the struggle over

[93] Slobodian (n 1) 136.
[94] Slobodian (n 1) 97, 143, 166.
[95] Slobodian (n 1) 181.
[96] Getachew (n 17) 80.
[97] See Slobodian (n 1) 105, 107. Hayek and Mises are good examples.

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apartheid in South Africa as a battle between the civilised, entrepreneurial subjects of global capitalist order—embodied by the White population—and their backward Other—embodied by the Black population.[98] One example of Röpke's evolutionary racism was his description of the "South African Negro" as "a man of an utterly different race" who "stems from a completely different type and level of civilization".[99] In another striking passage, Röpke's correspondent, sociologist Helmut Schoeck, expressed to him that western intellectuals' reluctance to acknowledge African "inferiority" was a manifestation of their guilt for having "failed to intervene... in Hitler's persecution of the Jews." Schoeck lamented that one could not "bring six million Jews back to life" by "putting cannibals in their place".[100]

While there is no doubt that Röpke's *explicit* commitment to racial hierarchy was uncommon amongst his intellectual companions,[101] it is important to caution against the excessive exceptionalisation of Röpke's stance. Racism does not always clear its throat and announce itself. Indeed, Ntina Tzouvala astutely observes that white supremacy constitutes a pervasive global system of dominance and exploitation that functions through, beyond, and in opposition to legal texts and institutions.[102] This idea certainly rings true in the context of the Geneva School's ordoglobalism that coalesced in its present form in the 1990s around institutions like international investment law, European competition law, and international treaty organisations like the WTO and the North American Free Trade Agreement (NAFTA). This study examines the use of Bilateral Investment Treaties (BITs) to constrain efforts of redress and redistribution in "post"-apartheid South Africa, thereby sustaining a racialised international division of wealth and labour.[103] Such laws are generic templates, officially "colour-blind". Yet here the failure is not what is seen (human group differences as in the case of Röpke) but what is ignored—a wilful blindness to the history and legacies of settler-colonialism

[98] Slobodian (n 1) 149–151.
[99] Slobodian (n 1) 152.
[100] Slobodian (n 1) 171.
[101] See Slobodian (n 1) 150. Röpke's stance on apartheid South Africa poses discomfort among many of his supporters. According to Slobodian, recent scholarly analyses of Röpke tend to overlook his vigorous defence of apartheid South Africa, with even a comprehensive biography failing to make any reference to it. Slobodian also notes that his rhetoric stands in stark contrast to the intellectual history of the neoliberal movement from the 1920s to the 1980s, where explicit defences of racial hierarchy had only a marginal role. Röpke's position on apartheid diverged from thinkers such as Hayek and Mises, leading him to align more closely with the traditionalist conservatives of the U.S. New Right.
[102] N Tzouvala *Capitalism as civilisation* (2020) 60.
[103] See chapter 6.

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and apartheid requiring restoration. This latter ignorance is shared by nearly all of the neoliberals of the Geneva School.[104]

Through a careful reading of his work, Slobodian documents the intersection between the neoliberal aversion to mass democracy and neoliberal thinkers' qualified criticisms of apartheid, which primarily focused on racial segregation and exclusion from the marketplace.[105] It is notable that these same intellectuals were receptive to the idea of introducing weighted voting rights in order to avert the possibility of a black-majority republic, which was viewed as a threatening prospect by both extremist and "moderate" defenders of apartheid alike.[106] Returning to the point of the necessity of rejecting attempts to firewall Röpke's defence of white supremacy from the worldviews of his fellow Geneva School neoliberals, it must be pointed out that requiring explicit documentation of individuals categorising Africans as "cannibals" sets an exceedingly high (and indeed, unnecessary) standard for identifying the endorsement of racialised models in the global economic order. In fact, Frank Furedi elucidates how, as tensions within the empire escalated, explicit white racism began to be viewed as a dangerous provocation, with the potential to heighten anticolonial sentiments and erode white supremacy.[107] To maintain the imperial status quo the West adopted a policy that Furedi calls "racial pragmatism", a conscious decision to curb racism to minimise destructive reactions against it. In executing this manoeuvre, Western elites "pragmatically" acknowledged the unacceptability of (explicitly) racial thinking and affirmed the necessity of upholding the principle of racial equality.[108] But this is a begrudging acceptance, which they continually resent. Furedi's thesis suggests a clear implication: true equality cannot be recognised in Western consciousness until the underlying assumptions shaping this identity are critically examined.

It is therefore important to highlight that the very attempt at typologising—that could easily be seen as the distinct contribution of Slobodian's work—can also go too far. Drawing neat lines of separation, as Slobodian tends to do with his analysis of Geneva School racism, can obscure the underlying commonalities that might be more consequential in the end. So, while Röpke's characterisation of African nationalists as

[104] See Slobodian (n 1) 232.
[105] See Slobodian (n 1) 179–180.
[106] See Slobodian (n 1) 174–178.
[107] F Furedi *The silent war: Imperialism and the changing perception of race* (1998) 84.
[108] Furedi (n 107) 79–80.

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"cannibals" starkly contrasts with the precise and technical language employed by the Geneva School's Ordoglobalism; it is crucial to underscore that the effectiveness of this world-altering perspective hinges on the use of specialised, subtle, and indeed, "pragmatic" terminology and techniques in order to achieve its primary objective of reasserting racial hierarchy in the international order.

2.4. Interrogating the "fall" of self-determination: Neoliberal worldmaking, internal tensions, and external assaults

As this brief historical exploration of neoliberal worldmaking continues to unfold, the looming presence of neoliberal internationalism emerges as an undeniable force. But the story of its irresistible influence cannot be told fully without considering Adom Getachew's account of the "rise" and "fall" of self-determination. By delving into the decolonisation strategies employed by African postcolonial nationalists in the mid-twentieth century, including anticolonial nationalism discourse and the political concept of self-determination, Getachew posits a unique perspective. She argues that these visionaries were engaged in a distinctive nationalist-internationalist endeavour, one that transcended traditional nationalisms of earlier eras and differed from the liberal internationalism already in play at that time. For these intellectuals, anticolonial nationalism and the utilisation of self-determination were not confined to narrow sovereign pursuits but rather constituted competing endeavours in the broader project of worldmaking.

As the United Nations institutionalised the concept of self-determination, it evolved into a potent political principle that anticolonial nationalists could leverage in their quest for autonomous societies emancipated from European domination. But the question then arises of what happens when such struggles are seen to fail? What are we to make, politically, of Getachew's account of anti-colonial worldmaking? One of Getachew's objectives is to revisit the post-war phase of decolonisation, highlighting that narratives focusing on the expansion of international society often neglect the central concerns and expansive internationalist visions of anticolonial nationalists during this period. These racist accounts,[109] which tend to argue that the world could never have been

[109] See J Pierre "The racial vernaculars of development: A view from West Africa" (2019) 122 (1) *American Anthropologist* 86 91. Pierre highlights how the demand for "good governance" and the accompanying criticism of the African state are rooted in profoundly racialised perspectives of Africa and its people. She further expresses that scholars ought to be concerned about the specific language of contempt, disappointment, and rejection frequently employed in describing African politics. Additionally, the persistent use of racialised epithets to characterise what has been essentialised as the

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different, commonly attribute the "failures" of Third World initiatives to the presumed inherent unsustainability of an equitable global order.[110] These dreams all failed, the argument goes, because they could never have succeeded.

Getachew's argument aligns more closely with this conclusion than it should, both historically and politically. Her account of the “fall” of self-determination is rooted in the end of a “moment”. Key to the fall seems to be the notion that the internal constraints of anticolonial nationalism played a decisive role in its demise.[111] In this way, Getachew's narrative tends to reinforce an emphasis on postcolonial failure, diverting attention from the diverse array of forces aligned against it, and which ultimately ensured its defeat. To be sure, the narrative choices of defeat versus failure, of internal tensions and contradictions and external assault are ones Getachew struggles with throughout her work. While she attempts to acknowledge the nearly insurmountable challenges encountered by the anticolonial worldmaking project, she appears to be more concerned with ensuring that hers is not to be a vindicationist narrative that refuses to reckon with the blind spots and contradictions of the characters in her study. Ultimately, she seeks to meld a narrative of failure and defeat. In one “episode” of this narrative, Getachew turns her attention to the anti-colonial programme of securing economic equality. Here, Getachew does address a specific instance of defeat where a new endeavour in neoliberal worldmaking displaces the pursuit of an egalitarian global order (the central focus of this study);[112] but even so, she is particularly focused on highlighting the internal divisions within the Third World coalition, specifically the contrasting stances of “oil-producing and oil-consuming” nations that undermined the anti-colonial worldmaking effort.[113]

"African state" in anthropological and social science literature, such as kleptocratic state, failed state, zombie state, vampire state, predatory state, and parasitic state, raises further alarm.

[110] A list of such accounts cannot be exhausted here. See for example J Bayart *The state in Africa: The politics of the belly* trans M Harper C Harrison & E Harrison (1991) (focusing on the emergence of a “new elite” in many African countries following decolonisation while glossing over the overarching hegemony of the global capitalist system (see p 12–13 in particular)**;** TN Harper *The end of empire and the making of Malaya* (1999) (providing a patently Western-centric account of the “internal struggles” at the heart of Malayan society following independence from British rule); and B Davidson *Can Africa survive? Arguments against growth without development* (1974) (focusing on the emergence of an “opportunistic” elite (p 47) and the potential of “tribal nationalism” (p 56) in African countries following decolonisation).

[111] Getachew (n 17) 179.

[112] Getachew (n 17) See chapter 5.

[113] Getachew (n 17) See chapter 5.

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For this reason, it is imperative to complement the reading of Getachew's narrative with works that delve more directly into (the political economy of) the 1970s. These sources provide a more precise account of what happened to the initiatives she describes, as well as others like them. Scholars such as Quinn Slobodian have demonstrated that the unravelling of numerous third-world initiatives asserted during the decolonisation phase of the twentieth century, including anticolonial nationalism projects, was not merely the outcome of spontaneous "falls" driven by internal contradictions. Rather, it resulted from a series of influences from the United States and other First World nations—translated into concrete projects of capitalist internationalism.[114] Understanding the failures of the institutional, legal, political, and economic struggles in the Third World during the 1970s as lost battles in a war against powerful interests disrupts several key beliefs within the post-Cold War international order. For instance, the idea that there was a radical departure from imperialistic practices is a myth that is crucial to the claim of the "developed" world to be a benevolent bringer of the gift of reason.[115]

Getachew's work exemplifies the way that history-telling is always a contentious political struggle—particularly when recounting tales of triumphs and failures. But understanding that the project of anti-colonial worldmaking failed because it was intentionally destroyed, rather than having simply fizzled out on its own, is crucial when revisiting such historical events. In the ongoing battle for justice, it is essential to recognise that those in power have a tendency to make the failure of resistance projects a permanent aspect of their existence.

2.5. Beyond economics: Unravelling neoliberalism's global political rationality and challenges in theorising its impact

The juxtaposition of anti-colonial "worldmakers" advocating for self-determination with neoliberal intellectuals reveals a profound ideological struggle for the future global order. Neoliberalism, illuminated by this comparison, transcends being merely an economic doctrine. it represents a deliberate effort to shape a specific vision of global governance. The fear exhibited by neoliberal intellectuals towards anti-colonial

[114] Slobodian (n 1). See also S Pahuja & A Saunders "The UN initiative on transnational corporations" in J von Bernstorff & P Dann (eds) *The battle for international law: South-North perspectives on the decolonization era* (2019). The account of (US) efforts to scuttle to third-world initiatives during the 1960s and 70s, made in relation to transnational corporations, would complement Getachew's text in important ways.
[115] Tzouvala (2020) (n 102) 39.

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movements indicates an awareness of the transformative potential inherent in the idea of self-determination. In response, neoliberalism positions itself as a counterforce, leveraging institutions to propagate market rationality on a global scale. This discussion, particularly given the intricacies explored in the preceding dialogue, highlights a fundamental challenge in theorising neoliberalism: the imperative to move beyond localised perspectives and engage with its global dimensions.

Over the years, the term "neoliberalism" has gained traction not only within academic circles but also increasingly within civil and political society. While practical usage of the term has proven fruitful, providing a common focal point for political and social actors, its theoretical proliferation has led to confusion. When discussing neoliberalism, are we referring to growing inequality, the expansion of marketisation, or the ascendancy of the financial sector? According to Wendy Brown, neoliberalism resists simplistic reduction to any single social process. None entirely captures its essence. Brown's perspective emphasises that theorising neoliberalism necessitates responding to the question: "Where are we?" It demands a nuanced diagnosis of "what our present is", borrowing a phrase from Michel Foucault.[116]

Brown conceives of neoliberalism as coexisting alongside contemporary capitalism, rather than as its intensification or product.[117] To be sure, this approach runs counter to the insights of Marxist theorists such as David Harvey,[118] but this does not imply that Brown regards capitalism as less significant or inconsequential in comparison to neoliberalism. Instead, Brown views capitalism and neoliberalism as two separate yet interconnected processes that mutually reinforce the most oppressive aspects of one another.[119] In her attempts to address the seemingly contradictory mélange of neoliberal and (ultra-)conservative, populist, or outright authoritarian forces that have intensified since the mid-2010s in the US context,[120] Brown argues—following Foucault—that neoliberalism is a political rationality that in remaking liberal governance, engenders a system of economic valuation so pervasive that it renders it nearly impossible to envision an existence beyond the confines of capitalism:

[116] See S Fuggle *et al* Foucault and the history of our present (2015) 3 and W Brown *In the ruins of neoliberalism: The rise of antidemocratic politics in the West* (2019) 2–3.
[117] Brown (2019) (n 116) 6.
[118] Harvey (n 1).
[119] W Brown *Undoing the demos: Neoliberalism's stealth revolution* (2015) 122.
[120] Brown (2019) (n 116) 59.

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"Neoliberalism is the rationality through which capitalism finally swallows humanity".[121] In practical terms, neoliberalism gives rise to self-investing, entrepreneurial individuals for whom the notion of "collective organising" appears irrelevant and incomprehensible.[122] Thus, a truly democratic polity that might challenge or at least ameliorate capitalist dominance becomes unthinkable.

In this way, Brown's approach rests on two key assumptions. First, she emphasises the importance of adopting a perspective on neoliberalism that is not confined to the strictly economic realm and recognises that "nothing is untouched by a neoliberal mode of reason and valuation", asserting that its critical analysis also "requires appreciating neoliberal political culture and subject "production".[123] This means, among other things, that neoliberalism is not understood as an exclusively economising project but rather as a political one that promotes the duo of markets and morals.[124] This idea requires further consideration. The most common critiques of neoliberalism often concentrate on its economic ramifications—the extreme income inequalities it fosters and legitimates;[125] the rise of precarious populations;[126] privatisation eroding shared access to public goods;[127] and that it exposes states, societies and individuals to unregulated financial market fluctuations.[128]

Each of these is an important and objectionable effect of neoliberalism. But the damage wrought by neoliberalism extends beyond economic realms, profoundly impacting democratic practices, cultures, institutions, and imaginaries.[129] Understanding neoliberalism as a governing rationality is crucial, as the promise of "democracy" depends on an understanding of democracy as the specifically political reach by the people to hold and direct powers that otherwise dominate us.[130] Once

[121] Brown (2015) (n 119) 44.
[122] Brown (2015) (n 119) 10.
[123] Brown (2019) (n 116) 8.
[124] Brown (2019) (n 116) 11.
[125] See for example R Kwon "How do neoliberal policies affect income inequality? Exploring the link between liberalization, finance, and inequality (2018) 33 *Sociological Forum* 643.
[126] See for example DM Kotz "Globalization and neoliberalism" (2002) 12 *Rethinking Marxism* 64.
[127] See for example L Heller *The human rights to water and sanitation* (2022) 117–139. Dealing with neoliberalism and the privatisation of water.
[128] See for example E Stockhammer "Neoliberalism, income distribution and the causes of the crisis" in P Arestis *et al The financial crisis origins and implications* (2011) 234–258.
[129] Brown (2019) (n 116) 35.
[130] Brown (2019) (n 116) 202–203.

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neoliberal economics is enacted in law, culture, and society, popular sovereignty becomes entirely incoherent and thus unimaginable.

Importantly, Brown also goes beyond Foucault since the philosopher had a fairly limited conception of the political and consequently underestimated neoliberalism's effect on the political body. In one of her writings, Brown examines the different ways in which neoliberal political reason has been disseminated, eating away at the demos.[131] Here, Brown calls attention to the ascendance of global governance: a new, decentralised mode of governing that replaces justice with best practices, political conflict with participation and collective autonomy with "responsibilization".[132] Brown does well to attend to this all-important consideration, but even so, the bulk of Brown's analysis speaks to the transformations of neoliberalism in the context of the United States, and in this respect, there is an issue that needs to be highlighted related to the frame of reference of Brown's work, which is mostly neoliberalism, *US style*.[133]

With Brown's provincialism it is not clear to what extent the respective arguments are generalisable and whether Brown would suggest that this is the general shape and form of neoliberalism today. This is a claim not easily defended, and might well index a problem peculiar to theorising neoliberalism. On the one hand, the rise of neoliberalism is *clearly* a transnational development—the eruption of ethnonationalist and authoritarian responses to some of its effects extends across the Global South, the EU, and the United States.[134] Yet, it can be argued that the unique manifestation

[131] Brown (2019) (n 116).
[132] Brown (2019) (n 116) 10–11.
[133] While both Brown's scholarship and this study delve into the intricacies of neoliberalism within specific national or regional contexts, they adopt distinct approaches in their analytical frameworks and research objectives. In this study, the focus on "post"-apartheid South Africa serves as a specific lens through which to elucidate the international dimensions of neoliberalism. The comparative methodology employed aims to unearth unique features and patterns in South Africa's experience while simultaneously contributing to a broader understanding of global neoliberalism. The emphasis lies on exploring how neoliberal ideologies intersect with diverse historical and socio-political landscapes, with the intention of discerning patterns that transcend national borders.
Conversely, Brown's analysis zeroes in on what I see as neoliberalism "US style", emphasising a brand of neoliberalism deeply rooted in the specific policy dynamics, historical trajectories, and socio- political nuances of the United States. The intent here is to illuminate the idiosyncrasies of neoliberal practices within the US context, capturing the essence of how neoliberalism manifests in a particular national setting. Brown's work provides valuable insights into the unique features of neoliberalism within the United States, offering a detailed examination of the policy dynamics and historical trajectories that have shaped the evolution of neoliberal thought within this specific context.
In essence, while both studies examine neoliberalism within national frameworks, my approach aims to highlight international dimensions through a comparative perspective, while Brown's work delves deeply into the specificities of neoliberalism as manifested in the intricate policy and socio-political landscape of the United States.
[134] See for example Slobodian (n 1) 15 and Whyte (n 45) 193.

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of neoliberalism, its intersection with cultural and political traditions, as well as the crises it both responds to and incites are specific to each national and even subnational setting.[135] If there is indeed no *universal* architecture of "actually existing neoliberalism", can a political theory be derived from the cluster of post-war ideas that identified as neoliberalism? If so, what are elements and arc of such a theory, its inherent values and principles, and its tensions or aporias?

Deriving a political theory from classical neoliberal thought is an especially challenging undertaking not least because "neoliberal" is a shorthand for the non-unified ensemble of post-war thinkers hailing from Germany, Austria, the United Kingdom, Switzerland, and the United States who gathered under the rubric of the MPS but pursued most of their work separately from one another.[136] Since these thinkers were formed by what Thomas Biebricher terms different "fields of adversity" (collectivism, the Keynesian welfare state, paleoliberalism, fascism, republicanism) and were trained in different disciplines (economics, philosophy, sociology, politics),[137] they also differently appraised the limits of classical liberalism—a concern that united these figures.[138] If they all demonised robust democracy, popular sovereignty, and social justice they differed on how best to secure "the political and social conditions for functioning markets".[139] Establishing these conditions constitutes what Biebricher terms "the neoliberal problematic"; what distinguishes neoliberalism from laissez-faire political economy (neoliberalism's classical ancestor) is the extent to which markets require careful institutional and legal and support.[140]

This analysis underscores the need for a specific political theory of neoliberalism—one that can recognise the diverse perspectives within neoliberal thought and skilfully reconcile these viewpoints to illuminate neoliberalism's prescriptions for global

[135] See Brown (2019) (n 116) 17–21. Brown appears to resign herself to this idea. She accepts that a neo-Marxist conceptualisation of neoliberalism akin to that of Slobodian's—one that ultimately formulates neoliberalism as a *global* project that is designed to quash nation-state economic sovereignty—contributes significantly to understanding the characteristics of "actually existing neoliberalism" and of the current conjuncture. However, notwithstanding this acknowledgment, Brown instead harnesses a predominately Foucauldian approach (although, she claims to employ a neo-Marxist approach as well) culminating in an account of neoliberalism's assault on democracy, and its activation of traditional morality in place of legislated social justice, in the US. She claims that such an approach best explains the moral dimension of neoliberalism.
[136] Slobodian (n 1) 12.
[137] T Biebricher *The political theory of neoliberalism* (2018) 18.
[138] Biebricher (n 137) 18–21.
[139] Biebricher (n 137) 26.
[140] Biebricher (n 137) 2, 56. Biebricher's work converges with Slobodian's (n 1) in this regard.

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governance. Such a theory is particularly crucial when considering that, what emerges from Brown's account of neoliberalism is an unbridled freedom ("liberty") acting out its instinctual impulses in an almost hedonistic manner, without regard for its own conscience, society, or the future of the planet.[141] But how does this sit with accounts of actually existing neoliberalism that stress its disciplinary aspects, ranging from generalised austerity to the instalment of workfare regimes across the world (to name a few)? In a nutshell, where Brown sees license and de-sublimation, it is also easy to see the harsh discipline of what William Davies has described as a punitive neoliberalism.[142] These are certainly global phenomena, and efforts to politically theorise our conjuncture cannot overlook these considerations.

Ultimately, the inability of Brown (and many others) to explore or understand conceptual frameworks similar to Biebricher's neoliberal problematic results in a narrow and incomplete understanding of neoliberalism's global impact. It tends to undermine the need for scholars to be attentive to the ways that power operates in different contexts and to the diverse ways that people experience and respond to neoliberalism.[143] This deficiency is highlighted by Brown's focus on Western philosophical traditions and her absence of engagement with African thought—specifically the unique ways that neoliberalism has affected African societies, such as the legacy of colonialism and the ongoing struggle for economic and political independence. But a failure to take this history into account greatly affects our ability to gain a more nuanced understanding of the historical and cultural context in which neoliberalism emerged—acknowledging the role of anti-colonial resistance in shaping neoliberalism helps us to recognise the diversity of perspectives and experiences that have contributed to the development of this ideology. It also highlights the complex

[141] See Brown (2019) (n 116) 28–30.
[142] See generally W Davies "The new neoliberalism" (2016) 101 *New Left Review* 121 130. Davies states, "Under punitive neoliberalism, economic dependency and moral failure become entangled in the form of debt, producing a melancholic condition in which governments and societies unleash hatred and violence upon members of their own populations". Davies states that the global financial crisis triggered this phase, suggesting that the transfer of banking debts onto government balance sheets, leading to austerity measures, is a phenomenon observed not only in a specific country but on an international scale. The emphasis on "financialisation" and the subsequent justification for austerity measures indicates a broader, global context where economic policies influenced by neoliberal principles are impacting governments and societies worldwide. The entanglement of economic dependency and moral failure through debt, and the resulting melancholic condition, can be seen as not confined to a single nation but as part of a larger, international phenomenon during this phase of neoliberalism.
[143] Steven Lukes emphasises the desirability of such an approach. See S Lukes *Power: A radical view* (2nd ed) (2005) 62.

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relationships between colonialism, imperialism, and economic development, which have had lasting impacts on the political and economic systems of many countries around the world.

2.6. Conclusion

This chapter has examined the intellectual history of neoliberalism, focusing on the crucial role played by anti-colonial resistance in shaping the emergence and development of this economic and political system. By highlighting the role of anti-colonial resistance in shaping the intellectual responses of neoliberalism's proponents, particularly those of the Geneva School, this chapter has attempted to offer a nuanced understanding of neoliberalism's intellectual history that recognises the complex interplay between (Western) power and anti-colonial resistance. Through the lens of Quinn Slobodian's historical exegesis, we have seen how neoliberalism emerged as a response to the changing global economic landscape and the opportunities for new markets in newly independent countries. We have also seen how anti-colonial resistance challenged dominant forms of power and governance, and how neoliberalism responded to those challenges by offering a vision of a global economic order oriented towards the interests of transnational corporations and wealthy elites.

Moreover, by conceptualising white supremacy as a global system of domination and exploitation that operates through, beyond, and against legal frameworks and institutions, we can better connect the themes of empire and race explored separately in Slobodian's book. Adom Getachew has encouraged us to reconsider imperialism not only in terms of direct political domination, but also in light of the perspectives of radical post-colonial leaders who understood imperialism as a condition of unequal integration into the global economic and political system. Within this framework, race and racialisation become contingent and dynamic processes that are manifested in unexpected arenas—including, as will be seen in chapter 4—international economic law. In this way, the intellectual history of neoliberalism evinced by the likes of Slobodian provides an essential roadmap for re-examining neoliberalism and its international economic structure and legal foundations, particularly in a time when the most vocal challenges to the existing status quo aim to deepen rather than dismantle these hierarchies.

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Chapter 3: Equality is a disorganising concept": Neoliberalism, human rights, and cultural conflict.

3.1. Introduction

In the preceding chapter it was established that the rise of neoliberalism in the late 20th century has significantly transformed the global order, with its influence extending beyond economic policy to shape political and social institutions. A central tenet of neoliberalism is the pursuit of free markets and global economic integration, which requires the removal of barriers to the movement of goods, capital, and labour across borders. However, this pursuit of economic liberalism has been accompanied by the erosion of traditional forms of political sovereignty, which has led to new tensions between economic and political actors. One way in which neoliberalism has sought to manage these tensions is through the use of human rights discourse.

In *Globalists* Slobodian introduces the term "xenos rights" to describe the legal protection of foreign property rights and the unhindered flow of capital.[1] These rights, as elucidated by Slobodian, encompass the idea of individuals possessing protected rights to safe passage and undisturbed ownership of their property and capital, irrespective of territorial boundaries.[2] He observes that xenos rights are intrinsic to the unified economic domain of *dominium*, in contrast to the fragmented landscape of state-centred *imperium*.[3] This distinction underscores the relationship between a unified economic domain and a potentially disjointed state-centric environment. Importantly, Slobodian argues that the preservation of xenos rights necessitates the involvement of political institutions within the *imperium*, resulting in enduring tensions between the economic and political realms.[4]

Furthermore, Slobodian provides an erudite account of how the neoliberals of the Geneva School aided in the campaign to contain demands for social and economic rights and to "institutionalise a parallel global regime in which the investor and the corporation—and not the citizen or refugee—was the paradigmatic rights-bearing subject".[5] He demonstrates that instead of outrightly rejecting the concept of human

[1] Q Slobodian *Globalists: the end of empire and the birth of neoliberalism* (2018) 123.
[2] Slobodian (n 1) 123.
[3] Slobodian (n 1) 220.
[4] Slobodian (n 1) 123, 220.
[5] Slobodian (n 1) 120.

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rights, neoliberals have chosen to undermine interpretations of human rights (including international human rights) that lean towards social democracy. Simultaneously, they have co-opted these rights to further their capitalist interests and objectives.[6] But to say that this was (or is) a critique of "social and economic rights" would be misleading, especially because the neoliberals themselves held the belief that the unrestricted movement of capital, goods, and labour constituted social and economic rights on par with the demand for employment, adequate housing, or nourishment.[7] Indeed, as Slobodian points out, the market rights enshrined in the European Economic Community Treaty were central to the neoliberal vision of Europe. In contrast to Roosevelt's Four Freedoms—freedom of speech, freedom of worship, freedom from fear, and freedom from want—neoliberals advocated for the four freedoms of capital, goods, services, and labour.[8]

Expanding upon this concept, Jessica Whyte posits that neoliberals reimagined human rights as "the moral language of the competitive market".[9] She asserts that they formulated their unique understanding of human rights as safeguards for the neoliberal market structure.[10] According to Whyte, this expression of the neoliberal vision was most pronounced during the era of neoliberal ascendancy.[11] This much is clear in Margaret Thatcher's championing of a "right to be unequal",[12] and in Ronald Reagan's boastful statement that "from Central America to East Asia, ideas like free markets and democratic reforms and human rights are taking hold".[13] It was taken up the then Director-General of the WTO, Pascal Lamy, who declared vigorously in 2010: "One could almost claim that trade is human rights in practice!" Lamy contended that "human rights and trade rules, including WTO rules, are based on the same values:

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[6] Slobodian (n 1) 136.
[7] Slobodian (n 1) 136.
[8] Slobodian (n 1) 136.
[9] J Whyte *The morals of the market: Human rights and the rise of neoliberalism* (2019).
[10] Whyte (n 9) 30.
[11] See Whyte (n 9) 30. The period of neoliberal ascendancy generally refers to the late 20th century and the early 21st century. Neoliberalism gained prominence in the 1970s and 1980s, with influential figures like Ronald Reagan in the United States and Margaret Thatcher in the United Kingdom implementing neoliberal economic policies. This era saw a widespread embrace of free-market principles, deregulation, privatisation, and a reduced role of the state in economic affairs.
[12] See Margaret Thatcher's 1975 speech to the Institute of Socioeconomic Studies ("Let our children grow tall") available at https://www.margaretthatcher.org/document/102769.
[13] See Ronald Reagan's 1986 State of the Union Address (US House of Representatives, 4 February 1986) available at https://www.reaganlibrary.gov/archives/speech/public-papers-ronald-reagan-february-1986.

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individual freedom and responsibility, non-discrimination, rule of law, and welfare through peaceful cooperation among individuals".[14]

Hayek's student, the international trade lawyer Ernst-Ulrich Petersmann, expressed this vision clearly when he argued for the interdependence of human rights and international trade law. In his seminal article published eight years before the WTO embraced the idea of a mutual relationship between human rights and competitive markets, Petersmann promoted the idea of globalising human rights, which he believed could be accomplished by fostering open markets, prohibiting economic discrimination, and the implementation of "welfare-increasing division of labour" by the WTO.[15] He argued that human rights promote economic integration by "protecting personal autonomy, legal and social security, peaceful change, individual savings, investments, production and mutually beneficial transactions across frontiers".[16]

But this neoliberal conception of human rights was not only embraced by right wing or conservative actors. Drawing from extensive historical analysis, Whyte shows that prominent organisations advocating for human rights, including Amnesty International, Human Rights Watch, and *Liberté sans Frontières* (LSF), have explicitly or implicitly relied on a rights framework developed by neoliberals since the 1940s.[17] These organisations, often lauded for their humanitarian efforts, have adopted and adapted neoliberal conceptions of rights to advance their agendas and influence global discourse on human rights.[18]

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[14] See "Lamy calls for mindset change to align trade and human rights" available at https://www.wto.org/english/news_e/sppl_e/sppl146_e.htm.

[15] E-U Petersmann "Time for a United Nations "Global Compact" for integrating human rights into the law of worldwide organizations: Lessons from European integration" (2002) 13:3 *European Journal of International Law* 621 639.

[16] Petersmann (n 15) 621.

[17] Whyte (n 9). See chapter 4.

[18] See Whyte (n 9) chapter 5. Revealing how human rights NGOs, particularly LSF, strategically incorporated neoliberal ideas. Their aim was to counter third-world advocacy for a new economic order, not only aimed at rectifying the injustices of colonialism but also initiating a global economic redistribution program. Far from avoiding economic considerations, LSF played a pivotal role in challenging the Third-Worldist perspective that attributed underdevelopment to colonial and ongoing neo-colonial influences, as well as economic exploitation. The strategic use of human rights language played a crucial role in reallocating responsibility for underdevelopment to the third world. This was achieved by asserting that the hardships faced by post-colonial societies were a consequence of internal conditions related to the failure of post-colonial states to safeguard human rights, primarily interpreted as freedom from state intervention. This argument, rooted in the dichotomy between the market as a peaceful, non-coercive realm and politics as inherently violent, led to the conclusion that any economic intervention would only worsen the situation. Moreover, the application of a "progressive gloss" to human rights not only assisted in neutralising solidarity movements in the West but also served to de-politicise the detrimental effects of neoliberalism.

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This chapter seeks to critically evaluate the link between human rights and neoliberalism. Through an analysis of Whyte's historical exegesis of neoliberalism and its impact on human rights discourse, It aims to illuminate the apparent puzzle that the human rights politics of the late twentieth century, marked by its unique utilisation of international institutions to curtail the authority of the state, seemingly emerged, as Samuel Moyn puts it, "seemingly from nowhere".[19] Situating neoliberalism within a broader historical context—including its intellectual foundations and its influence on international law and institutions—the chapter endeavours to illustrate that the convergence between neoliberalism and human rights is not a sudden occurrence but a result of long-term ideological developments and interactions. Ultimately, the goal of this chapter is to reveal the underlying assumptions and potential effects of this symbiotic relationship on our current conjuncture.

The exploration of the relationship between human rights and neoliberalism emerges from a critical stance on prevailing assumptions in social-scientific literature. While conventional wisdom tends to portray human rights as a shield against neoliberal capitalism, this chapter shows that, in many instances, human rights have been wielded to validate neoliberal ideologies. It specifically examines how neoliberal justifications of competitive markets and individual property rights were built on racialised narratives that placed "Western civilisation" over and above colonial and postcolonial societies, which were deemed incompatible with Hayek's concept of "the morals of the market". Furthermore, by examining Whyte's exploration of the post-war neoliberal resurgence of an eighteenth-century argument regarding the "sweetness of commerce"—which sought to temper the unruly nature of human passions through market relations—it illustrates that neoliberals endeavoured not only to weaken the influence of rising postcolonial nation-states but also to reshape this argument through a generalised dichotomy wherein markets foster peace and politics engender violence.

Importantly, exploring the intricate relationship between human rights and neoliberalism exposes the structural constraints entwined within rights discourse. This analysis suggests that the symbiotic alliance between neoliberalism and human rights operates as a strategic mechanism utilised by neoliberals to restrict avenues for transformative change outside the human rights framework. Significantly, this not only

[19] S Moyn *The last utopia: Human rights in history* (2010).

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complicates endeavours challenging entrenched systems but also underscores how neoliberals strategically leverage human rights as a tool to legitimise and safeguard their ideological framework, creating barriers against challenges to their deeply entrenched ideology. Understanding these dynamics becomes pivotal for comprehending why rights discourse is frequently perceived as insufficient in instigating meaningful societal transformation.[20]

Section 3.2 delves into the intertwining of human rights and neoliberalism as explored in Jessica Whyte's "The morals of the market". Examining the alignment of human rights language with the rise of neoliberalism since 1947, it explores the early appropriation of human rights language by neoliberal thinkers and the resulting convergence, emphasising the distinct version of human rights championed by NGOs and the US government three decades after the Universal Declaration of Human Rights (UDHR). **Section 3.3** discusses the amorality of neoliberalism, challenging the notion of it as morally indifferent economism. **Section 3.4** delves into Friedrich Hayek's perspective on the morals of the market, emphasising his views on moral standards for free enterprise, the erosion of moral foundations, and the role of individualistic values in justifying wealth accumulation. **Section 3.5** explores the "sweetness of commerce" thesis, tracing its roots to Albert Hirschman and its connection to neoliberalism, revealing neoliberals' broader concerns beyond economic dominance. Lastly, **Section 3.6** provides a comprehensive exploration of how neoliberal human rights operate, shedding light on historical trajectories and conceptual underpinnings. It emphasises the influential yet potentially limiting role of rights discourse in promoting neoliberal dominance by grappling with concerns about mass democracy and limiting the potential for radical societal change. It reveals a nuanced neoliberal stance on human rights, strategically aligned with liberal ideals to safeguard the market order.

3.2. The relationship between human rights and neoliberalism

In *The morals of the market*,[21] Jessica Whyte delves into the historical and conceptual intersections between human rights and neoliberalism. It is widely acknowledged that the adoption of human rights language by American and European leaders, as well as

[20] For an overview of such critiques see A Marmor “On the limits of rights” 16 *Law and Philosophy* 1.
[21] Whyte (n 9).

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a new wave of international human rights NGOs, coincided with the rise of neoliberalism in the late 1970s.[22] To comprehend this convergence, Whyte aligns with the many thinkers who have highlighted the points of convergence and compatibility between neoliberalism and human rights. Upendra Baxi's pioneering work on "trade-related market-friendly human rights" tracks the endeavours of major corporations to harness the normative power of human rights in defence of capital rights.[23] Makau Mutua has argued that the failure of human rights NGOs to address "economic powerlessness" has contributed to the normalisation of capitalist markets and the subordination of labour relations.[24] Costas Douzinas similarly contends that negative freedom, which he characterises as a euphemism for opposing state economic regulation, has "dominated the Western conception of human rights and turned them into the perfect companion of neoliberalism".[25] For Wendy Brown, the politics of human rights not only “converges neatly with the requisites of liberal imperialism and global free trade” but also serves to legitimise them.[26] And Susan Marks has suggested that the recent shift towards examining the "root causes" of human rights violations has, in reality, shielded the structural context in which human rights violations are systematically perpetuated.[27]

To expand on these observations, Whyte delves into another parallel history that has received less attention. While the simultaneous rise of neoliberalism and human rights in the 1970s is widely recognised, it is important to note that a significant event took place several decades earlier. In 1947, the UN Commission on Human Rights convened its inaugural meeting at Lake Success with the purpose of initiating the drafting of an international bill of rights.[28] Interestingly, during the same period, a group of economists, philosophers, and historians had gathered in the Swiss Alpine village

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[22] See, for example S Moyn “A powerless companion: Human rights in the age of Neoliberalism” (2015) 77 *Law and Contemporary Problems* 147 and N Klein *The shock doctrine: The rise of disaster capitalism* (2008).
[23] U Baxi *The future of human rights* (2006).
[24] See generally M Mutua “Human rights and powerlessness: Pathologies of choice and substance” (2008) 56 *Buffalo Law Review* 1027.
[25] C Douzinas “Seven theses on human rights: (3) Neoliberal capitalism & voluntary imperialism’, *Critical Legal Thinking* (blog), 23 May 2013, available at https://criticallegalthinking.com/2013/05/23/seven-theses-on-human-rights-3-neoliberal-capitalism-voluntary-imperialism/.
[26] W Brown “‘The most we can hope for …’”: Human rights and the politics of fatalism’ (2004) 103: 2 *South Atlantic Quarterly* 451 456.
[27] S Marks “Human rights and root causes” (2011) 74: 1 *Modern Law Review* 57.
[28] Whyte (n 9) 11.

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of Mont Pèlerin to discuss the principles that could underpin a new liberal order.[29] While the former group's efforts led to the creation of the UDHR, envisioned as a shared milestone for all peoples and nations, the latter group's discussions laid the groundwork for the establishment of the MPS, which has been aptly described as the "neoliberal thought collective".[30]

While most existing accounts about the relationship between human rights and neoliberalism begin in the 1970s, Whyte takes a step back to the 1940s to explore the development of neoliberal human rights discourse in the preceding decades leading up to the ascent of neoliberalism. In 1947, the differences between those who drafted the UDHR and the neoliberals of Mont Pèlerin were more substantial than their areas of agreement. Both groups recognised the importance of addressing threats to human dignity and freedom in the aftermath of World War II, but their proposed solutions differed markedly. The human rights delegates embraced a comprehensive range of social and economic rights, whereas the neoliberals portrayed state welfare and planning as totalitarian threats to the foundations of "Western civilisation".[31] Whyte's central focus is to examine how neoliberal thinkers perceived the emergence of human rights and subsequently appropriated and shaped the language associated with them to serve their own objectives[32]. By gaining a deeper understanding of the role human rights played in earlier neoliberal thinking, Whyte is able to shed light on their eventual convergence in later years.

Approximately three decades after the UDHR was adopted, a distinct and influential version of human rights began to gain prominence. This version was championed by

[29] Whyte (n 9) 11.
[30] Mirowski (n 7) 21.
[31] See Whyte (n 9) 37–40. The neoliberals contended that state welfare and planning were totalitarian threats to the concept of "Western Civilisation" due to their belief that excessive government intervention, especially in the form of extensive welfare programs and centralised economic planning, could potentially undermine the core principles they associated with Western societies. From the neoliberal perspective, while they acknowledged a strategic role for the state in safeguarding the market, they were wary of an overreliance on state control. They argued that an expansion of welfare programs and comprehensive economic planning might lead to a concentration of power in the hands of the government, limiting individual freedoms and impeding the efficient functioning of the free market—elements they considered crucial to the success and prosperity of Western civilisation. Neoliberals were concerned that a heavy-handed approach to state welfare and planning could stifle individual entrepreneurship, innovation, and market dynamics, ultimately eroding the very values they deemed integral to Western societies. In this view, the potential encroachment of the state into various aspects of economic and social life was seen as a threat to the principles of limited government, free markets, and individual liberties that neoliberals believed underpinned the essence of Western Civilisation.
[32] Whyte (n 9) 37.

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international NGOs and the United States government.[33] Notably, it replaced earlier efforts to establish rights related to housing, food, education, and medical care with a narrower emphasis on civil and political rights.[34] This particular interpretation of human rights became hegemonic alongside neoliberal assaults on both the welfare state and on postcolonial endeavours to restructure the global economy in pursuit of greater equality.[35] Human rights became the prevailing ideology in an era characterised by the decline of revolutionary utopias and socialist politics, which Margaret Thatcher succinctly encapsulated in her famous assertion that "there is no alternative".[36] It coincided with the rise of neoliberalism and the erosion of alternative political and economic paradigms.[37]

The economic transformations of this period were stark, from the emergence of austerity measures and the reduction of state welfare programs, to the commercialisation of public services and the deregulation of the financial sector. As a result, critics of neoliberalism have tended to focus on its economic agenda.[38] But the coexistence and mutual flourishing of human rights and neoliberalism cannot be understood if neoliberalism is perceived as an exclusively economic doctrine.

3.3. Neoliberalism against the economy

Neoliberalism is commonly understood as an economic ideology that lacks moral considerations, prioritising economic rationality above all other values. Brown presents a compelling critique by asserting that neoliberalism's pervasive "economisation" of life effectively shapes humans as *homo economicus*, constantly and exclusively driven by economic pursuits.[39] Brown also argues that, despite its practical alignment with neoconservatism in the United States, neoliberalism is “expressly amoral at the level of both ends and means”.[40] This line of criticism is not new and extends beyond the specific neoliberal form of capitalism, bearing striking resemblance to The Communist

[33] Whyte (n 9) 12, 140, 175.
[34] Whyte (n 9) 70.
[35] Whyte (n 9) 106, 176, 189.
[36] Whyte (n 9) 12.
[37] Whyte (n 9) 12.
[38] See for example MB Steger & RK Roy *Neoliberalism: A short introduction* (2021) and S Ansari *Neoliberalism and resistance in South Africa* (2021).
[39] W Brown *Undoing the demos: Neoliberalism’s stealth revolution* (2015) 31.
[40] W Brown “American nightmare: Neoliberalism, neoconservatism, and de-democratization” (2006) 34: 6 Political *Theory* 690 692.

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Manifesto's portrayal of the bourgeoisie, who reduce human relationships to mere self-interest and heartless transactions involving money.[41]

In 1979, during one of his lectures, Foucault observed that the newly ascendent neoliberalism appeared to offer a refreshing departure from the punitive moralism inherent in earlier forms of liberalism.[42] He discerned in the "purely economic analysis" of Gary Becker, a human capital theorist from the Chicago School, a fundamentally amoral depiction of the criminal as homo economicus—an individual who engages in actions with the expectation of profit and willingly accepts the risk of penal consequences.[43] From this perspective, Foucault noted that "there is no difference between the infraction of the highway code and a premediated murder".[44] Consequently, he argued that a neoliberal penal policy would merely adjust penalties and rules in order to diminish the prevalence of crime, while abstaining from attempts to discipline the criminal and cure them of presumed pathologies.[45] Foucault speculated that in a neoliberal society, the focus would shift from a moralising approach of normalisation and exclusion to one of tolerating "minority individuals and practices".[46]

According to Brown, who pays closer attention to the political implications of neoliberalism, the ascendance of neoliberal economism poses a significant threat to democracy and rights.[47] She contends that neoliberalism produces individuals who exhibit indifference towards democratic political values and harbour outright hostility towards egalitarianism.[48] Consequently, political issues are reconfigured as individual problems to be addressed through market-based solutions, leading to the erosion of civil liberties, the rule of law, and fair elections, which she describes as being "wholly desacralized".[49] Paradoxically, she argues, this desacralisation creates fertile ground for neoconservative endeavours aimed at strengthening the foundations of family,

[41] K Marx and F Engels *The Communist Manifesto* (2008) 37.
[42] See M Dean “Michel Foucault’s ‘apology’ for neoliberalism” (2014) 7:3 *Journal of Political Power* 433.
[43] Dean (n 42) 435.
[44] See M Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979* trans G Burchell (2008) 253–254.
[45] Foucault (n 44) 259–260.
[46] Foucault (n 44) 260.
[47] Brown (2015) (n 39) 17.
[48] Brown (2015) (n 39) 17.
[49] Brown (2006) (n 40) 702.

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religion, and the state. These efforts are facilitated, in part, by a discourse of civilisation that imbues a moralising tone into "a certain imaginary of the West and its values".[50]

If we are to interpret neoliberalism in such amoral terms, then international human rights NGOs, with their dedication to principles such as individual liberty, human dignity, freedom of conscience, and bodily integrity, emerge as a vital counterforce to combat neoliberalism's relentless economisation of life. Despite her prior criticisms of rights and liberalism, Brown's condemnation of neoliberalism leads her to present an unexpectedly sympathetic view of the liberal-democratic political model she believes we are currently losing. She states, "We are no longer creatures of moral autonomy, freedom, or equality. We no longer choose our own ends or the means to them".[51] While Brown offers a compelling analysis of the economisation of rights in the neoliberal era, the underlying assumption remains that older ideals of dignity, rights, and even soulfulness have been sacrificed in favour of an unwaveringly economistic doctrine.[52]

From Whyte's perspective, accounts that depict neoliberalism as a morally indifferent economism fail to acknowledge the distinctive morality that played a pivotal role in its emergence.[53] The argument posits that, what set the twentieth-century neoliberals apart from their nineteenth-century predecessors was not merely a narrow view of humans as *homo economicus*, but rather a conviction in the necessity of a robust moral and legal framework for a functional competitive market.[54] As Foucault acknowledged regarding the German ordoliberals, neoliberal thinkers aimed to establish or revive a set of moral values that would underpin social cohesion within the realm of market competition.[55] This intent is explicitly articulated in the founding statement of the MPS: diagnosing a civilisational crisis marked by the erosion of conditions essential for "human dignity" and the threats to freedom of thought and expression, it asserts that these developments "have been fostered by the growth of a view of history that denies all absolute moral standards".[56] Rather than serving as

[50] Brown (2006) (n 40) 709.
[51] Brown (2015) (n 39) 42.
[52] See Brown (2015) (n 39) 111.
[53] Whyte (n 9) 14.
[54] Whyte (n 9) 13, 44–45.
[55] Whyte (n 9) 14.
[56] P Mirowski & D Plehwe (eds) *The road from Mont Pèlerin*: *The making of the neoliberal thought collective* (2009) 24–25.

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an external addition or a pragmatic partnership, social conservatism—encompassing explicit appeals to family values, Christianity, and the concept of Western civilisation—is regarded as an integral component of the neoliberal project.[57]

Far from reducing all of life to economics, Whyte shows that the mid-twentieth-century neoliberals were deeply sceptical towards the notion of the economy itself. This scepticism is exemplified in Hayek's polemical 1944 work, *The road to serfdom*, where he expressed dissatisfaction with his contemporaries' excessive focus on economic matters. Hayek argued that the values that are now often disregarded as nineteenth-century illusions, such as "liberty and independence, truth and intellectual honesty, peace and democracy, and respect for the individual qua man instead of merely as the member of an organized group",[58] ranked lowest in contemporary society. Similarly, around the same time, Röpke criticised the prevalence of "economism", which “judges everything in relation to the economy and in terms of material productivity, making material and economic interests the centre of things”.[59]

There is no denying that certain elements of neoliberalism lend support to the charge of economisation. Mises famously argued that the market functions as a perpetual election where each dollar carries the weight of a ballot.[60] James Buchanan, a public-choice theorist from the United States, went further by reconceptualising politics as a sphere of self-interested individual competition.[61] In a similar vein, Becker contended that marriage can be viewed as a two-person firm and children as commodities produced within households.[62] These perspectives paint a picture of neoliberalism as an extension of economic rationality into all facets of life. However, the early neoliberals, mindful of the ancient Greek roots of economics in *oikonomia*, which pertains to the management of a household, expressed apprehensions.[63] They worried that perceiving the overarching market order solely as an economy would propagate the notion that this order operated under the auspices of collective solidarity, with a unified set of goals that could be directed by Keynesian or social-

[57] Whyte (n 9) 80.
[58] FA Hayek *The road to serfdom* (2001) 219.
[59] W Röpke *The Social Crisis of Our Time* trans A Schiffer Jacobsohn & P Schiffer Jacobsohn (1950) 53.
[60] Whyte (n 9) 15.
[61] JM Buchanan *Theory of Public Choice: Political Applications of Economics* (1972).
[62] GS Becker *A Treatise on the Family* (1991).
[63] Whyte (n 9) 74.

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democratic planners.[64] They argued that such a belief system embodied the very essence of totalitarianism and posed a threat to the individualistic social fabric of Western society.[65] For them, the competitive market they sought to revitalise was not just a more efficient mechanism for resource allocation; it served as the fundamental institution of a morally upright and "civilised" society, providing crucial support for individual rights.[66]

3.4. Friedrich Hayek and the morals of the market

In December 1961, Hayek addressed the Congress of American Industry on “The Moral Elements of Free Enterprise”.[67] Sharing the stage with Hayek were Herrell DeGraff, a professor and an executive member of the American Meat Institute in Chicago, as well as fellow members of the MPS, John Davenport and Felix Morley, who all delved into matters of morals and values.[68] Hayek's message was that free enterprise required “not only moral standards but moral standards of a particular kind”.[69] Similar to the manufacturers in his audience, Hayek and his MPS companions had held a longstanding belief in the necessity of a moral framework to complement a market-based order. From their viewpoint, the ascent of socialism and social democracy was primarily perceived as a moral challenge. "No free society would survive", asserted the Austrian economist to this receptive business audience, "without a moral climate that instils personal responsibility and regards it as just that people are rewarded materially based on how valuable their services are to their fellows”.[70]

In his later book, Law*, legislation and liberty*, Hayek delved into a more comprehensive examination of the moral principles underpinning a market society.[71] Drawing inspiration from the fall of Rome and the thesis posited by its distinguished historian Edward Gibbon, who attributed the decline of the ancient civilisation to a degradation of moral values, Hayek sounded a cautionary note. While acknowledging the debate about the accuracy of Gibbon's assessment of Rome, Hayek firmly maintained that

[64] Whyte (n 9) 74.
[65] Whyte (n 9) 74.
[66] Whyte (n 9) 74.
[67] See Whyte (n 9) 16.
[68] Whyte (n 9) 16.
[69] FA Hayek “The moral element in free enterprise” in *Studies in Philosophy, Politics and Economics* (1967) 230.
[70] Whyte (n 9) 16.
[71] FA Hayek *Law, legislation and liberty*: *A new statement of the liberal principles of justice and political economy* (1982).

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"there can be no doubt that moral and religious beliefs can destroy a civilisation".[72] For Hayek and his fellow members of the MPS the erosion of the moral foundations that upheld a market-based order posed a direct threat to their own civilisation.[73] They recognised that the deterioration of the values essential for a thriving market order had the potential to undermine and even destroy their societal framework.[74]

In this context, the term "morals" encompassed not only individuals' personal beliefs about right and wrong actions but also the informal rules of conduct that shape how individuals behave.[75] Hayek made a clear distinction between morals and laws, emphasising that morals lack coercive enforcement.[76] However, he underscored their essential role in the functioning of a market society. Hayek believed that liberalism took a misguided path in the 19th century when John Stuart Mill, a British liberal philosopher, began criticising the “tyranny of the prevailing morals”.[77] This criticism, according to Hayek, fostered a disregard for moral traditions and contributed to a growing sense of “permissiveness” in society.[78] While Hayek acknowledged that a single, absolute system of rules or morals independent of social organisation cannot likely exist, he argued that only one particular moral system could facilitate an open or “humanistic” society.[79] Such a society would value individuals for who they are and afford them relative freedom to pursue their own plans.[80]

According to Hayek, a market society, where people are primarily driven by expected monetary gains, necessitates distinct moral perspectives compared to a society centred around shared goals. He referred to these as the “morals of the market”, which encompassed individualistic and commercial values that prioritise the pursuit of self-interest over the cultivation of common purposes.[81] In a market society, a moral framework is required that justifies wealth accumulation and inequality, encourages individual and familial responsibility, and promotes acceptance of the impersonal outcomes resulting from market processes, even if they contradict deliberate pursuit

[72] Hayek (1982) (n 71) 68.
[73] Whyte (n 9) 53.
[74] Whyte (n 9) 53.
[75] Hayek (1982) (n 71) 13.
[76] Hayek (1982) (n 71) 56–57.
[77] Whyte (n 9) 17.
[78] Whyte (n 9) 17.
[79] Hayek (1982) (n 71) 38.
[80] Hayek (1982) (n 71) 38.
[81] Hayek (1982) (n 71) 146.

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of collectively formulated ends.[82] Additionally, within this moral framework, obligations are limited to refraining from causing harm to others, and they do not impose positive obligations towards others.[83]

The account of morals presented was deeply functionalist. According to Hayek, the morals of the market serve to sustain the only order that embraced "nearly all mankind": the competitive market order.[84] Hayek argued that "conduciveness to that order be accepted as a standard by which all particular institutions are judged", emphasising the importance of moral rules in supporting the market order.[85] This aligns with Hayek's interpretation of the German ordoliberal belief that economic policies must be *systemgerecht*, or compatible with the entire economic system. This notion of market-conduciveness or compatibility served as a precise criterion for neoliberals to evaluate claims related to human rights.[86] They actively promoted rights that supported market relations, while opposing claims for rights that that impeded the functioning of the competitive market. These rights would require state intervention, non-market forms of obligation, and redistribution. The neoliberals approached such claims as though "the fate of civilisation depended on it".[87]

Today, a considerable body of critical scholarship on human rights seeks to contest the notion that human rights are merely the embodiment of an inherent moral sense derived from human nature.[88] However, this perspective does not hold much weight in neoliberal accounts of human rights. Hayek, for example, explicitly rejected the notion that morals and rules are "permanently implanted in an unalterable nature of man".[89] His mentor Mises expressed a similar sentiment decades earlier, stating that "Nature grants no rights at all".[90] Hayek went against the dichotomy between natural law and rationally constructed rules. Instead, he argued that culture, institutions, and morals are "neither natural nor artificial, neither genetically transmitted nor rationally designed".[91] According to Hayek, morals develop through the unconscious selection

[82] Hayek (1982) (n 71) 146–147.
[83] Hayek (1982) (n 71) 146–147.
[84] Hayek (1982) (n 71) 113.
[85] Hayek (1982) (n 71) 113.
[86] Hayek (1982) (n 71) 129.
[87] Whyte (n 9) 17.
[88] Whyte (n 9) 17.
[89] Hayek (1982) (n 71) 60.
[90] L von Mises *Socialism: An Economic and Sociological Analysis* trans J Kahane (1962) 62.
[91] Hayek (1982) (n 71) 155.

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of values and institutions that provide the greatest benefits to those who adhere to them.[92] As Hayek elucidated, the moral principles of the market initially arose in urban, commercial hubs where personal connections were less pronounced, and individuals were accustomed to participating in detached and less intimate market interactions with others.[93]

Hayek drew inspiration from the social theories of the Scottish Enlightenment to formulate an evolutionary understanding of morality. By incorporating the ideas of Adam Smith and Adam Ferguson, who proposed a progression of human history through various stages, such as from hunter to herdsman, and from farmer to trader, Hayek argued that the advancement from small-scale communities to a "Great Society" necessitated the relinquishment of personal loyalty and egalitarian commitments more suitable for tribal existence.[94] According to Hayek, this transition necessitated replacing goal-oriented rules commonly found in small societies, where individuals collaborated towards common aims, with abstract rules applicable to larger groups of strangers and ultimately to all of humanity.[95] Hayek acknowledged that the transition to a market economy, with its replacement of goal-oriented rules prevalent in small societies, might be deeply resented by individuals in those smaller communities who valued the cooperative and interconnected social dynamics that characterised their way of life.[96]

In his attribution of moral development to the "survival of the successful", Hayek presented a racialised narrative that assumed Europeans who had engaged in commercial relations were more successful than others.[97] He viewed their success as a consequence of adopting "moral conceptions" that did not prescribe specific goals but instead established general rules to limit permissible actions.[98] According to Hayek, the demands for social justice and social and economic rights from his contemporaries were seen as atavistic attempts by the "non-domesticated or uncivilized" members of society to revive the morals of a tribal society.[99] From this

[92] Whyte (n 9) 18.
[93] Hayek (1982) (n 71) 146.
[94] Hayek (1982) (n 71) 143.
[95] Hayek (1982) (n 71) 143.
[96] Whyte (n 9) 150.
[97] FA Hayek *The Constitution of Liberty: The Definitive Edition* ed. R Hamowy (2011) 112.
[98] Hayek (1982) (n 71) 144.
[99] Hayek (1982) (n 71) 147.

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perspective, socialism and social democracy were not solely economic threats to the productivity and efficiency of economic relations; they were considered regressions in civilisation, representing the resurgence of "suppressed primordial instincts" that posed a threat to the moral foundations of the competitive market.[100]

One of Whyte's main arguments here is that the neoliberal perspective on the competitive market was not solely based on economic factors but also had moral, cultural and political dimensions. Early neoliberals ascribed a set of non-political virtues to the market, which included the checks and balances on power, facilitation of social cooperation, resolution of conflicts, and safeguarding of individual liberties and rights.[101] They portrayed commercial or "civil society" as a realm characterised by voluntary and mutually beneficial relationships, distinct from the violence, coercion, and conflict inherent in the political sphere.[102] According to this view, market coordination served as more than just a means to enhance productivity and efficiency. It was positioned as an alternative to the perceived violence, coercion, and despotism associated with politics, particularly mass politics.[103] Hayek contended that the widespread adoption of the moral principles of the market offered a "distant hope of a universal order of peace".[104] In other words, embracing the morals of the market was seen as a pathway towards achieving a peaceful and harmonious global order.

3.5. The "sweetness of commerce" thesis

Whyte emphasises that the neoliberals resurrected an earlier political argument for capitalism, as initially identified by Albert Hirschman in his renowned 1977 book *The passions and the interests*. Hirschman referred to this concept as the "doux-commerce" or "sweetness of commerce" thesis, which he asserted was widely accepted during the mid-eighteenth century.[105] This thesis revolved around the moral virtues attributed to the market. Hirschman traced the roots of the doux-commerce thesis to a line in Baron de Montesquieu's work, "The spirit of the laws", which he personally chose as the epigraph for his book: "It is fortunate for men to be in a situation where, though their passions may prompt them to be wicked [méchants], they

[100] Hayek (1982) (n 71) 165.
[101] Whyte (n 9) 167.
[102] Whyte (n 9) 167.
[103] Whyte (n 9) 74.
[104] Hayek (1982) (n 71) 148.
[105] Whyte (n 9) 19.

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have nevertheless an interest in not being so".[106] According to Hirschman, this perspective suggested that self-interest, when channelled through commerce, could serve as a check on wicked impulses.[107] It offered a message of hope for a world grappling with the violence of passions and the apparent limitations of reason.[108] Contrary to republican thinkers of the time who often condemned commerce as corrupting, Montesquieu celebrated it for its qualities of "spirit of frugality, economy, moderation, work, wisdom, tranquillity, order and rule".[109] He contended that commerce was a source of “softness” which "cures destructive prejudices" and leads to more gentle *mores*.[110]

For Montesquieu, those who pursued their interests through the market stood in a relation of mutual need, and thus the "natural effect of commerce is to lead to peace".[111] During the 17th and 18th centuries, global trade was marred by violence and danger, intertwined with colonial conquest and the abhorrent slave trade. The harsh realities of such historical circumstances were derided by Marx in his writings on the process of "primitive accumulation" of capital.[112] Marx cynically ridiculed accounts that portrayed commerce as pacifying, highlighting the grisly aspects of Dutch colonialism, including secret prisons, assassinations, bribery, and enslavement, and sarcastically remarked, "That is peaceful [doux] commerce"![113] According to Hirschman, the belief in the pacifying role of commerce began to wane only when this violence became more apparent within Europe itself, particularly with events like the French Revolution, the Napoleonic Wars, and the social upheaval caused by the Industrial Revolution.[114] By the twentieth century, Hirschman argued, it was no longer possible for observers to maintain faith in the hopeful vision of a pacifying market.[115] Consequently, its proponents shifted their focus to emphasising the economic benefits of the market, drawing on Adam Smith to extol the increased productivity and efficiency facilitated by the division of labour.[116] For many critics, the neoliberal

[106] AO Hirschman *The passions and the interests: Political arguments for capitalism before Its triumph* (2013) xxii.
[107] Hirschman (n 106) 30.
[108] Hirschman (n 106) 30.
[109] B Baron de Montesquieu *The spirit of the laws* (1989) 48.
[110] Baron de Montesquieu (n 109) 338.
[111] Baron de Montesquieu (n 109) 338.
[112] See K Marx *Capital: Volume I* (1906).
[113] Marx (n 112) chapter 24, section 6.
[114] Hirschman (n 106) 78.
[115] Hirschman (n 106) 83.
[116] Hirschman (n 106) 105.

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thinkers epitomised this transition from a political justification of capitalism to an economic one, whereby the primary emphasis shifted to the economic advantages it purportedly offered.[117]

Unlike Hirschman, Whyte contends that a version of the justification of capitalism based on pacifying social relations was indeed central to neoliberal thought in the tumultuous circumstances of the twentieth century.[118] Neoliberal thinkers, including Hayek, sought to revive the argument that a society organised through the competitive market could replace the coercion, conquest, and conflict inherent in politics with voluntary, mutually beneficial, and harmonious social relations.[119] However, the prevalent notion that neoliberalism is solely concerned with economic dominance has obscured its distinctive political argument in favour of the competitive market. Throughout the twentieth century, neoliberals emphasised that the erosion of market competition posed a threat to individual freedom and would lead to the rise of coercive and bureaucratic power.[120] They criticised socialism and social democracy for politicising the distribution of resources and replacing consensual market relations with contentious conflicts over societal goals.[121] Neoliberals saw the wars and conflicts of the twentieth century as the inevitable consequences of turning away from the market economy.[122] In essence, neoliberal thinkers advocated for the competitive market as a means to foster social harmony, prevent the concentration of power, and safeguard individual freedom, contrasting it with what they perceived as the divisiveness and violence of more egalitarian systems.[123]

Indeed, the neoliberals' view of the competitive market extended beyond its economic efficiency and encompassed broader political and social dimensions. They considered the market not merely as a tool for the distribution of goods and services, but as a fundamental institution that safeguarded individual freedom, rights, and social harmony. This understanding forms the basis of their belief that a market-oriented society was essential for the preservation of peace and the prevention of coercive power. By emphasising the importance of market competition, neoliberals sought to

[117] Whyte (n 9) 135.
[118] Whyte (n 9) 58–60.
[119] Whyte (n 9) 106.
[120] Whyte (n 9) 123.
[121] Whyte (n 9) 140.
[122] Whyte (n 9) 140.
[123] Whyte (n 9) 140.

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protect individual autonomy and limit the potential for centralised authority. They argued that alternative economic systems, such as socialism or extensive state intervention, would undermine individual freedoms and lead to conflicts over resource allocation.[124] Neoliberals believed that consensual market relations and voluntary exchanges between individuals could mitigate societal tensions and promote cooperation based on mutual benefit.[125] In this context, it becomes apparent that the concerns of neoliberals extended beyond narrow economic considerations. They were deeply invested in the preservation of individual rights, the prevention of political coercion, and the establishment of a social order founded on peaceful interactions. This broader perspective suggests the potential for shared concerns and common ground between neoliberals and human rights activists, as their respective objectives encompassed a range of political, social, and ethical dimensions.

3.6. How do neoliberal human rights operate?

In the realm of market capitalism, Deirdre McCloskey, a prominent economist from the Chicago School, presents the drafting of the UDHR as evidence of capitalism's ability to foster qualities such as self-education in business and life, humble customer engagement, resistance against cheating, and a willingness to seek compromises.[126] McCloskey draws a parallel between Eleanor Roosevelt's negotiation of the UDHR and the values necessary for successful market interactions.[127] Similarly, some proponents of human rights argue that the process of drafting these standards can serve as a model for global governance and nonviolent, deliberative change in other domains.[128] While the drafting of the UDHR indeed involved compromises among advocates of differing political, economic, and religious systems, there was a general consensus among the drafters, including Roosevelt, that unrestricted markets did not generate harmony and civility but rather led to conflicts and disorder.[129] Reflecting on the compromises made during the drafting process, Hayek, in contrast to McCloskey, criticised the UDHR in 1966 for its perceived incoherence, as he believed it attempted

[124] Whyte (n 9) 113.
[125] Whyte (n 9) 54, 74.
[126] D McCloskey *The bourgeois virtues: Ethics for an age of commerce* (2006) 507.
[127] McCloskey (n 126) 507.
[128] See for example K Sikkink *Evidence for hope: Making human rights work in the 21st century* (2017) 16.
[129] Whyte (n 9) 50.

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to merge the liberal rights tradition with the contrasting principles derived from the Marxist Russian Revolution.[130]

Throughout Whyte's work, she delves into the comparison between the neoliberal perspective on human rights and the various notions of rights and responsibilities that drove the drafters of the UDHR and the two legally binding human rights covenants.[131] These foundational documents not only recognised classical civil and political rights but also included extensive lists of social and economic rights. Additionally, the covenants emphasised the right of nations to self-determination.[132] From the standpoint of neoliberals during that era, the UN human rights process appeared less like a model of peaceful collaboration in the market and more like the global expansion of the "collectivism" they perceived as a global threat.[133] They believed that efforts to secure social welfare rights and national self-determination would undermine the market order and jeopardise "Western civilisation".[134] However, Whyte's work reveals that despite their concerns about the "collectivist" and "politicised" nature of the human rights discourse at the United Nations, neoliberals did not outright reject human rights. Instead, they formulated their own understanding of human rights as moral and legal frameworks that support a liberal market order.

As Whyte notes, in 1992, when questioned about the original purpose of the MPS, economist Milton Friedman acknowledged that its primary goal was to advance a classical liberal philosophy advocating for a free economy, a free society, and human rights in social and civil realms.[135] However, it is noteworthy that Friedman's statement seems incongruous considering his favourable characterisation of Chilean General Pinochet's authoritarian regime as an economic and political "miracle".[136] This raises questions about the sincerity of his invocation of human rights. In the 1970s, human rights NGOs gained prominence by challenging the widespread torture and disappearances that occurred during the implementation of neoliberal shock policies in the Southern Cone.[137] According to a prominent critical view, the neoliberal

[130] Hayek (1982) (n 71) 103.
[131] Chapter 1 contains the bulk of this account.
[132] Whyte (n 9) 104.
[133] Whyte (n 9) 105.
[134] Whyte (n 9) 134.
[135] Whyte (n 9) 22. The original interview is available at: https://www.minneapolisfed.org/article/1992/interview-with-milton-friedman.
[136] See M Friedman "Passing down the Chilean recipe" (1994) 73 *Foreign Affairs* 177 177.
[137] Whyte (n 9) 139.

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emphasis on competitive markets and austerity measures inherently undermines the protection of human rights, as it operates on fundamentally different normative foundations.[138] This view posits that neoliberalism and human rights represent two distinct logics in the contemporary world, often competing with each other.[139] The universalisation of human rights and the expansion of global capitalism and the world market are seen as the two major globalising forces vying for influence on the world stage.[140]

For Whyte, Friedman's perspective ought to be given serious consideration. It is worth noting here that during the 1947 statement of aims by the MPS, human and political rights were "notably absent", as the concept of human rights had not yet become an obvious component of the liberal tradition.[141] Similarly, the phrase "human rights" was not present in the Oxford Manifesto, issued in the same year as a statement of principles by representatives from nineteen liberal parties within the "Liberal International".[142] At that time, the discourse surrounding human rights was still being developed, and even among liberals, there was no consensus on how the newer language of human rights related to previous affirmations of the "rights of man", fundamental rights, humanitarianism, or individual freedom under the rule of law.[143] Neoliberal thinkers actively participated in shaping this construction process. Human rights, though often overlooked, played a significant role in neoliberals' efforts during the mid-twentieth century to challenge socialism, social democracy, and state planning.[144] Neoliberal thinkers made substantial contributions to the formulation of human rights that gained prominence in later decades. By 1992, when Friedman made his remarks, it had become widely accepted among many major international human rights NGOs that only a liberal market economy could effectively foster human rights, reflecting the influence of neoliberal arguments.[145]

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[138] See P O'Connell "On reconciling irreconcilables: Neo-liberal globalisation and human rights' (2007) 7: 3 *Human Rights Law Review* 483 484.
[139] See J Blaue & A Moncado *Human rights: A primer* (2009) 15.
[140] See D Kinley *Civilising globalisation: Human rights and the global economy* (2009) xii.
[141] Mirowski & Plehwe (n 56) 25.
[142] See Liberal International, Oxford Manifesto – 1947, available at: https://liberal-international.org/who-we-are/our-mission/landmark-documents/political-manifestos/oxford-manifesto-1947/.
[143] Whyte (n 9) 75.
[144] Whyte (n 9) 193.
[145] Whyte (n 9) 127.

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Neoliberal thinkers viewed human rights and competitive markets as mutually reinforcing. In "The road to serfdom", Hayek contended that the rise of the "commercial spirit" was responsible for all claims made on behalf of individuals. Hayek argued that the ideals of liberty, equality, and fraternity, often associated with the French Revolution, were essentially commercial ideals designed to secure advantages for individuals.[146] According to Hayek and his fellow neoliberals, the functioning of a competitive market not only facilitated individual rights but also depended on the rule of law and the recognition of the inherent and inviolable rights of each individual.[147] Hayek's understanding of the rights of man drew heavily from the influence of his mentor, Mises. Mises, in his 1922 study on socialism, posited that individual rights emerged in conjunction with the development of capitalism.[148] He argued that as people gained economic freedom, they naturally desired it in other areas of their lives and sought legal recognition of their subjective rights as citizens. From this perspective, rights emerge when the capitalist division of labour allows individuals to pursue their own interests and values, liberating them from arbitrary power wielded by others.[149] Mises contended that capitalism transformed human relationships into quantifiable and calculable exchanges, bringing freedom from the abstract realm of ideals into tangible reality.[150] As he noted, such freedom is not an inherent or natural right but a product of capitalism's transformative power.[151]

According to Mises, if the economic freedom provided by a market economy is removed, all political liberties and bills of rights lose their significance, becoming empty rhetoric.[152] The neoliberals, like their Marxist critics, viewed human rights as closely intertwined with the emergence of capitalism.[153] In fact, Hayek credits Marx as the first to recognise that the evolution of democratic freedoms was predicated on the development of private capitalism and the free market.[154] Marx perceived the freedom and equality espoused in declarations of rights as reflecting the formal equality found within market relations, while also sanctioning the self-interest and inequality prevalent

[146] Hayek (2001) (n 58) 174.
[147] Hayek (2001) (n 58) 88.
[148] von Mises (n 90) 193.
[149] von Mises (n 90) 194.
[150] von Mises (n 90) 194.
[151] von Mises (n 90) 194.
[152] L von Mises *Human action: A treatise on economics* (1996) 287.
[153] Whyte (n 9) 147.
[154] Hayek (2001) (n 58) 109.

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in civil society.[155] Fredric Jameson draws a parallel between Marx and Milton Friedman, suggesting that both assert the genuine and objective nature of these concepts and values, which are organically generated by the market system itself and intrinsically linked to it.[156] However, the key distinction lies in the interpretation of these concepts. While the neoliberals argue that the market economy is the sole source of freedom and liberty, Marx contends that capitalist equality and freedom ultimately result in inequality and a lack of genuine freedom.[157]

In his early work *On the Jewish question* Marx contended that the rights to equality, liberty, security, and property enshrined in the declarations of the eighteenth century primarily served to protect the self-interested individual within civil society.[158] Samuel Moyn, in an article challenging recent Marxist criticisms of the alignment between human rights and neoliberalism, highlights that the young Marx's critique was directed at the abstraction of political emancipation within the confines of the nation-state, rather than the transnational, NGO-driven, legalistic human rights framework prevalent today.[159] According to Moyn, when human rights gained prominence in the 1970s, they departed significantly from Marx's critique of the statist paradigm of revolutionary rights of man.[160] While human rights emerged alongside neoliberalism, Moyn argues that human rights NGOs were essentially passive companions of neoliberalism, lacking the power to shape its trajectory.[161] Moyn further suggests that while the concept of individuals having inherent rights was influenced by the political economy, which inherently impacts moral ideals and social relations, this influence was never complete.[162] Human rights did not revert to their nineteenth-century role solely as safeguards for private property and freedom of contract. Instead, they underwent a transformation and took on a broader scope and meaning in the modern context.[163]

[155] See Marx (n 349) chapter 6.
[156] F Jameson “Postmodernism and the market” in R Miliband & L Panitch *Socialist register 1990: The retreat of the intellectuals* (1990) 96
[157] Marx (n 112) chapter 13.
[158] K Marx “On the Jewish Question” in *Early Writings* (2000) 14.
[159] S Moyn “A powerless companion: Human rights in the age of Neoliberalism” (2015) *77 Law and Contemporary Problems* (2015) 153.
[160] Moyn (2015) (n 159) 153.
[161] Moyn (2015) (n 159) 153.
[162] S Moyn *Not enough: Human rights in an unequal world* (2018) 175.
[163] Moyn (2018) (n 162) 175.

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Whyte contends that human rights were not merely shaped by an underlying economic reality but were an integral part of the neoliberal project to instil market morals.[164] This does not imply that contemporary human rights can be reduced solely to protections of private property and contracts, as they encompass a broader range of principles. Similarly, neoliberalism should not be equated with classical liberalism of the nineteenth century, nor can it be reduced to a defence of property and contracts alone. A concise and insightful description of the distinctiveness of neoliberalism can be found in a 1951 paper by Friedman titled "Neo-liberalism and its prospects".[165] According to Friedman, the fundamental flaw of nineteenth-century liberalism was its limited view of the state's role, which focused on maintaining order and enforcing contracts.[166] Neoliberalism emerged as a reaction to this flaw, aiming to uphold the importance of the individual while replacing the goal of laissez-faire with the goal of a competitive order.[167] Friedman argued for a more expansive role for the state in creating the necessary conditions for competition, surpassing the constraints imposed by nineteenth-century laissez-faire ideology.[168]

Despite their diverse perspectives, the early members of the MPS largely shared a common agenda outlined in Friedman's influential paper.[169] During the inaugural meeting, Hayek emphasised that a functioning market relies on the protection of certain rights, such as property rights and contract enforcement, and that accepting this principle is where the real challenge begins.[170] In *The road to serfdom*, Hayek criticised earlier liberals for neglecting the importance of an appropriate legal system for a competitive market, asserting that the recognition of private property and freedom of contract by the law alone is insufficient.[171] Within the neoliberal framework, human rights played a significant role in establishing an appropriate legal system and moral framework for a global capitalist market. These rights were not aligned with Marx's critique of the rights of man. Rather, the neoliberals viewed human rights as a means

[164] Whyte (n 9) 135.
[165] M Friedman “Neo-liberalism and its prospects” *Farmand 17* February 1951.
[166] Friedman (n 165) 3.
[167] Friedman (n 165) 3.
[168] Friedman (n 165) 3.
[169] Whyte (n 9) 147.
[170] See J Rodrigues “The political and moral economies of neoliberalism: Mises and Hayek” (2013) 37:5 *Cambridge Journal of Economics* 1001 1002.
[171] Hayek (2001) (n 58) 39.

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to preserve the market order, rather than solely protecting the interests of the individual, even the self-interested individual.

This important clarification regarding (neoliberal) human rights, emphasising their overarching objective to safeguard the market order as something more consequential than merely protecting individual interests, leads us to a more comprehensive understanding of the substance and significance of human rights in the global order. Both historically and in the present, the content of human rights is shaped by political struggles. Human rights are not inherent or naturally bestowed, and there has never been a unified human rights movement that could achieve broad consensus on a comprehensive list of rights and their prioritisation, let alone ensure their realisation for all individuals. However, merely acknowledging that "human rights" lacks a singular meaning, as Susan Marks observes in a related context, implies that these issues are isolated problems, detached from broader processes, tendencies, and dynamics in the world.[172] By neglecting to examine the forces and dynamics that drive such transformations, we fail to grasp what is necessary to bring about genuine change in the world. This "false contingency" overlooks the fact that political possibilities are shaped by systemic constraints. Specifically, the notion that human rights can have infinite interpretations treats them as abstract and detached from the structures of contemporary capitalism, disregarding the historical conditions and struggles that gave rise to them. It fails to recognise that not all concepts of humanity and community hold equal significance within the framework of human rights.[173]

In this vein, Brown asserts that rights discourse "functions as a politics and shapes political space, often with the intention of monopolising it".[174] This underscores the inherent structural determinacy within rights discourse, where it side-lines any political initiative seeking to harness the discourse of rights for its own purposes.[175] Although rights themselves may lack normative certainty and fail to provide definitive "correct answers", critics argue that there is a deeper level of determinism at play, wherein rights can undermine the radical goals of otherwise effective political movements.[176]

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[172] S Marks “False Contingency” (2009) 62:1 *Current Legal Problems* 1 17.
[173] B Golder *Foucault and the politics of rights* (2015) 88.
[174] Brown (2004) (n 26) 461.
[175] See for example Moyn (2018) (n 162) 56.
[176] See I rua Wall “The in/determinacy of human rights: A response to O’Connell” (2015) available at https://criticallegalthinking.com/2015/06/22/the-indeterminacy-of-human-rights-a-response-to-oconnell/.

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The limitation of possibilities within human rights discourse acts as a catalyst for the broader advancement of the neoliberal agenda, particularly the flourishing of the global market.[177] As Brown notes:

> "*Rights are the flying wedge with which democratic commitments to equality, civility, and inclusion are challenged in neoliberal legal battles. But the forces behind them, staging incursions against society and democracy, are the values and claims of the market…"*[178]

While advocating for civil liberties, the neoliberals seem to endorse their utilisation in a manner consistent with their ideals, particularly when aligned with individual freedom and traditional (market) morality. However, their perspective conveniently diverges when rights are perceived as a potential threat to their project. Notably, the MPS's "Statement of Aims" explicitly opposes a societal structure where "private rights are . . . allowed to become a basis of predatory power". Criticism of the way rights and rights talk is displacing "democracy" was also the subject of a book by Mary Ann Glendon, a board member of the Alliance Defending Freedom—a US Christian conservative legal organisation that serves to "advance a narrow conception of religious freedom rights located in the specific cultural politics of neoliberal, white evangelicalism".[179] According to Glendon, human rights discourse in the US is "turning American political discourse into a parody of itself and challenging the very notion that politics can be conducted through reasoned discussion and compromise" and that it is "less about human dignity and freedom than about insistent, unending desires".[180]

In this context, human rights emerge as a key tool to grapple with neoliberal concerns surrounding mass democracy (and the potential for radical societal change). Brown observes that neoliberals approach this challenge by narrowing and de-democratising the political sphere. According to neoliberal thinking, the most effective strategy to achieve this objective is to challenge the concept of state sovereignty[181] and advocate

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[177] See W Brown *In the ruins of neoliberalism: The rise of antidemocratic politics in the west* (2019) 57, 69.
[178] Brown (2019) (n 177) 114.
[179] See H Dick "Advocating for the right: Alliance Defending Freedom and the rhetoric of Christian persecution" (2021) 29 *Feminist Legal Studies* 375 375.
[180] M Glendon *Rights talk: The impoverishment of political discourse* (1993) 171.
[181] See Slobodian (n 1) 9, 11, 15, 117. The neoliberalism of the Geneva school, distinguished for its world-shaping dimensions, emerged partially as a critique of national sovereignty. Despite the

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for a political system where markets (and morality) are safeguarded from the encroachments of democracy. [182]

3.7. Conclusion

The relationship between neoliberalism and human rights reveals a complex interplay of ideas and interests. While the neoliberals of the MPS were united in their belief that a competitive market was essential for societal progress, they recognised that the market's functioning relied on more than the recognition of property rights and freedom of contract. They acknowledged the need for an appropriate legal system and a *moral* framework, in which human rights played a crucial role.

Human rights, as understood by the neoliberals, went beyond the traditional notion of individual protections. Instead, they were conceived as instruments to safeguard the market order itself. This perspective distinguished neoliberal human rights from the rights of man criticised by Marx, as they were intrinsically tied to the preservation and expansion of the capitalist system. The neoliberals' engagement with human rights was not a rejection or dismissal of these principles but a reinterpretation that aligned them with their broader economic and political agenda. They sought to construct a legal and moral framework—tied to the grand vision of Western civilisation—that supported a global capitalist market, promoting competition and economic freedom as the foundation for peace, freedom, and prosperity.

As human rights evolve into a pivotal instrument for extending market morality into the public domain, this morality undergoes a detachment from the spontaneous nature ascribed to laissez-faire political economy (neoliberalism’s classical ancestor). This process contributes to the closing of possibilities in society, as the instrumental use of human rights to propagate market morality narrows the scope for alternative perspectives and approaches, limiting the potential for diverse ethical frameworks to influence public discourse.

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ordoliberal perspective's emphasis on sovereignty as a *remedy* for de-democratising the political, Slobodian unequivocally illustrates neoliberalism as a barrier against sovereignty across a spectrum of thinkers. Nevertheless, Brown's exploration of neoliberal critiques of democracy reinforces the idea that the neoliberal tradition encompasses a diverse range of positions.

[182] See Brown (2019) (n 177). It aims to achieve this through a number of strategies, including: restricting democratic calls for social justice through the imposition of general rules and, conversely, expanding the private sphere that is shielded against state intrusion.

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Chapter 4: Neoliberalism as liberation in "post"-apartheid South Africa

4.1. Introduction

Building on the exploration of the intricate relationship between neoliberalism and human rights, the focus will now shift to a specific case study exemplifying the application of neoliberal principles in a national context—South Africa. Examining how neoliberalism manifested in the transition from apartheid to "post"-apartheid governance provides a concrete illustration of the interplay between neoliberal ideology and the shaping of political, economic, and human rights landscapes. This transition, marked by substantial policy changes and shifts in governance, will serve as a lens to analyse how neoliberalism's moral and economic framework influenced the nation's trajectory in the post"-colonial-apartheid era.

Reflecting specifically on the South African context, Koelble suggests that these are inevitable developments: "The new South African democracy is part and parcel of the encompassment process of circulatory capitalism, in its financial and rhetorical form, which has engulfed most parts of the globe since 1973".[1] He continues:

> "The political emancipation that took place symbolically in 1994, was part of a much larger global movement towards the realisation of an ideology of human freedom, market reform and universal rights that is intrinsically connected to the circulatory, some might add predatory, form that capitalism has taken".[2]

This prevailing state of affairs, characterised in part by the emergence of powerful neoliberal forces, raises important questions about the role of the ANC government in South Africa's transformative journey. Critics have voiced concerns that the ANC, once hailed as a champion of liberation and social justice, may have veered off course, succumbing to the temptations of capital and relinquishing its transformative ideals.[3]

The transition from apartheid to democracy, symbolically marked by the 1994 political emancipation, was expected to usher in a new era of inclusive governance and address the deep-seated socio-economic disparities inherited from the past. However,

[1] T Koelble "Building a new nation: Solidarity, democracy and nationhood" In D Chidester P Dexter & W James (Eds.) *What holds us together: Social cohesion in South Africa* (2003) 145.
[2] Koelble (n 454) 145.
[3] See generally H Marais *South Africa: Limits to change. The political economy of transition* (1998), N Alexander *An ordinary country: Issues in the transition from apartheid to democracy in South Africa* (2002) and J Saul *The next liberation struggle: Capitalism, socialism and democracy in South Africa* (2005).

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as the ANC assumed power, a discernible shift occurred, which some scholars, including Bond, refer to as an "elite transition".[4] This transition denotes a departure from the aspirations of the liberation struggle towards embracing neoliberal principles and policies.[5] During this transition period, the ANC government faced the complex task of navigating the demands of a globalised capitalist system while simultaneously striving to address historical inequalities and uplift marginalised communities.[6] However, the growing influence of neoliberal ideologies and the allure of market-driven solutions seemed to shape the direction of the government's policies.[7] Critics argue that this shift prioritised the interests of capital over the urgent needs of the majority, leaving socio-economic inequalities largely untouched.[8]

The repercussions of this alleged alignment with capital are evident in the commodification of socio-economic rights.[9] Rather than being treated as fundamental entitlements aimed at achieving social justice, these rights became transformed into commodities within the market system.[10] As a result, the ANC government's pursuit of neoliberal policies inadvertently perpetuated existing inequalities, exacerbating the hardships faced by disadvantaged communities.[11]

Consequently, marginalised communities, who bore the brunt of these socio-economic inequities, began organising themselves to challenge the government's neoliberal trajectory.[12] These grassroots movements aimed to address the disconnect between the ANC's original transformative vision and the reality experienced on the ground.[13] They sought to reclaim their voices and actively participate in shaping policies that would prioritise the needs and well-being of all citizens, especially the marginalised and excluded.[14]

The ANC government's alleged elite transition, influenced by neoliberal forces, has created a dichotomy between the promises of liberation and the challenges of

[4] P Bond *Elite transition: from apartheid to neoliberalism in South Africa* (2000).
[5] Bond (2000) (n 4) 1.
[6] Bond (2000) (n 4) 84.
[7] Bond (2000) (n 4) 53, 182.
[8] See for example Alexander (n 3) 43, Marais (n 3) 35.
[9] See T Madlingozi “Post-apartheid social movements and the quest for the elusive 'new' South Africa” (2007) 34 (1) *Journal of Law and Society* 77 80.
[10] Madlingozi (2007) (n 9) 80.
[11] Madlingozi (2007) (n 9) 97.
[12] Madlingozi (2007) (n 9) 84.
[13] Madlingozi (2007) (n 9) 89.
[14] Madlingozi (2007) (n 9) 89.

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economic transformation. As South Africa grapples with the complexities of democracy, there is a pressing need to critically examine the implications of this transition on socio-economic rights, inequality, and the pursuit of a just and inclusive society. This chapter aims to do just that.

The chapter begins **(4.2)** by discussing Dale McKinley's analysis of the ANC's "post"-apartheid shift towards corporate interests, diverging from its commitment to popular power. The subsequent section **(4.3)** explores the concrete manifestation of this shift by examining South Africa's economic policy transition from the development-focused RDP to the market-oriented Growth, Employment, and Redistribution (GEAR) strategy, emphasising its broader significance in the country's political and economic evolution. The chapter then widens its scope to explore South Africa's journey from apartheid to constitutional democracy in **4.4**, investigating the shaping of Third World statehood through international law and neoliberal policies. The concept of the "standard of civilisation" is introduced, revealing dynamics of exclusion and conditional inclusion based on capitalist modernity, as the ANC opted for the adoption of neoliberal policies during the transition. The "post"-apartheid statehood is portrayed as a consequence of aligning with global capital, evident in the South African Constitution, which promises human rights while simultaneously perpetuating socio-economic inequalities.

4.2. South Africa's "corporatised" liberation

Written by one of South Africa's prominent scholar-activists, Dale McKinley's book *South Africa's Corporatised Liberation*,[15] presents a scathing evaluation of the ANC during its time in government. It scrutinises the party's accumulation of power, its disinterest in harnessing the revolutionary potential of the people, and its abandonment of popular power during the negotiated transition to democracy.[16] Instead, the ANC opted to collaborate with large-scale capital. According to McKinley, this decision transformed the ANC into the primary political entity representing corporate capital on various levels—domestic and international, encompassing diverse racial and geographical aspects.[17] The ANC and the state it currently controls have both assumed a corporatised nature, assimilating the defining characteristics and

[15] D McKinley *South Africa's corporatised liberation: A critical analysis of the ANC in power* (2017).
[16] McKinley (n 15) 4–5.
[17] McKinley (n 15) 4–5.

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practices of corporations.[18] Consequently, this transformation has significantly tilted the balance of power away from the working class and impoverished masses.[19] The corporatised state of the ANC establishes a threefold hierarchy of power: class, organisational, and institutional.[20] Elements within the party or state that fail to conform to the centralised power structure are subjected to measures such as attacks, marginalisation, restructuring, or elimination.[21]

According to McKinley's analysis, the ANC has historically served as a means for an emerging African capitalist class to gain entry into the predominantly white-owned South African economy.[22] Faced with racial exclusion, the ANC adopted a nationalist discourse and strategy, presenting a unified struggle against class divisions.[23] This ideology was reinforced by the ANC's alliance with the South African Communist Party (SACP) and their adoption of a two-stage theory of liberation. According to this theory, the black population faced a common oppression, and their primary objective was to fight for national liberation.[24] The ANC and SACP positioned themselves as the vanguard of this struggle, leading to the pursuit of the National Democratic Revolution, the aim of which was to deracialise capitalism, as a precursor to a second stage of non-capitalist or socialist society.[25]

This prepared the groundwork for the transition to democracy, which McKinley argues was swiftly undermined.[26] The convergence of interests between corporate capital and the ANC played a significant role in this erosion. As popular power gained momentum and made apartheid unsustainable, corporate capital recognised the need to align with the ANC. Additionally, the changing international landscape, marked by the collapse of the Soviet Union, compelled the ANC to negotiate with its erstwhile adversaries.[27] However, the crucial factor was the ANC's own selection of a liberation strategy, which ultimately solidified into a corporatised route to attaining and wielding power.[28]

[18] McKinley (n 15) 6.
[19] McKinley (n 15) 6.
[20] McKinley (n 15) 6.
[21] McKinley (n 15) 6.
[22] McKinley (n 15) 13.
[23] McKinley (n 15) 14.
[24] McKinley (n 15) 24.
[25] McKinley (n 15) 24.
[26] McKinley (n 15) 94.
[27] McKinley (n 15) 140.
[28] McKinley (n 15) 16.

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The ANC's vanguardist ideology, which aimed to seize control over the state and economy, quickly overshadowed popular power, leading to the rapid demobilisation of civil society.[29] Consequently, Black Economic Empowerment emerged as a key mechanism to legitimise the concept of deracialised capitalism while greatly enriching a politically influential elite.[30] Once in power, the ANC swiftly embraced the core principles of neoliberalism, effectively surrendering economic control to large corporations and finance capital, which rapidly gained dominance[31]. The implementation of the "trickle-down" approach had dire consequences for the poor, majority black population, exacerbating their hardships rather than alleviating them.[32]

McKinley presents a widely accepted analysis through a metaphor that aims to make his argument easily understandable to the general public. He portrays twentieth-century South Africa as a house built upon foundations rooted in the systematic economic, racial, and political oppression of the black majority. The National Party and white capital acted as political and economic landlords, respectively, exerting control over the house.[33] Following the negotiated settlement, the house was "liberated" with the ANC replacing the National Party as the political landlords.[34] The house underwent significant renovations, but the economic landlords remained the same, gradually increasing the rent over time.[35] However, they failed to recognise that the foundations of the house were deteriorating.[36] Throughout the first two decades of ANC rule, no substantial measures were taken to address the underlying structural issues.[37] Consequently, the main structure of the house now embodies both old and new prejudices, class divisions, and various forms of inequality.[38] It is now up to the ordinary people who inhabit the house to dismantle the internal walls of fear, hatred, and division, remove the compromised foundations, and rebuild the house that the ANC has constructed.[39]

[29] McKinley (n 15) 30-32.
[30] McKinley (n 15) 41.
[31] McKinley (n 15) 74.
[32] McKinley (n 15) 15.
[33] McKinley (n 15) 2.
[34] McKinley (n 15) 2.
[35] McKinley (n 15) 3.
[36] McKinley (n 15) 3.
[37] McKinley (n 15) 3.
[38] McKinley (n 15) 3.
[39] McKinley (n 15) 4.

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Suffice it to say here that the book delves into several chapters exploring the ANC's entry into the "house" of power,[40] its establishment of rules through the corporatisation of economic and political influence,[41] its divisive tactics through poor governance, corruption, and inequality,[42] its suppression of opposition,[43] and its reconstruction of the house in a regressive manner despite progressive rhetoric and a socially inclusive constitution.[44] All these factors have led to a house teetering on decaying foundations. Consequently, the ordinary inhabitants of the house are left with two options: either change landlords and hope for stricter control over capital, albeit with the unlikely prospect of fixing the house, or more realistically, dismantle the barriers that separate them, mobilise collectively to reclaim ownership of the house, and rebuild it from the ground up.[45] The ultimate goal is to create a house where everyone can coexist on equal terms and enjoy freedom, productivity, and well-being. Achieving this necessitates challenging capitalism and moving beyond it, as capitalism inherently favours the minority and cannot be reformed.[46]

McKinley acknowledges the complexities involved in pursuing the second option. However, he strongly criticises any predetermined solution based on the application of a specific ideological tradition. Such an approach would undermine the core principles of a democratically designed and collectively envisioned alternative. According to McKinley, a genuine alternative must emerge from a transformative process of shifting consciousness and engaging in practical struggles and shared experiences, both individually and collectively.[47] This suggests that the process of building a new democracy is likely to be messy and unpredictable, without any guarantee of predetermined outcomes. It requires a willingness to critically examine and reimagine politics beyond established orthodoxies, embracing a mindset that is open to new possibilities and approaches.[48]

While McKinley's overall argument in "South Africa's Corporatised Liberation" is generally agreeable, there are some aspects of his positions that could be further

[40] McKinley (n 15) chapter 1.
[41] McKinley (n 15) chapter 2.
[42] McKinley (n 15) chapter 3.
[43] McKinley (n 15) chapter 4.
[44] McKinley (n 15) chapter 5.
[45] McKinley (n 15) 146.
[46] McKinley (n 15) 146.
[47] McKinley (n 15) 147.
[48] McKinley (n 15) 147.

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strengthened. One of the points of contention is the assertion of the transformative potential of "people's power" and the majority support for a radical or anti-capitalist politics in South Africa. The question arises: if this is indeed the case, why has the ANC managed to maintain its grip on power? McKinley does acknowledge the ANC's declining electoral performances and the limitations of representative democracy, but there seems to be a disconnect between the purported desires of the masses and the continued dominance of the ANC. In addressing this issue, a more thorough exploration of the role of nationalism could be beneficial.

Here, we will do well to recall Nigel Gibson's observation that newly independent states are subject to a transitional discourse that is itself part of "an ideological terrain that promotes globalisation and silences alternative paradigms".[49] In effect Gibson is alluding to a discourse that seeks to promote the structural imbalances of power in the global economy—a form of what Stephen Gill has called "disciplinary neo-liberalism", where the structural power of capital and its powers to survey investment conditions around the world gives it an extraordinary disciplinary power to make sure national governments strive to provide favourable conditions for capital accumulation.[50]

In the context of South Africa's liberation struggle and transition to democracy, Gibson suggests that an "ideological capitulation" of South Africa's critical left may well have curtailed "post"-apartheid South Africa's ability to challenge the dialectics of a limited transition within this context of neoliberal hegemony.[51] As a result of this ideological capitulation, the historically marginalised black population found themselves constrained to embrace particular discourses of rights, reconciliation, and democracy instead of pursuing more radical alternatives.[52] This suggests that despite their historical struggles and the desire for more meaningful change, the black population had to accept a more moderate or incremental approach to address the challenges of the "post"-apartheid era. Of major concern here is the fact that the abovementioned initiatives have "largely left intact the racial, economic, cultural, and epistemic

[49] N Gibson "The pitfalls of South Africa's 'liberation'" (2001) 23(3) *New Political Science* 371 376
[50] See S Gill *Power and Resistance in the New World Order* (2008) 123. Gibson's brief reference to the IMF points to this assertion (see Gibson (n 49) 373).
[51] Gibson (n 49) 376.
[52] T Madlingozi "Social justice in a time of neo-apartheid constitutionalism: Critiquing the anti-black economy of recognition, incorporation and distribution" (2017) 28(1) *Stellenbosch Law Review* 123 146–147.

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hierarchies associated with colonial-apartheid".[53] Such an ideological capitulation is significantly evident in South Africa's embrace of neoliberal macroeconomic policy during and after the transition period.

4.3. Economic paradigm shift: From "post"-apartheid struggles to neoliberal realities

During the late 1980s and early 1990s, the discourse on macro-economic policies in South Africa was led by various entities, including the Economic Trends Group (ET), the Macro-Economic Research Group (MERG), the World Bank (WB), and the International Monetary Fund (IMF).[54] The MERG primarily advocated for a "post-Keynesian" economic policy, emphasising state investment that would later extend to private investment to foster sustainable economic growth.[55] However, the MERG's proposals, presented to the ANC in 1993 as South Africa transitioned to democracy, were not embraced by the ANC. According to Narsiah, this marked the initial setback for a sincere effort from the "growth through redistribution faction within the ANC".[56] In late 1993, a document named the Reconstruction and Development Programme (RDP) emerged through workshops involving intellectuals, the SACP, the trade union movement represented by the Congress of South African Trade Unions (COSATU), and other non-governmental organisations (NGOs).[57]

The RDP aimed to adopt a basic needs approach, functioning essentially as a Keynesian capitalist welfare system.[58] It intended to focus on economic development, along with infrastructure, basic healthcare, and education.[59] In 1993, the ANC incorporated the RDP into its manifesto and subsequently used it to formulate policies after assuming political power in 1994.[60] However, the final version of the RDP policy deviated significantly from the original principles and intentions of the organisations that contributed to its creation, such as the ET, MERG, SACP, and COSATU.[61]

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[53] S Sibanda "When do you call time on a compromise? South Africa's discourse on transformation and the future of transformative constitutionalism" (2020) 24 *Law, Democracy & Development* 384 388.
[54] R Peet "Ideology, discourse, and the geography of hegemony: From socialist to neoliberal development in postapartheid South Africa" (2002) 34 *Antipode* 54.
[55] Peet (n 54) 70.
[56] S Narsiah "Neoliberalism and the privatisation of South Africa" (2002) 57 *GeoJournal* 29 31.
[57] P Bond & MM Khosa (eds) *An RDP policy audit* (1999) 2.
[58] GCZ Mhone & O Edighej Governance in the new South Africa: The challenges of globalisation (2003) 93.
[59] See R Southall *Liberation movements in power: Party & state in Southern Africa* (2013) 91–92.
[60] Peet (n 54) 70 & Narsiah (n 56) 31.
[61] Narsiah (n 56) 31.

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According to Schneider, rejecting the original MERG approach was a regrettable decision, as MERG's economic approach was more realistic for late-industrialising countries than the exclusively market-oriented neoliberal approach.[62]

Addressing the deeply rooted and racially charged inequality in South Africa was the ANC government's primary responsibility. The monumental task involved restructuring the foundations of the South African economy to ensure integrated economic development. This required wealth and resource redistribution, job creation, sustainable growth, and rapid development to support government and personal expenditures. Narsiah notes that the RDP encountered challenges with policy implementation from its inception, primarily due to limited resources fiercely guarded by figures within the ANC parliament, specifically Thabo Mbeki and Trevor Manual.[63] The pressure to accomplish these objectives led the ANC to adopt a new strategy emphasising that economic growth was crucial, and would concomitantly lead to the realisation of South Africa's social welfare goals.[64] This strategy also involved increasing national and foreign investment and privatisation.[65] The RDP's need-based approach was gradually supplanted by a supply-side approach, especially under the mounting pressure on the ANC to achieve economic success in a competitive global economic landscape.[66]

In 1996, the ANC government replaced the RDP with a new initiative named the Growth, Employment, and Redistribution (GEAR) strategy. Cheru suggests that the shift was motivated by the belief that "the RDP functioned not as a development framework, but as an aggregation of social policies designed to alleviate poverty without affecting the complex of economic policies and practices that produce poverty and inequality".[67] Many observers perceived this as a significant change in ANC policies, shifting from "social heterodoxy" to "neoliberal orthodoxy".[68] Subsequently, most economic policies in South Africa have followed versions of these neoliberal

[62] GE Schneider "The post-apartheid development debacle in South Africa: How mainstream economics and the vested interests preserved apartheid economic structures" (2018) 52(2) *Journal of Economic Issues* 302 309.
[63] Narsiah (n 56) 31. See also Southall (n 59) 92.
[64] Southall (n 59) 94.
[65] Southall (n 59) 94.
[66] F Cheru "Overcoming apartheid's legacy: The ascendancy of neoliberalism in South Africa's anti-poverty strategy" (2001) 22(4) *Third World Quarterly* 505 507.
[67] Cheru (n 66) 507.
[68] Narsiah (n 56) 31.

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principles to promote economic growth by opening up the country to international trade.[69] Cheru argues that this ideological shift traces back to the early 1990s, suggesting a strategic decision by the ANC leadership to align with neoliberal economic policies.[70] This alignment is viewed as a continuation of the NP-led government's exploration of neoliberal economic policies in the mid-1980s.[71]

4.4. Shaping South African statehood: International law, neoliberal imperatives, and the 'logic of improvement'"

Focusing on the historical lineages of the events, including the ascendancy of neoliberal macroeconomic policy, South Africa's transition from apartheid to constitutional democracy can be seen as another manifestation of the process of shaping and reshaping Third World statehood through international law and institutions. From this perspective, and more broadly, by perceiving international law as a bounded terrain of argumentation rather than a definitive benchmark for measuring and assigning clear values (legal/illegal),[72] it can be argued that the political manoeuvres during the birth of the democratic era in South Africa can be better understood as enacting the "standard of civilisation". Or, as Ntina Tzouvala would have it, these manoeuvres constantly oscillated between a "logic of improvement" and a "logic of biology".[73] Within this context, South Africa's rehabilitation as an equal sovereign became conditional on its transformation into a model neoliberal state.

In terms of this framework, the concept of "civilisation" goes beyond a single, definitive legal concept. Instead, it is seen as a mode of argumentation employed within international legal discourse.[74] This mode of argument establishes a connection between the level of recognition granted to political communities in international law and their internal governance structure, specifically their adherence to the principles of capitalist modernity.[75] The central argument put forth is that discussions based on the "standard of civilisation" often fluctuate between two seemingly contradictory positions. On one hand, there is scepticism and even hostility towards the idea of equal inclusion for non-Western, predominantly non-white political communities within

[69] Schneider (n 62) 308.
[70] Cheru (n 66) 507–508.
[71] Cheru (n 66) 508.
[72] N Tzouvala *Capitalism as civilisation* (2020) 175.
[73] Tzouvala (2020) (n 72) 175.
[74] Tzouvala (2020) (n 72) 2.
[75] Tzouvala (2020) (n 72) 2.

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international law.[76] This scepticism stems from deep-seated notions of cultural or racial inferiority. On the other hand, there is a belief that such inclusion is possible and desirable, but it comes with the condition that these communities adopt specific reforms aligning with capitalist modernity.[77] As a result, the "standard of civilisation" creates a complex dynamic between exclusion and conditional inclusion.[78] This duality is referred to as the "logic of biology", which emphasises insurmountable barriers to equal rights for non-Western communities, and the "logic of improvement," which offers inclusion but only upon capitalist transformation.[79]

Taking a step further, it can be argued that this paradoxical situation only arises and becomes relevant within the context of imperialism as a distinct capitalist phenomenon.[80] On one hand, imperialism establishes spheres of political dominance and heightened economic exploitation.[81] In more recent times, it structures "global value chains" to facilitate the transfer of value from the periphery to the imperial centre.[82] These dynamics between the centre and periphery are not necessarily fixed and can be subject to reorganisation due to inter-imperialist conflicts.[83] The rapid emergence of Chinese capitalism and its expansion through initiatives like the Belt and Road Initiative exemplify the dynamic and evolving nature of these relationships, influenced in part by historical patterns of imperial domination but not reducible to them.[84] On the other hand, the inherent tendency of the capitalist mode of production towards extended reproduction, both spatially and otherwise, contributes to the proliferation of institutions, legal frameworks, and techniques necessary for establishing and perpetuating the capitalist mode of production.[85] The conundrum presented by the "standard of civilisation" reflects the contradictions of uneven and combined capitalist development.[86] These contradictions exist not as arbitrary fluctuations but as a unity of divergences. In other words, capitalism constitutes a mode of production that recognises no inherent limits to its expansion, whether in

[76] Tzouvala (2020) (n 72) 2.
[77] Tzouvala (2020) (n 72) 2.
[78] Tzouvala (2020) (n 72) 2.
[79] Tzouvala (2020) (n 72) 2.
[80] Tzouvala (2020) (n 72) 2.
[81] Tzouvala (2020) (n 72) 2.
[82] Tzouvala (2020) (n 72) 2–3.
[83] Tzouvala (2020) (n 72) 3.
[84] Tzouvala (2020) (n 72) 3.
[85] Tzouvala (2020) (n 72) 3.
[86] Tzouvala (2020) (n 72) 3.

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geographical, moral, or other dimensions of life that cannot be subjected to the imperatives of capitalist accumulation.[87]

Nevertheless, according to Sundhya Pahuja, international law played a crucial role in shaping the trajectory of decolonisation by equipping colonised peoples with the vocabulary and conceptual tools to express their aspirations and make them comprehensible within the international legal and political sphere.[88] In Pahuja's words, international law "was already the universal juridical frame covering the globe. This coverage meant that international law could provide a structure by which the heterogeneous movements for decolonisation could be smoothed into a coherent story" and "be contained within the broader frameworks set by Western interests".[89] Thus, while international law enabled the articulation of decolonisation claims and granted them a certain level of attention, it simultaneously entrenched the notion that national statehood was the sole avenue for asserting legal personality.[90] The universal scope and the assertion of universality in international law thus established both the framework for decolonisation to occur and the boundaries within which this process could unfold.[91] Be that as it may, colonised and racialised peoples around the world chose to mobilise international law, albeit to varying degrees and with different levels of commitment, in order to fight against their oppression.[92] This trend encompassed newly independent states like India advocating for the rights of their fellow countrymen abroad,[93] and—as in the case of apartheid South Africa—peoples under international tutelage submitting petitions protesting the violation of their human rights.[94]

Even though a detailed account of the relationship between neoliberalism, international law and the state is beyond the scope of the argument presented in this study, it is important to outline a brief understanding of this interplay, so that it becomes clear why it is that, in contemporary international politics, the “logic of improvement” is equated not just with capitalism, but with a particular model of capitalist accumulation,

[87] Tzouvala (2020) (n 72) 3.
[88] S Pahuja *Decolonising international law: Development, economic growth and the politics of universality* (2011) 80.
[89] Pahuja (n 88) 45.
[90] Pahuja (n 88) 45.
[91] Pahuja (n 88) 45.
[92] Pahuja (n 88) 80–81.
[93] Tzouvala (2020) (n 72) 134.
[94] See ES Reddy (ed) *Apartheid, South Africa and international law* (1985). See annexure II for records of South African representative’s successful recourse to the UN General Assembly against apartheid.

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neoliberalism. Neoliberalism can be comprehended as a framework encompassing both a set of ideas and a tangible form of capitalist accumulation that "rests upon the idea of generalized competition and state intervention for the construction, guarantee and expansion of these competitive relations in an ever-increasing sphere of social co-existence, including the structure and functions of the state itself".[95] In the realm of material production and distribution, the rise of neoliberalism was marked by several significant developments. These included the widespread expansion of global value chains, the growing supremacy of financial capital in relation to other sectors, the reinforcement of large and concentrated capital at the expense of smaller enterprises, and the overarching dominance of capital over not only the working classes and society as a whole but also the natural environment.[96]

It is precisely by situating South Africa's transition to constitutional democracy within this political economy context that we can get a fuller account of neoliberalism's global ordering functions. The ANC's stance on economic policies during its period in exile was marked by uncertainty and a lack of clarity. Despite the radical language used in the Freedom Charter, influential leaders like Nelson Mandela displayed hesitancy and were not fully committed to a more radical left-wing agenda.[97] Some ANC leaders, including Thabo Mbeki, had already started shifting towards a more business-friendly approach after engaging with the investor community during negotiations in the 1980s.[98] The return of senior ANC leaders from exile or release from prison in the early 1990s was accompanied by an intense ideological pressure. The party's interactions with global financial institutions during that period had a profound impact on the thinking of its leadership.[99] Several key ANC figures underwent a significant "ideological conversion", as described by Segatti and Pons-Vignon.[100] Mandela, for instance, faced criticism from the global investor community after stating that the nationalisation of mines, banks, and monopolies was ANC policy and non-

[95] See N Tzouvala "Chronicle of a death foretold? Thinking about sovereignty, expertise and neoliberalism in the light of Brexit" (2016) 17 *German Law Journal* 117 120–121.
[96] D Harvey *A brief history of neoliberalism* (2007) 32–33.
[97] See B Freund "Swimming against the tide: The macro-economic research group in the South African transition 1991–94" (2013) 40 *Review of African Political Economy* 519 520 and A Hirsch *Season of hope: Economic reform under Mandela and Mbeki* (2005) 42.
[98] Freund (n 97) 522.
[99] Bond (2000) (n 4) 43.
[100] A Segatti & N Pons-Vignon Stuck in stabilisation? South Africa's post-apartheid macro-economic policy between ideological conversion and technocratic capture (2013) 40(138) *Review of African Political Economy* 537 537.

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negotiable.[101] According to Freund, Mandela swiftly realigned his economic views with left-of-centre Western parties after his release from prison. Alongside figures like Thabo Mbeki, Trevor Manuel, and Alec Erwin, Mandela's government eventually implemented the GEAR programme in 1996, as discussed in 4.3 above.[102] Mandela closed off avenues for opposition within the ANC and among its left-wing allies, including trade unions, by declaring GEAR as necessary and its content as non-negotiable.[103] As Peet concluded with regard to the power of neoliberal economists: "What the terror on Robben Island could not do to Mandela, the Davos culture could".[104]

ANC elites, including Mandela, faced significant pressure to adopt an orthodox neoliberal macroeconomic policy, driven by the power dynamics within the global economy.[105] The ANC assumed power during a time when the influence of nation states was being constrained by globally connected sections of capital, leading to a cautious approach by ANC elites.[106] The inherited weakness of the apartheid-era economy added to their concerns, prompting the fear that not projecting a "disciplined" and business-friendly image could result in a loss of confidence from the investor community, leading to reduced investment, credit rating downgrades, and capital flight.[107] To address these concerns and attract crucial resources in a highly unequal global power structure marked by economic dependency, Mandela and other ANC leaders pursued what Bayart termed a "strategy of extraversion".[108] This involved cultivating a moderate political identity and outwardly demonstrating self-discipline to the investor community. By embracing neoliberal orthodoxy and presenting themselves as a moderate and self-disciplined party, ANC elites sought to allay the anxieties of the international investor community, whose resources were vital for the new government.[109]

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[101] Peet (n 54) 62.
[102] Freund (n 97) 526.
[103] Freund (n 97) 526.
[104] Peet (n 54) 79.
[105] Peet (n 54) 82.
[106] See WI Robinson *A theory of global capitalism production, class, and state in a transnational world* (2004) 70–74.
[107] See B Fine "Assessing South Africa's New Growth Path: Framework for change?" (2012) 39(134) *Review of African Political Economy* 551 and P Williams & I Taylor "Neo-liberalism and the political economy of the "new" South Africa" (2000) 5(1) *New Political Economy* 21.
[108] J Bayart "Africa in the world: A history of extraversion" (2000) 99(395) *African Affairs* 217 217.
[109] A Beresford "Nelson Mandela and the Politics of Unfinished Liberation in South Africa" (2014) 41(140) *Review of African Political Economy* 297 301.

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Despite accounts of the endogenous nature of these shifts,[110] the "post"-apartheid submission to global capital should be understood as a consequence of efforts to remake states in the Global South in accordance with the imperatives of a historically singular convergence between neoliberalism and international law.[111] Indeed, conforming with these imperatives emerged as a necessary precondition for political communities to be granted equal inclusion within the international legal order. It became evident that having accepted (and even celebrated) the inevitability of a democratic South Africa, the international community recognised the necessity of setting the legal framework for this transition and creating a state safe for racial capitalism.[112] These frameworks generally point at a delimiting of the horizon of what sovereignty, self-determination and national independence are *for*.[113] For example, the design of South Africa's "post"-apartheid Constitution was strategically crafted to effectively safeguard the interests of foreign capital and as a way of pacifying the racial anxieties of white settlers.[114] These principles formed the non-negotiable backbone of South Africa's Constitution.[115] Protections of established property rights and of free economic activity were incorporated into the Constitution as part of its "Bill of Rights" protecting basic human rights,[116] thereby locking-in the highly unequal, racialised distribution of property and wealth in the country.[117] The acceptance of these provisions became an inflexible condition for South Africa's independence[118]—that is, the "logic of improvement" became an integral part of "post"-apartheid South Africa's acquisition of statehood under international law.

Understanding this backdrop of external influences framing South Africa's post-apartheid statehood allows for a more nuanced exploration of the dynamics between global expectations and the nation's constitutional design. In this context, the Constitution emerges as the paramount symbol for societal change, setting the

[110] See for example McKinley (n 15) vii and Segatti & Pons-Vignon (n 100) 544.
[111] For an account of this convergence see A Orford & J Beard Making the state safe for the market: The World Bank's World Development Report 1997' (1998) 22 *Melbourne University Law Review* 195.
[112] See R Wilson *The Politics of Truth and Reconciliation in South Africa: Legitimizing the post-apartheid state* (2001) 151–153.
[113] Tzouvala (2020) (n 72) 163.
[114] H Giliomee & L Schlemmer (eds) *Negotiating South Africa's future* (1989) 12, 37.
[115] Wilson (n 112) 6.
[116] Wilson (n 112) 6.
[117] See generally MB Ramose "An African perspective on justice and race" (2001) Polylog: Forum for Intercultural Philosophy available at: http://them.polylog.org/3/frm-en.htm#s7.
[118] See Bond (2000) (n 4), Giliomee & Schlemmer (n 114) 21.

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parameters for hope and progress. However, this supposed beacon of transformation becomes a double-edged sword. It serves as a spectacle, embodying promises of human rights and equality, but it also functions as a limiting force. In this context, Madlingozi's reflections on "post"-apartheid constitutionalism offer a compelling perspective: "transformative constitutionalism" as a subversive force that may allow the Constitution as the hegemonic signifier to reframe itself and its fundamental, organising notions.[119] Within the parameters of critical legal theory, Van Marle suggests that "that there is a danger that law, monumental constitutionalism and human rights embody another spectacle",[120] which may feed the South African 'imagination' to the "detriment of the ordinary, the way people actually live and, more pertinently, the complexities of life".[121] Madlingozi advances the argument further towards a decolonial notion of *constitutionness*,[122] as opposed to the "hegemonic constitutional project" that promises human rights to *all*,[123] paradoxically excluding those on "other side" of the "abyssal line"—the victims of settler colonialism—from the "benefits" of Transformative Constitutionalism.[124] This alignment echoes the broader neoliberal vision, wherein constitutional frameworks, while symbolising transformative aspirations, serve to entrench socio-economic inequalities and perpetuate the status quo, aligning with the core tenets of neoliberal governance.[125]

4.5. Conclusion

The analysis presented in this chapter highlights the transformation of the African ANC and the South African government under the influence of neoliberal forces. The transition from apartheid to constitutional democracy, symbolised by the political emancipation in 1994, was expected to bring about inclusive governance and address historical socio-economic disparities. However, the ANC's embrace of neoliberal principles and policies during this transition period (and beyond) has raised concerns about its commitment to transformative ideals and social justice. The corporatisation

[119] Madlingozi (2017) (n 52) 125.
[120] K Van Marle "The spectacle of post-apartheid constitutionalism" (2007) 16(2) *Griffith Law Review* 411 411.
[121] Van Marle (n 120) 411.
[122] "On settler colonialism and post-conquest constitutionness: The decolonising constitutional vision of African nationalists of Azania/South Africa" (2016) [Draft paper]. Retrieved from https://www.academia.edu/33747352/On_Settler_Colonialism_and_Post_Conquest_Constitutionness_The_Decolonising_Constitutional_Vision_of_African_Nationalists_of_Azania_South_Africa.
[123] Madlingozi (2016) (n 122) 5.
[124] Madlingozi (2016) (n 122) 1.
[125] W Brown *Undoing the demos: Neoliberalism's stealth revolution* (2015) 20.

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of the ANC, as described by Dale McKinley, has resulted in a shift of power away from the working class and marginalised communities. The ANC's collaboration with corporate capital and its adoption of neoliberal macroeconomic principles have perpetuated socio-economic inequalities and commodified socio-economic rights. The pursuit of deracialised capitalism through mechanisms like BEE has further enriched a politically influential elite while failing to alleviate the hardships faced by the majority of the population.

Moreover, the ANC's entry into the international community played a significant role in shaping its policies and strategies. The changing global landscape, marked in part by the collapse of the Soviet Union and the ascendancy of neoliberalism, compelled the ANC to position itself as a reliable partner for international investors and a player in the global market. This strategic choice to align with global neoliberal trends allowed the ANC to gain recognition and acceptance on the international stage, but it came at the expense of its original transformative vision and the aspirations of the liberation struggle.

By adopting a corporatised route to power and prioritising market-driven solutions, the ANC sought to attract foreign investment and secure international support. However, this strategic alignment with neoliberal forces hindered the ANC's ability to fully address the historical socio-economic disparities inherited from colonialism and apartheid. The pursuit of deracialised capitalism and the rapid implementation of neoliberal policies not only perpetuated socio-economic inequalities but also commodified socio-economic rights within South Africa, undermining the ANC's commitment to social justice.

Furthermore, the ANC's collaboration with capital and its corporatised nature have not only impacted domestic governance but have also revealed the inherent inequities of international law. While this collaboration has granted the ANC international recognition and attracted investment, it has come at the cost of compromising its transformative ideals and perpetuating significant socio-economic inequalities. The prioritisation of market-driven solutions and the relentless pursuit of capital interests, often to the detriment of the urgent needs of the majority, have resulted in a persistent state of socio-economic disparities, disproportionately burdening marginalised communities. This exposes the troubling biases within international law, which tend to

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favour powerful economic actors, thereby perpetuating a system that unfairly places the heaviest burden on those who are already disadvantaged.

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Chapter 5: The “ethos” and victims of the neoliberal dream

5.1. Introduction

For many neoliberals, the notion of disciplining the state varied along racial lines. The struggle for decolonisation in the Global South and anti-racist movements in the West made the issue of the global colour divide inseparable from different and competing conceptions of the global economic system. Slobodian’s *Globalists* acknowledges that the Geneva School was not oblivious to racial concerns, which in fact created significant tensions within its members.[1] Notably, Slobodian extensively documents the explicitly racialised views of Wilhelm Röpke and his advocacy for apartheid South Africa during a time when the National Party government sought Western support.[2] However, as emphasised in Chapter 2, it is worth noting the importance of caution against overly characterising Röpke's position as exceptional, even though his explicit endorsement of racial hierarchy was uncommon among his intellectual peers.[3] Indeed, through a careful examination of his writings, Slobodian uncovers the intersection between neoliberal reservations about mass democracy (if not outright disdain) and their limited criticisms of apartheid. Revisiting a point made earlier in the study, it is apparent that neoliberal thinkers were primarily concerned with racial segregation and exclusion from the marketplace, while being open to the idea of weighted voting rights as a means to prevent the emergence of a black-majority republic, which was perceived as a threatening prospect by extremist and "moderate" defenders of apartheid alike.[4]

Nevertheless, the question of how to comprehend the connection between race and the global governance system persists, particularly when we recognise the limitations of solely examining the personal opinions of individual scholars. As in *Globalists*, the example of South Africa is instructive. Following the demise of apartheid, South Africa sought to be reclassified as a developing country within the General Agreement on Tariffs and Trade (GATT).[5] However, their request was swiftly denied as the white supremacist regime had classified the country as "developed" based on the

[1] Q Slobodian *Globalists: the end of empire and the birth of neoliberalism* (2018) 170–174.
[2] Slobodian (n 1) 175–180.
[3] Slobodian (n 1) 179.
[4] Slobodian (n 1) 179–180.
[5] See JJ Hentz *South Africa and the logic of regional cooperation* (2005) 134.

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association between whiteness and development rather than the country's actual economic circumstances.[6] The GATT's understanding of development followed a progressive and linear trajectory, making the notion of a "developed" country being reclassified as "developing" inconceivable, regardless of the original classification's context.[7] Simultaneously, in the post-1994 era, governments entered into numerous Bilateral Investment Treaties (BITs) that, following the standard template of the 1990s, provided extensive and often unanticipated protections to foreign investors.[8]

This chapter seeks to analyse this state of affairs. In this context, it refrains from revisiting the numerous criticisms directed towards this legal framework itself, which are many and have started entering the mainstream of international law discourse. Instead, its focus lies on highlighting the idea that, irrespective of the motives of the parties involved, the primary purpose of these treaties and subsequent arbitral awards is to uphold a system of capitalist exploitation structured around racial lines. These instruments effectively designate the South African state as the enforcer of this reality, frequently contravening its own Constitution in the process.

The chapter endeavours to illustrate, using the *Swiss Investor*[9] and *Foresti*[10] cases as examples, that despite the notable contrast in terminology and approach between the technical language of investment treaties and arbitrators and Röpke's derogatory portrayal of African nationalists as "cannibals",[11] the fundamental purpose of these legal frameworks is to perpetuate the dynamics of racially structured global capitalism. Furthermore, these regimes seek to safeguard the economic structure of colonialism and apartheid, limiting the potential for meaningful transformation even after the realisation of universal suffrage in South Africa. This objective is realised through the implementation of disciplinary mechanisms, including investment treaties.

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[6] Hentz (n 5) 136.
[7] See Slobodian (n 1) 248–250.
[8] S Hindelang & M Krajewski *Shifting paradigms in international investment law: More balanced, less isolated, increasingly diversified* (2016) 268.
[9] The arbitration proceedings were conducted under UNCITRAL arbitration rules, and the arbitration ruling remains confidential. For more on the dispute, see LE Peterson "Swiss investor prevailed in 2003 in confidential BIT arbitration over South Africa land dispute" (2008) *Investment Arbitration Reporter* 1(13).
[10] *Piero Foresti, Laura de Carli and others v Republic of South Africa*, ICSID Case No ARB(AF)/07/1, Award (4 August 2010).
[11] Slobodian (n 1) 171.

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By framing white supremacy as a pervasive global system of dominance and exploitation that operates within, outside, or in opposition to legal frameworks and institutions—as was the objective throughout this study—we gain the ability to integrate the themes of empire and race, which Slobodian's work tends to explore in a degree of separation. As we have seen in chapter 2, Adom Getachew's recent insights prompt us to reconsider imperialism not solely as direct political control, but to also contemplate the perspectives of radical post-colonial leaders who drew inspiration from various strands of Marxist-Leninist thought. These leaders viewed imperialism as a state of unequal integration into the global economic and political system. Within this context, the concepts of race and racialisation emerge as contingent and ever-evolving processes that manifest in unexpected arenas, including the realm of international economic law.

The chapter begins **(5.2)** by briefly discussing the methodological approach to reading international law texts symptomatically—that is, in a way that exposes the intricate interplay between human rights, state power, and neoliberal agendas, and highlights the challenges faced by marginalised populations within the framework of neoliberalism. Section **5.3** delves into the neoliberal internationalist dimensions evident in BIT arbitration against South Africa, examining the *Swiss investor* and *Foresti* cases.

5.2. Reading international law texts symptomatically: Insights from Orford and Capers

In reading the *Foresti* and *Swiss Investor* rulings, we will do well to adopt a methodology that draws inspiration from the works of Orford[12] and Capers,[13] who demonstrate the value of reading legal texts against their conventional interpretations. While explicit accounts of reading within and for legal texts—particularly those in international law—remain scarce, Orford's earlier work utilised feminist and post-colonial literary theory to purposefully misread dominant texts on humanitarian intervention. By focusing on the narrative and pedagogical functions of these texts,[14] Orford shed light on the ongoing interconnections between international law and

[12] A Orford "On international legal method" (2013) 1 *London Review of International Law* 166.
[13] I Bennett Capers "Reading back, reading black" (2006) 35 *Hofstra Law Review* 9.
[14] Orford (n 12) 166.

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imperialism. Expanding beyond international law, Capers' approach on "reading back" and "reading black" are an invaluable guide for critically engaging with legal texts.

Capers' oppositional reading method challenges mainstream approaches and probes the texts themselves, uncovering contestation, slippages, inconsistencies, and paradoxes as gateways to their underlying logic.[15] This approach prompts us to not only examine what is explicitly present but also to scrutinise the omissions and silences within the texts, recognising their defining role.[16] By adopting this methodology, we can discern that cases seemingly unrelated to race and racism actually contribute to the production and perpetuation of racial hierarchies.[17] Even when the reasoning within these cases appears confusing and inconsistent, understanding the centrality of racial imaginaries and assumptions lends coherence and significance to their arguments.[18] Capers Continues:

> "To illustrate this reading practice, I have chosen two cases that on their face do not appear to be engaged in 'race work' at all. In selecting such cases, I hope to excavate the racialized thinking that informs even those opinions most removed from racial concerns. As I shall argue, each of these cases participates in forming racial identity and promulgating a type of racial hierarchy. And because these are judicial opinions, because they speak with the force of law, each of these opinions functions as an authorizing discourse on race".[19]

As Capers exemplifies, this reading practice can be applied to cases beyond race, such as those pertaining to queer, class-based, or feminist concerns.[20] It is essential to emphasise that this methodology does not advocate for a mere diversification of the judiciary, as personal characteristics alone do not guarantee a willingness to read between the lines.[21] Instead, it aims to unearth the hidden dimensions of legal opinions and their authoritative influence on racial discourse.[22] Building upon the compelling insights of Orford and Capers, this chapter aims to push the boundaries of their approaches in two ways. Firstly, it proposes a productive understanding of reading within and for international law, departing from Capers' metaphorical language of excavation and revelation. Rather than viewing it as an uncovering of what was

[15] Capers (n 13) 9.
[16] Capers (n 13) 12.
[17] Capers (n 13) 12.
[18] Capers (n 13) 13.
[19] Capers (n 13) 13.
[20] Capers (n 13) 12.
[21] Capers (n 13) 12.
[22] Capers (n 13) 12.

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already present, it seeks to espouse an approach that can generate new insights and interpretations.

Relatedly, it is argued that every interpretation of international law, whether it is critical or mainstream, theoretical or doctrinal, is shaped by a specific *problematic* that renders certain aspects of the text highly visible while rendering others invisible, or more precisely, unthinkable.[23] Drawing inspiration from Gaston Bachelard's epistemological theories,[24] the concept of *problematic* has been integrated into critical legal theory as an endeavour to challenge the accepted premises within the discipline. Originally, this concept aimed to capture what sets scientific knowledge apart from other practices that also make truth-claims about the world.[25]

For Bachelard, the demarcation between sciences and other practices occurs when we transcend everyday common-sense observations, which he viewed as fundamentally incompatible with scientific inquiry.[26] In this context, a problematic encompasses more than just a theory; it embodies the essential structure required for theories to emerge.[27] It entails diverting different concepts from their isolated and immediate ordinary semantic meanings and redefining them in relation to one another.[28] Applying this perspective to the study of law proves beneficial in two ways. Firstly, it enables us to question and surpass the common-sense notions ingrained in the discipline. Secondly, it challenges the notion that legal texts exist independently as an objective reality, and that the act of doctrinal interpretation or historical engagement merely involves rediscovering an already-existing meaning.

Returning to Orford's perspective,[29] it must be pointed out that, if she engages in a productive misreading of international law texts, so does everyone else. In other words, all interpretations are influenced by the *problematic*, prompting us to critically examine the texts of international law and explore alternative meanings beyond the conventional interpretations. Those well-versed in literary theory and Marxism may already identify the method proposed here as akin to “symptomatic reading”, a mode

[23] See generally P Maniglier “Bachelard and the concept of the problematic” (2012) 173 *Radical Philosophy* 21.
[24] G Bachelard *La Formation de i’esprit scientifique* (1993).
[25] Bachelard (n 24).
[26] Maniglier (n 23) 23.
[27] Maniglier (n 23) 23.
[28] Maniglier (n 23) 23.
[29] Orford (n 12).

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of textual analysis inspired by the ideas of French Marxist philosopher Louis Althusser.[30]

Building upon these insights, this study's approach to interpreting *Foresti* and *Swiss Investor* diverges from the conventional notion of extracting a pre-existing meaning solely from the text's surface. It does not involve a conventional legal interpretation followed by the incorporation of historical materialism. This approach seeks not only to uncover what is explicitly stated but also to explore the unsaid, not as a result of oversight but as a logical consequence inherent in the text's problematic nature. Through this process, the text reveals a dual nature: the transmitted text itself and an unarticulated parallel text, containing the silences and omissions that could not be expressed within the existing text without creating contradictions. Importantly, these silences are not passive entities waiting to be discovered; instead, they are the product of the questions we choose to ask the text and the underlying problematic that shapes our interpretation. Therefore, a symptomatic reading is defined by both its inherent problematic and the objective reality of the text as a social-historical production.

5.3. Exploring the neoliberal internationalist dimensions evident in the BIT arbitration against South Africa

South Africa has encountered at least two claims under its BITs. In 2001, a Swiss investor initiated arbitration against South Africa based on the provisions of the country's BIT with Switzerland. The investor alleged that the South African police had neglected a series of incidents involving trespassing, theft, and vandalism targeting a property acquired by the investor for the purpose of developing it into a game lodge and conference centre.[31] The investor further claimed that the investment had been subject to expropriation as a result of the cumulative damage inflicted on the property or, alternatively, due to a domestic land-claims process in which local residents were seeking ownership of all or parts of the property in question.[32] Although the expropriation claim was dismissed by the arbitration tribunal, South Africa was found to have violated its obligation to provide "full protection and security" to foreign investments.[33] Due to the confidential nature of the case, the arbitration proceedings and the subsequent award received limited coverage in the South African media.

[30] L Althusser *Lenin and philosophy and other essays trans* B Brewster (2001) 85–126.
[31] Petersen (n 9).
[32] Petersen (n 9).
[33] Petersen (n 9).

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5.3.1. The Foresti case

One notable case that received attention in the South African media is the *Foresti v South Africa* case. The legal proceedings commenced in November 2006 when a group of Italian nationals and a Luxembourg-based corporation (referred to as "the claimants") initiated arbitration proceedings against South Africa at the International Centre for Settlement of Investment Disputes (ICSID).[34] The claimants, who were involved in the South African granite mining and processing industry at the time, filed a claim in January 2007. They alleged that certain provisions within South Africa's Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) constituted an effective expropriation of their mineral rights and violated the terms outlined in South Africa's BITs with Italy and the Belgo-Luxembourg Economic Union.[35]

The MPRDA serves several purposes, one of which is to significantly and meaningfully increase opportunities for historically disadvantaged individuals to participate in the mineral and petroleum industries and benefit from the exploitation of the nation's mineral and petroleum resources.[36] This act introduced a new mineral rights regime in South Africa. Previously, under South African law, private entities that owned land also owned the mineral resources beneath that land.[37] However, the MPRDA brought about a fundamental change by transferring ownership of all mineral resources in South Africa to the State.[38] Private ownership of mineral rights was replaced with a licensing system administered by the government.[39] Mining enterprises that previously held old order mineral rights were required to convert them into new order rights under the new regime.[40] Moreover, the MPRDA implemented various requirements that enterprises must meet to qualify for exploration or mining licenses. One such requirement is that the enterprise must have a minimum of 26 percent ownership stake, or higher, held by black South Africans. This provision aims to promote Black

[34] *Foresti* (n 10) 3.
[35] *Foresti* (n 10) 16.
[36] Mineral and Petroleum Resources Development Act No 28 of 2002, s 2(d).
[37] See D Vis-Dunbar "South African court judgment bolsters expropriation charge over Black Economic Empowerment legislation in the mining sector" Investment Treaty News (23 March 2010) available at: https://www.iisd.org/itn/en/2009/03/23/south-african-court-judgment-bolsters-expropriation-charge-over-black-economic-empowerment-legislation/.
[38] Vis-Dunbar (n 37).
[39] Vis-Dunbar (n 37).
[40] Vis-Dunbar (n 37).

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Economic Empowerment and advance the goal of economic inclusion for historically disadvantaged individuals in the mining sector.[41]

In their Memorial, the claimants asserted that the South African Government, through the enactment of the MPRDA, had effectively expropriated their mineral rights. According to the claimants' argument, the MPRDA extinguished their existing mineral rights while providing them only with a procedural right to apply for the conversion of their "old order mineral rights" into significantly diminished "new-order mineral rights".[42] Furthermore, the claimants contended that their shares in the affected operating companies had been directly and/or indirectly expropriated due to the combined effect of the "compulsory equity divestiture requirements" of the MPRDA and the Mining Charter.[43] In their view, these actions violated the provisions outlined in South Africa's BITs with Italy and the Belgo-Luxembourg Economic Union.[44] These BITs include protections against direct and indirect expropriation, measures with equivalent effects, and measures that limit investors' rights of ownership, possession, control, or enjoyment of their investments.[45]

In its Counter-Memorial, the South African Government contested the claimants' assertion of direct or indirect expropriation of their old order mineral rights and shares in the operating companies. The Government argued that the claimants had not suffered a substantial deprivation of their investment rights, as their shares in the operating companies had not been directly expropriated.[46] It maintained that the operating companies retained the same fundamental entitlement to prospect for and mine granite, and that the equity divestiture requirements of the MPRDA and Mining Charter did not deprive the claimants of control over their investments.[47] Furthermore, the Government argued that even if it were assumed, for the sake of argument, that the claimants did have a valid claim for expropriation of their old order mineral rights and shares in the affected operating companies, the promulgation of the MPRDA did not contravene the provisions regarding expropriation in the relevant BITs.[48] According

[41] A Friedman “Flexible Arbitration for the Developing World: Piero Foresti and the Future of Bilateral Investment Treaties in the Global South” (2010) 7 *International Law & Management Review* 37 41.
[42] *Foresti* (n 10) 14.
[43] *Foresti* (n 10) 14–15.
[44] *Foresti* (n 10) 14–15.
[45] *Foresti* (n 10) 14–15.
[46] *Foresti* (n 10) 19.
[47] *Foresti* (n 10) 19–20.
[48] *Foresti* (n 10) 17–18.

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to the Government's argument, the MPRDA met the conditions set out in the BITs that permit expropriation, including non-discrimination, an important public purpose, compliance with due process requirements, and the availability of an effective mechanism for determining compensation for affected parties.[49]

The dispute central to the *Foresti* case was ultimately resolved outside the Tribunal through a settlement agreement in December 2008. Under this agreement, the South African Government granted the claimants' operating companies new order mineral rights, allowing them to bypass the full compliance with the equity divestiture requirements outlined in the MPRDA and Mining Charter.[50] The *Foresti* case and its significant costs not only brought the issue to the attention of the government but also raised concerns within South African society regarding the potential for investors to challenge affirmative action measures and other legitimate domestic policies before international arbitral tribunals.[51] Although the case was eventually resolved through a settlement, it underscored the vulnerability of sensitive South African legislation to legal challenges initiated by foreign investors.

In this context, a state with limited financial resources is interpellated as a primarily repressive agent, compelled to address issues of poverty and destitution predominantly through racially biased policing and the prioritisation of investor protection. Concurrently, these arbitration cases have shown how (neoliberal) human rights become entangled in this arrangement, serving as a mechanism that both limits a particular form of state power (i.e., intervention in the economy) and reinforces another (i.e., intervention, even if authoritarian, to ensure submission to the market). This intricate interplay between human rights, state power, and neoliberal agendas has lasting implications for our understanding of state violence and its relationship to human rights discourse.

All this points to the idea that, in practice, neoliberalism creates a surplus population that is deemed surplus to the needs of neoliberal markets. According to Achille Mbembe, these individuals are considered abandoned subjects, relegated to the role

[49] *Foresti* (n 10) 17–18.
[50] *Foresti* (n 10) 20.
[51] See "Remarks by Dr Rob Davies at the Centre for Conflict Studies Public Dialogue on "South Africa, Africa and International Investment Agreements"', Cape Town, 17 February 2014 available at: https://www.tralac.org/news/article/5481-south-africa-africa-and-international-investment-agreements.html.

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of "superfluous humanity" that capital no longer requires to function.[52] They are unable to be exploited and are excluded from capitalist exploitation, not even serving as a reserve army of labour, as Kalyan Sanyal notes.[53] Race becomes a means of coding and managing the material boundaries between different forms of labour and surplus under neoliberalism, such as the distinctions between citizens and migrants, formal and informal labour, waged and surplus individuals, and those with entitlements and those with "bare life".[54] This racial ordering of labouring populations is enforced through violent practices by neoliberal states and provides the material foundation that enables the "spontaneous plausibility of racist ideology" as an explanation for these material relations.[55] Discourses of law and order, within the context of neoliberalism, often serve as ideological arenas where this phenomenon takes place.[56]

Under these circumstances, the *Foresti* and *Swiss Investor* cases display how BITs and international investment law hinder disadvantaged individuals from challenging entrenched socio-economic injustices. The antagonistic nature of international investment law suppresses dissent and actively undermines even the most modest attempts at economic reform. Thus, the *Foresti* and *Swiss Investor* cases illuminate the obstacles faced by marginalised populations as they confront the material realities and ideological arenas shaped by discourses of law and order within the framework of neoliberalism.

5.4. Conclusion

This chapter has explored the intricate relationship between neoliberalism, race, and global governance through examining the impact of neoliberal policies on “post”-apartheid South Africa, particularly through bilateral investment treaties (BITs) and their arbitration cases. The analysis has demonstrated that these BITs and arbitral awards, while seemingly detached from racial concerns, serve to perpetuate the dynamics of racially structured global capitalism. They reinforce the economic structures of colonialism and apartheid, hindering meaningful transformation even after the attainment of universal suffrage in South Africa.

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[52] A Mbembe *Critique of Black Reason* (2017) 3.
[53] KK Sanyal *Rethinking capitalist development: primitive accumulation, governmentality and post-colonial capitalism* (2007) 47-45.
[54] A Kundnani “The racial constitution of neoliberalism” (2021) 63(1) *Race & Class* 51 53.
[55] Kundnani (n 54) 53.
[56] Kundnani (n 54) 64.

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By adopting a symptomatic reading approach and exploring the *Foresti* and *Swiss Investor* cases, the chapter has revealed how even seemingly unrelated legal texts participate in the production and perpetuation of racial hierarchies. Such an approach underscores the imperative for a thorough and critical examination of international investment law and its authoritative influence on postcolonial sovereignty. Moreover, the chapter has highlighted the role of neoliberalism in creating a population deemed surplus to the needs of neoliberal markets, and how race becomes a means of coding and managing labouring populations.

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Chapter 6: Conclusion

In this conclusion chapter, I summarise the findings and arguments of the study and reflect back on some of the strengths and weaknesses of the theoretical and methodological approaches I have taken. Additionally, I endeavour to draw conclusions about the overall study by contemplating the feasibility of freedom from neoliberalism, considering its deeply ingrained presence in the global order. The chapter commences with a comprehensive summary of the research findings, providing a cohesive overview of the insights gained throughout the study.

In this study, the investigation has responded to the overarching problem statement that frames neoliberalism as a politico-economic ideology extending beyond macroeconomic policies and free market ideologies. The emphasis on neoliberalism as a "market-and-morals project" and its roots in early neoliberal thinkers prompted an examination of the methods employed by early neoliberals to propagate their ideology. Aligned with perspectives highlighting the significance of these methods in establishing an economic, moral, and technological foundation for the spread of neoliberalism, the study explored two critical questions.

The exploration led to inquiries about how the long-term thinking of early neoliberals contributed to shaping the contemporary world and to what extent the neoliberal moral and institutional framework, characterised by a reframed conception of human rights, could be leveraged to envision a world beyond neoliberal hegemony. Specifically, the study questioned whether the current understanding of human rights offers effective means to counteract the exploitation and violence of markets, despite their entanglement with neoliberalism.

The study addressed these questions by delving into the intellectual discourse of a specific group of thinkers known as the "Geneva School" identified by Quinn Slobodian.[1] This group, while resisting post-colonial demands for economic self-determination, played a crucial role in advancing a particular idea of neoliberal internationalism. Emphasising the necessity of devising legal and institutional mechanisms to restrict post-colonial sovereignty and safeguard the international division of labour, the research also examined the South African liberation struggle.

[1] Q Slobodian *Globalists: the end of empire and the birth of neoliberalism* (2018) 8.

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Through the lens of the intellectual history of neoliberal internationalism, the ultimate goal was to shed light on the implications of these ideologies for present-day South Africa. In doing so, the study has contributed valuable insights to the broader discourse on neoliberalism, its historical roots, and its impact on global governance.

The first of the substantive chapters of the study, **chapter 2**, explored the transformative impact of decolonisation on international politics, challenging traditional narratives and emphasising its role in creating a more inclusive and equitable global order. It drew on Adom Getachew's work,[2] which reframes decolonisation as a broader endeavour beyond nation-building, involving influential Black Atlantic intellectuals seeking geopolitical and economic justice. Importantly, it discussed the racial dimensions of decolonisation, the transformation of self-determination, and post-independence challenges, including neo-colonialism.

The chapter delved into the neoliberal response to decolonisation, revealing how neoliberals perceived postcolonial economic initiatives as threats to the global market. It showed that the Geneva School's "ordoglobalism" aimed to institutionalise market mechanisms,[3] expressing concerns about the proliferation of self-determination policies, and that neoliberals grappled with racial dimensions and sought to perpetuate earlier imperial visions of the global economic order.

The "fall" of self-determination was examined within the context of neoliberal internationalism, with a focus on anticolonial nationalists' worldmaking endeavours and the role of the United Nations in institutionalising self-determination. The chapter scrutinised narratives that ascribe postcolonial failures to internal contradictions and delved into the impact of First World nations on Third World struggles. Importantly, it highlighted the historical imprecision and unfairness of attributing the decline of self-determination solely to internal failures of African states, especially when considering the formidable strength of the international neoliberal programme aimed at challenging and disrupting the anti-colonial worldmaking project.

Based on the foregoing historical exposition of neoliberalism and anti-colonial "worldmaking", the section on theorising neoliberalism expanded the understanding beyond an economic perspective. Neoliberalism was presented as a deliberate

[2] A Getachew *Worldmaking after empire: The rise and fall of self-determination* (2019).
[3] Slobodian (n 1) 12.

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political effort shaping global governance, impacting democratic practices, cultures, and institutions. Wendy Brown's perspective underscored neoliberalism's coexistence with contemporary capitalism, influencing diverse aspects of society beyond economics.[4] The section emphasised the importance of a nuanced perspective on neoliberalism, acknowledged its transnational development, and called for a specific political theory that considered diverse perspectives and contextualised it in African thought, criticising the lack of engagement with non-Western philosophical traditions.

In **chapter 3**, a nuanced and symbiotic relationship between neoliberalism and human rights was illuminated, challenging conventional assumptions that positioned human rights as a counterforce to neoliberal capitalism. Through an in-depth exploration of Jessica Whyte's historical analysis,[5] the study uncovered the strategic wielding of human rights by neoliberals to legitimise their ideologies and restrict transformative change within a rights framework. The findings exposed structural constraints embedded in rights discourse, revealing the strategic use of human rights by neoliberals to safeguard their entrenched ideological framework. These insights challenged prevalent assumptions in social-scientific literature and provided a deeper understanding of the intricate dynamics and long-term developments characterising the convergence between neoliberalism and human rights.

From a comprehensive historical account tracking the convergence between neoliberalism and human rights that will not be rehashed here, the chapter shows that neoliberals, acknowledging human rights' importance, strategically use them to counter mass democracy, aiming to de-democratise politics by challenging state sovereignty. The historical development of human rights involves neoliberal thinkers actively shaping their construction, with a consensus among major NGOs that a liberal market is vital for fostering human rights. It showed how neoliberals perceive human rights and competitive markets as mutually reinforcing, emphasising the rule of law and individual rights. The chapter also showed the determinacy within rights discourse, suggesting its potential to advance neoliberal values and undermine broader political initiatives. This complex relationship raises questions about the sincerity of neoliberal

[4] W Brown *In the ruins of neoliberalism: The rise of antidemocratic politics in the West* (2019) 6.
[5] J Whyte *The morals of the market: Human rights and the rise of neoliberalism* (2019).

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commitments to human rights, especially when viewed in light of their strategic use and potential impact on democratic values and global capitalism.

Chapter 4 demonstrated the impact of neoliberal internationalism on South Africa's political, economic, and human rights landscape during the transition from apartheid to "post"-apartheid governance. Focusing on the period marked by substantial policy changes, it examined the influence of global circulatory capitalism on this transition. The analysis critically evaluates concerns about the ANC government's shift towards neoliberalism, termed as an "elite transition",[6] and its consequences for societal transformation. Ultimately, the chapter provided insights into the implications of South Africa's alleged alignment with neoliberal forces on its pursuit of a just and inclusive society.

It underscored the multifaceted dynamics of South Africa's transition from apartheid to democracy, primarily drawing insights from Dale McKinley's "South Africa's Corporatised Liberation".[7] McKinley critically dissects the ANC's evolution during the early stages of the "post"-apartheid transformation period, highlighting the party's power consolidation, abandonment of popular empowerment, and collaboration with corporate capital. The adoption of neoliberal principles is depicted as a pivotal turning point, transforming the ANC into a corporatised entity with hierarchical power structures. McKinley's metaphor likening South Africa to a crumbling house vividly illustrates the ANC's inability to confront the deep-rooted issues stemming from settler colonialism. The chapter delved into macro-economic policy discourse and the intricate interplay of international influences. In this regard, the chapter discussed the "logic of improvement" and "logic of biology" within the context of the "standard of civilisation",[8] and revealed the complexities of conditional inclusion and exclusion in international discourse.

Lastly **chapter 5** critically examined the proliferation of bilateral investment treaties (BITs), in the context of the (failed) "post"-apartheid attempt at reclassification within the General Agreement on Tariffs and Trade (GATT). Rather than focusing on critiques of the legal framework itself, the chapter emphasises how these treaties perpetuate a racially structured global capitalism, designating the South African state

[6] P Bond *Elite transition: from apartheid to neoliberalism in South Africa* (2000).
[7] D McKinley *South Africa's corporatised liberation: A critical analysis of the ANC in power* (2017).
[8] N Tzouvala *Capitalism as civilisation* (2020) 175.

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as an enforcer. Examples from the *Swiss Investor* and *Foresti* cases illustrate the continuity of racially influenced economic structures. By framing white supremacy as a global system, the study challenges the separation of empire and race in Slobodian's work.

The cases discussed involve South Africa facing arbitration under its BITs. In the Swiss Investor case,[9] though the expropriation claim was dismissed, South Africa was found to have violated its obligation to provide "full protection and security" to foreign investments. The Foresti case,[10] involving Italian nationals and a Luxembourg-based corporation, highlighted conflicts arising from South Africa's Minerals and Petroleum Resources Development Act (MPRDA). The case was eventually settled, raising concerns about the potential for investors to challenge affirmative action measures and domestic policies before international tribunals.

These cases not only underscore the vulnerability of South African legislation to legal challenges initiated by foreign investors. They also highlight the challenges faced by marginalised populations within the framework of neoliberalism, particularly how BITs hinder dissent and economic reform efforts, contributing to the vulnerability of disadvantaged individuals in the face of international legal challenges initiated by foreign investors. In this way, these cases contribute to the global proliferation of neoliberalism.

Those were the key findings of the study. In the final section I conclude by providing (some sort of) answer to the overarching question: Is it possible to attain freedom from neoliberalism?

Is freedom from neoliberalism possible?

Given the findings of this study, the following important questions need to be answered: Is there any likelihood of actualising a freedom from the exploitation and violence of neoliberal hegemony—can mechanisms such as human rights achieve this goal? it is worth noting that these important inquiries appear to receive limited attention

[9] The arbitration proceedings were conducted under UNCITRAL arbitration rules, and the arbitration ruling remains confidential. For more on the dispute, see LE Peterson “Swiss investor prevailed in 2003 in confidential BIT arbitration over South Africa land dispute” (2008) *Investment Arbitration Reporter* 1(13).
[10] *Piero Foresti, Laura de Carli and others v Republic of South Africa*, ICSID Case No ARB(AF)/07/1, Award (4 August 2010).

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within the overall scope of the research. Indeed, the brevity of their discussion raises some concerns about the depth and significance assigned to these critical aspects, leaving room for further exploration and analysis in future studies. One contributing factor to this limited focus is the inherent dynamism of the concept of neoliberalism. But while this certainly poses limitations, it might also inform the necessary approach to effectively confront and move beyond neoliberalism's influence.

This study has endeavoured to facilitate the exploration of this possibility by tackling one of the most prevalent objections associated with the concept of neoliberalism: its perceived lack of coherent meaning. By presenting a comprehensive framework that theorises the underlying disagreement over its meaning instead of merely reiterating it, the study—at the very least— provides two key methodological insights that can be employed in the endeavour to combat neoliberalism. The first is that, given the ever-evolving nature of neoliberalism, it necessitates an approach to critique that is rooted in historical context and emphasises ongoing iterations. Critique, in this context, should not be viewed as a mere stage to be surpassed but rather as an enduring practice integral to understanding and effectively challenging neoliberalism. Secondly, the role of narrative and popular consciousness cannot be underestimated in both comprehending the pervasive influence of neoliberalism and cultivating a pathway towards constructing an alternative. It is crucial to not only accurately grasp neoliberalism in theoretical and descriptive terms, but also to recognise that the ramifications of this discourse extend far beyond academic debates. The very terms and parameters established within these discussions lay the groundwork for initiating the process of dismantling neoliberalism.

Indeed, critical engagement is not merely valuable for diagnosing the issues at hand; it is an indispensable component of the endeavour to dismantle them. In particular, when analysing neoliberalism, a comprehensive examination must extend beyond the realm of ideas and the actions of elite figures. It necessitates a deep exploration of the popular perceptions and understandings that grant it power. Recognising the ever-changing and “mutating” nature of neoliberalism highlights the imperative for a resistance that is both radical and adaptable, mirroring the very world it aspires to transform.[11] This notion, inspired by Stuart Hall, elucidates how the landscape of

[11] See generally W Callison & Z Manfredi (eds) *Mutant neoliberalism: market rule and political rupture* (2019).

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politics underwent a fundamental shift during the era of Thatcherism.[12] Neoliberalism's rise stemmed not only from economic or strictly political projects, but also from the profound transformation of essential narratives and popular understanding.[13] Here, Hall reinforces something that that law and political economy scholars are aware of but may be susceptible to overlooking: narrative and popular understanding must remain at the core of constructing alternative structures.

While exclusively critiquing neoliberalism's preoccupation with efficiency and technocracy, scholars in law and political economy run the risk of inadvertently overlooking the strategic framing of market ideology as common sense. This framing was intricately linked to notions of dignity, self-governance, and scepticism towards governments' understanding of individual struggles. Despite its overt emphasis on individualism, Sören Brandes demonstrates how neoliberal thought cleverly tapped into the collective imaginary by portraying the market as a collective entity representing "the people".[14] It is imperative to remember that neoliberalism's power lies in its ability to draw upon core values shared by the left, including—irrespective of differences in interpretation—concepts like equality and fairness. In their pursuit of alternatives, scholars must not forget that neoliberalism's influence is not solely rooted in opposition to progressive values. Rather, it appropriates and reinterprets these values to serve its own ideological agenda. Recognising this dynamic underscores the importance of critically engaging with and reframing these core values within a transformative framework that challenges the inherent assumptions and power structures of neoliberalism. It is foreseeable that the significance of popular understandings could be used as a counterargument against the value of theoretical engagement. However, it is crucial to note that engaging with the popular does not imply forsaking theory. Rather, it entails forging connections between theoretical concepts and the everyday struggles and lived experiences of the working class—a profound commitment to the interplay between theory and praxis.

Stuart Hall's work serves as a powerful reminder of the imperative to transform the attitudes and values of individuals who, in their everyday lives, grapple with the practicalities of survival and caring for their loved ones. This transformative process is

[12] S Hall *The hard road to renewal: Thatcherism and the crisis of the left* (1988).
[13] Hall (n 12) 8.
[14] S Brandes “The market’s people: Milton Friedman and the making of neoliberal populism” in Callison & Manfredi (n 11) 68.

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essential for constructing an alternative to neoliberalism. Praxis extends beyond mere policy proposals or concrete plans, although these remain significant. It encompasses the creation of narratives and stories that establish meaningful connections between theory and people's lived experiences, fostering identification and solidarity. Neoliberalism's triumph in political arenas was not primarily attributable to its policy proposals but rather its remarkable capacity to shape fundamental social ideas deeply embedded within the population. It is therefore incumbent upon us to engage in praxis that dismantles the dominant neoliberal narratives and cultivates alternative narratives that resonate with people's lives. By bridging theory and personal narratives, we can nurture a collective identification and foster solidarity, thereby mobilising transformative change from the ground up.

By actively engaging with neoliberalism and its ever-evolving manifestations, we gain a valuable framework to navigate the intricacies and challenges that lie ahead. But this study refuses to provide definitive assurances regarding the ultimate demise of neoliberalism or even the end of the beginning. However, it presents critical insights that offer strategic guidance and inform the ongoing struggle against neoliberalism. Rather than offering simplistic solutions or predetermined outcomes, the study prompts us to think critically and strategically about the multifaceted nature of the struggle against neoliberalism. It encourages us to delve into the complexities of this ideological paradigm, understand its mechanisms, and identify points of intervention. By drawing from these critical insights, we can refine our strategies, develop effective countermeasures, and continue the persistent struggle against neoliberalism's hegemony.

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