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Human Rights as a Limit to Utopian Thinking?

Michele Tedeschi

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In his widely-discussed monograph *The Last Utopia*, Samuel Moyn challenges conventional narratives that ground the origins of human rights in Enlightenment ideals and place their internationalisation in the immediate aftermath of World War II.¹ It was only in the late 1970s, Moyn argues, that human rights exploded as a powerful international discourse. They managed to do so because by that time dominant political ideologies, such as revolutionary communism and nationalistic anti-colonialism, had lost their appeal. As a result, human rights emerged as a last utopia when other utopian projects appeared to fail.² A revised history, thus, yet a history that joins its target of critique in qualifying human rights as inherently utopian. More conventional theories of human rights, in fact, invariably revolve around 'the utopia sketched by the Enlightenment'.³ Co-

incidentally, it is also in 2010, when *The Last Utopia* was published, that Jürgen Habermas defined human rights as a 'realistic utopia' which enables constitutional states to pursue the ideal of a just society.⁴ In general, human-rights discourse – whether or not it embraces the field's orthodoxy⁵ – is replete with references to "utopia". In her topography of the field, Marie Dembour notes that even those she labels as 'protest scholars' understand human rights as a utopian venture, a project always in the making and never achieved.⁶

I argue that theories evoking the utopian dimension of human rights tend to share two important attributes,⁷ which can be elucidated by reference to certain concerns that have been raised with respect to Moyn's historical analysis. The first of those attributes is the absence of definitional foundations capable to vindicate the association between human rights and utopian thinking. As Michael Freeman notes, Moyn falls short of providing any formal definition of utopianism. He considers human rights utopian because they evoke a seemingly better state of affairs, but he fails to register that the prospect of a better world does not necessarily exhaust the requirements of utopian

1 See, for instance, Lynn Hunt, *Inventing Human Rights: A History* (W W Norton & Company 2007).

2 Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press 2010).

3 Richard Rorty, 'Human Rights, Rationality and Sentimentality' in Aakash Singh Rathore and

Alex Cistelean (eds), *Wronging Rights?: Philosophical Challenges for Human Rights* (Routledge 2011) 113.

4 Jürgen Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41 *Metaphilosophy* 464, 476.

5 Marie-Bénédicte Dembour, 'What Are Human Rights? Four Schools of Thought' (2010) 32 *Human Rights Quarterly* 1, 3.

6 *Ibid.* 8.

7 As far as this research has taken me, a notable exception is the analysis contained in Costas Douzinas, 'Human Rights and Postmodern Utopia' (2000) 11 *Law and Critique* 219.

imagination.⁸ The same consideration appears to hold true for several other contributions that frame human rights in utopian terms. For instance, Mark Goodale's anthropological take on the discipline⁹ does not seem overly preoccupied with justifying its title, *Surrendering to Utopia*. Secondly and relatedly, simplistically associating human rights and an indeterminate idea of utopia conceals at least one possible alternative: what if, instead of fostering utopian thinking to the point of merging with it, human rights acted as an obstacle to envisaging and pursuing better versions of our present reality? This is the question that Adam Etinson raises, by noting the unlikelihood that any utopia is 'pressured to expand as a result of its incorporation of human rights.'¹⁰ Rather, Etinson claims, a significant concern with rights seems more likely to result in a restriction of our utopian imagination.¹¹

As a result, in this paper I will explore two issues: the conformity of human rights to the concept of utopianism; and the latter's susceptibility to being hindered by human-rights discourse. The interconnected nature of these themes suggests proceeding in an organic manner, instead of addressing them in turn. Accordingly, I develop my argument as follows. I first sketch a definition of utopianism that includes a thorough criticism of existing social structures as one of its key requirements. I then argue that human rights fulfil such a requirement on the theoretical plane, but tend to lose their critical energy by way of their liberal declination in contemporary practice. That declination, moreover, works along fragmenting lines that impinge upon the unity of the human self and obscure the complex ways in which subjectivities are built,

thus hampering our understanding of the very forces from which utopia is supposed to depart. Even when considered in its unity, moreover, the liberal understanding of self makes human rights overly amenable to market fundamentalism. In times of growing material inequality, therefore, human-rights discourse cannot support redistributionist strategies originating in the political left. The subsequent section addresses an ensuing question: can human rights embody a right-wing utopia? The analysis answers in the negative, for right-wing ideologies are too consonant to the dominant capitalist order to offer a meaningfully different worldview. And by readily bowing to that worldview while at the same time purporting to stand above politics, I argue in the last substantive section, human rights significantly constrain the space for political contestation, forestalling any discussion that would deviate from the capitalist paradigm. Finally, having argued throughout the article that contemporary human-rights discourse cannot be equated to utopianism, I suggest that in a proper utopia the question of rights would perhaps become totally irrelevant.

I. What Is Utopianism? Between Impossibility and Critique

'A utopia is an ideal place or state of life', we learn from a dictionary of philosophy.¹² An ideal place that does not exist, as per the Greek etymology combining "ou" ("not") and "topos" ("a place").¹³ This inexistence confers upon the word its everyday meaning, designing the idea of a perfect reality that is impossible to realise in practice. One may assume scholars such as Moyn and Habermas to use the term in this very general sense, when discussing human rights. If that is the case, then it is the impossibility of fully realising human rights that makes the discipline utopian in nature. After all, as

8 Michael Freeman, 'Book Review: Samuel Moyn, *The Last Utopia: Human Rights in History*' (2012) 46 *Sociology* 989, 990.

9 Mark Goodale, *Surrendering to Utopia: An Anthropology of Human Rights* (Stanford University Press 2009).

10 Adam Etinson, 'Book Review of Samuel Moyn, *The Last Utopia: Human Rights in History*' (2012) 34 *Human Rights Quarterly* 294, 294.

11 Ibid.

12 'Utopia', *The Oxford Dictionary of Philosophy* (3rd ed, Oxford University Press 2016).

13 'Utopia', *Collins English Dictionary* (12th ed, HarperCollins Publishers 2014).

the late Antonio Cassese conceded, international society will never realise the dream of a world free from violence, poverty, and injustice. Yet, Cassese added, human rights form part of a utopian project aimed at alleviating the major deficiencies affecting the current global order.¹⁴

Utopianism properly so called, however, is characterised by much more than simple impossibility. First, it entails a requirement of universality: utopias '*should aim to benefit everyone, albeit to differing degrees.*'¹⁵ In light of their claim to universality, human rights appear fit to fulfil this second requirement, at least on the theoretical plane. But there is a further, important characteristic that appears necessary for any given project to qualify as utopian thinking: for '*every utopia, by its very existence, constitutes an ad hoc criticism of existing society*',¹⁶ a society from which utopia substantially departs.¹⁷ In this sense, utopianism is antithetical to ideology, yet it becomes ideology itself – a counter-ideology that stands opposed to the extant socio-economic order.¹⁸ But the ideology that a given utopia represents cannot be judged based on its feasibility. That is exactly the mistake incurred by thinkers such as Marx and Engels in their evaluation of literary utopias, according to Tom Moylan.¹⁹ The product of utopian imagination is not to be interpreted as a plan of action, a blueprint for a society to be put in place. At best, utopia entails a preconceptu-

al imagination of that which history has not yet achieved.²⁰

The brief definitional endeavour undertaken above suggests an important consideration: while it may be true that a world in which everyone enjoys the whole set of recognised human rights is, in a very general and colloquial sense, utopian; it does not seem to be accurate, even in that general sense (and despite their alleged universal character), to depict human-rights discourse as *a utopia* – be it the last utopia, a realistic one, or otherwise. Utopianism is more appropriately described as a critically-informed imaginative exercise. The next section will examine the compatibility of such a conceptualisation with human-rights discourse.

II. Critical Energy on the Conceptual Plane

We have seen that genuine utopian thinking carries with it a certain critical energy directed at the society from which it stems. The question thus arises: do human rights present themselves as a critique of the globalised world in which they are supposed to operate? It is possible, of course, that the query does not mandate a definite answer. It may well be the case that what we ought to be asking is whether human rights represent *a sufficient* critique of the global social order, the problem being one of degree rather than quality. If that is so, we may possibly consider Cassese's above-mentioned statement as touching upon something more than the impossibility to fully realise human rights, everywhere and for everyone. The Italian jurist's analysis also implies that the world in which we live is violent, unjust and poverty-ridden. It is a truism, of course, and yet one which attests to the existence of a critical potential that human rights embed, at least on a conceptual level. It is no coincidence that while marking the internationalisation of human rights,²¹ the twentieth

14 Antonio Cassese, 'Introduction' in Antonio Cassese (ed), *Realizing Utopia: The Future of International Law* (Oxford University Press 2012) xxi.

15 Barbara Goodwin and Keith Taylor, *The Politics of Utopia: A Study in Theory and Practice* (Hutchinson 1982) 18.

16 Ibid 29.

17 Peter Fitting, 'Utopias Beyond Our Ideals: The Dilemma of the Right-Wing Utopia' (1991) 2 *Utopian Studies* 95, 98.

18 See Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* (Harvest Books 1936).

19 Tom Moylan, 'The Locus of Hope: Utopia versus Ideology' (1982) 9 *Science Fiction Studies* 159, 160–161.

20 Ibid 161.

21 Stephen P Marks, 'Human Rights' in Christopher G Bates and James Ciment (eds), *Global Social Issues: An Encyclopedia* (Routledge 2012).

century also witnessed widespread massacres, genocides, the atomic bomb, a rocketing gap between the poor and the rich within Western countries and between Global North and Global South.²² In that sense, human rights project the image of a world in which the Rohingya people are safe from genocide;²³ in which no government considers stoning its citizens to death for their sexual orientation;²⁴ and in which nowhere poverty becomes the subject of 'a political choice'.²⁵

As I have noted in passing, however, this interpretation seems confined to the domain of theory. It is to a formal understanding of human rights that a similar view attaches critical potential, one based on instruments such as the Universal Declaration of 1948 (hereafter, "UDHR"). For the assessment of the ability of human rights to enable forms of utopian thinking, instead, we should look at the shape taken by the human-rights idea when it becomes a powerful political discourse. It is to that discourse, after all, that the association between human rights and utopia operated by scholars such as Moyn and Habermas refers, albeit in different manners.

III. Crystallisation, or the Loss of Utopian Thrust

In light of the foregoing, we are now faced with the question: do human rights retain their critical potential, when they move from the conceptual plane on to the real world? Anna Grear seems to be addressing exactly that inquiry, when she claims that the historical appearance of rights as critical reactions against injustice is always 'followed by their institutional crystallisation', in a process that invariably results in the obliteration of their radical potential.²⁶ Institutional crystallisation, therefore, extinguishes the critical thrust typical of rights projects. As for human rights, we may wonder when that moment of crystallisation occurred. In a way, Moyn's historical analysis – if supplemented by the work of other theorists – already contains an answer. When gaining traction as the moral lingua franca of international relations, Moyn claims, human rights established themselves as a minimalist idealism detached from political ideologies. That development was facilitated by a series of concomitant events, including the invention of grassroots advocacy by Amnesty International and the move away from the United Nations as the main avenue for negotiating human-rights claims.²⁷

But it is precisely when they became successful, that human rights lost their utopian potential. As Joseph Slaughter maintains, in fact, the anti-imperial pull that characterised much human-rights discourse in the 60s and 70s had dissipated by 1976, the year in which the entry into force of the two Covenants sanctioned the legal crystallisation of the discipline.²⁸ From that moment onwards, a reactionary process took place

22 Douzinas, 'Human Rights and Postmodern Utopia' (n 7) 220.

23 Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, UN-Doc. A/HRC/39/64, 12 September 2018.

24 Yvette Tan, 'Brunei to Punish Gay Sex with Death' *BBC News* (3 April 2019) <https://www.bbc.com/news/world-asia-47769964> accessed 3 May 2019.

25 Philip Alston, 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights' (*Office of the United Nations High Commissioner for Human Rights*, 16 November 2018) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E> accessed 3 May 2019.

26 Anna Grear, "'Framing the Project" of International Human Rights Law: Reflections on the Dysfunctional "Family" of the Universal Declaration' in Conor Gearty and Costas Douzinas (eds), *The Cambridge Companion to Human Rights Law* (Cambridge University Press 2012) 31.

27 Moyn (n 2) ch 3.

28 Joseph R Slaughter, 'Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World' (2018) 40 *Human Rights Quarterly* 735, 770.

within and around human rights. Among its key components, Slaughter includes the reduction of their moral compass to civil and political liberties, as well as the progressive neoliberalisation of the global economy.²⁹ Slaughter thus completes Moyn's historical reconstruction, providing a sense of what had to be set aside for human rights as we know them today to achieve their global success. For, as Antony Anghie notes, it is precisely when Moyn's investigation reaches the late 1970s that the Third World disappears from view, having represented a key focus of discussion until that point.³⁰

But Anghie also looks beyond the Third World, framing the crystallisation of human rights against its broader historical context. Starting from the late 1970s, he maintains, an individualistic interpretation of rights was promoted against calls for development, self-determination and redistribution of wealth on a global scale. Importantly, those calls embodied '*the utopia sought by all people all around the world, and that both capitalism and communism promised*' to deliver.³¹ We notice that utopianism features here as antithetical to human rights, rather than as characterising them – antithetical, that is, only so long as we consider human rights in their dominant guise. It is precisely to that guise that the following section will turn.

IV. Fragmenting the Self, or Constraining Utopian Thinking

We have introduced the individualistic understanding that has come to dominate human-rights discourse. Such an understanding directs its focus on the sufferings of oppressed individuals, thereby allocating utmost prominence to civil and political liberties.³² In so doing, it avoids engaging with

the structural causes behind abuses³³ and inevitably sets aside socio-economic entitlements.³⁴ Yet, those entitlements were supposed to form part and parcel of the international human-rights project. But if the latter was initially meant to serve '*a fully participating homo oeconomicus who had to be accommodated into both capitalist and communist economic systems*',³⁵ the model developed since the late 1970s mostly centres on the Enlightenment subject of rights – i.e. a rational individual capable of pursuing autonomously-chosen goals free from external constraints,³⁶ except those imposed by market forces.³⁷

And it is precisely at removing such abuses as they prevent the individual from participating in the free market, that the international human-rights movement seems to aim. Accordingly, Ratna Kapur argues that human rights contribute towards building a notion of personhood which fulfils the need for '*the continuous production of the consumer-subject*.'³⁸ A similar notion is utopian in the weak sense that it appears impossible to extend it to all human beings across the globe. Not only is it impossible, it would also be unadvisable to strive towards it from the perspective of its earnest proponents, namely those actors who employ human rights for the purposes of '*protecting property and preserving inequalities*'.³⁹ For if it is true that a world population living by

29 Ibid 769.

30 Antony Anghie, 'Whose Utopia? Human Rights, Development, and the Third World' (2013) 22 *Qui Parle* 63, 72.

31 Ibid 75–76.

32 Makau Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press 2002) 46.

33 Susan Marks, 'Human Rights and Root Causes' (2011) 74 *Modern Law Review* 57. See also Wendy Brown, 'Suffering Rights as Paradoxes' (2000) 7 *Constellations* 208, 239.

34 Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press 2001) 90.

35 Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press 2003) 200.

36 Ratna Kapur, *Gender, Alterity and Human Rights* (Edward Elgar 2018) 5.

37 Rajagopal (n 35) 199.

38 Kapur (n 36) 33.

39 Antony Anghie, 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World' (2000) 32 *New York University Journal of International Law and Politics* 243, 272.

North-American standards of consumption would need almost five planet Earths to fulfil its demands (and one living by European standards would need almost three);⁴⁰ then it must also be true what Julius Nyerere said in 1974, that '*within the existing structures of economic interaction [the poor nations] must remain poor, and get relatively poorer, whatever [they] do*'.⁴¹ Accordingly, the prevailing theory of human rights as civil and political rights cannot pursue global access to the free market on an equal footing for all. As Uday Mehta explains, the liberal '*anthropological minimum is qualified, if not betrayed, by the density of the social norms that are required to support its apparent naturalism*'.⁴² In this declination of the human-rights paradigm, the human self *has* to preserve its Lockean identity, an identity that appears '*almost Scrooge-like for anyone who does not belong to the ranks of the well-off middle classes*'.⁴³

In a society that often operates along boundaries (or walls) dividing and discriminating against races, gender identities, sexual orientations, classes and religions, not everyone can be recognised as possessing the anthropological minimum which liberalism requires; not everyone is a self whose freedoms deserve protection and implementation. And even when protection is offered, it only comes as a fragmentary tool. For the question is not just that the subject of human rights '*emerges as the male, the property-owning, the European and the white*',⁴⁴

thereby '*doubly reinstat[ing] the colonial paradigm of masculinity [and] of European superiority*'.⁴⁵ The question is also that within the dominant human-rights discourse, the victim can appear as marked by only one form of social injustice at a time – be it race, gender, or disability. As Wendy Brown observes, however,

'we are not fabricated as subjects in discrete units by these various powers: they do not operate on and through us independently, or linearly, or cumulatively, and they cannot be radically extricated from one another [...]. As many feminist, postcolonial, queer, and critical race theorists have noted in recent years, it is impossible to pull the race out of gender, or the gender out of sexuality, or the colonialism out of caste out of masculinity out of sexuality.'⁴⁶

It is in this operational feature, I argue, that we spot a first example of how human-rights discourse may constrain our utopian thinking. To build an image of a better society based on a critique of the existing one, we must be able to understand the way in which the various, sometimes competing power dynamics operating within the latter interact with one another in both oppressing and constituting human subjectivities.

By focusing on one violation at any given time, human rights disintegrate the complex ways in which society impinges upon human dignity, obscuring the background against which violations occur.⁴⁷ And by constantly pointing at one overwhelming trait which supposedly defines their subject, they ultimately distort our perception of the human self. Such a distortion is capa-

40 These often-quoted statistics are based on data made publicly available by non-profit organisation Global Footprint Network: see <http://data.footprintnetwork.org/#/> accessed 7 May 2019.

41 Quoted in Antony Anghie, 'Legal Aspects of the New International Economic Order' (2015) 6 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 145, 145.

42 Uday S Mehta, 'Liberal Strategies of Exclusion' in Frederick Cooper and Ann Laura Stoler (eds), *Tensions of Empire: Colonial Cultures in a Bourgeois World* (University of California Press 1997) 79.

43 Costas Douzinas, 'The Poverty of (Rights) Jurisprudence' in Conor Gearty and Costas Douzinas (eds), *The Cambridge Companion to Human Rights Law* (Cambridge University Press 2012) 67.

44 Costas Douzinas, *The End of Human Rights* (Hart Publishing 2000) 100.

45 Dianne Otto, 'Disconcerting "Masculinities": Re-inventing the Gendered Subject(s) of International Human Rights Law' in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Hart Publishing 2005) 114.

46 Brown (n 33) 235–236.

47 Analysing the manner in which rights language applies to women, for example, Brown maintains that rights 'promise to redress [women's] suffering [...] but only by fracturing that suffering [...] into discrete components, a fracturing that further violates lives already violated by the imbrication of racial, class, sexual, and gendered power': *ibid* 232.

ble of significantly hindering utopian thinking. Far from just expelling discrimination from its territory, in fact, utopia should host a society in which individuals are not even perceived as being defined (and contained) by finite features of their body, personality or beliefs. In other words, utopianism cannot be satisfied with eliminating prejudice: it must also do away with the paradigms in which prejudice is rooted and the wholeness of the human self is denied, even though on a mere conceptual plane.

The analysis offered by Costas Douzinas with respect to the subject of human rights supports this view. Douzinas identifies the same blind spot diagnosed by Brown: as it can only focus on one form of injustice at a time, human-rights discourse inevitably offers a fragmented image of the human subject.⁴⁸ By way of this process, human rights infringe our dream of existential integrity, a longing shared by Western and Non-Western societies which evokes *'the ability of self to be what it is, unique unrepeatable and different, [...] free of determination and able to resist external imposition.'*⁴⁹ Yet, despite the fragmenting (and anti-utopian) force that they exert, Douzinas claims that human rights embody the ultimate aspiration for existential unity nurtured by the self. If they do so, it is because the idea of human rights rests on the same values of freedom and equality that also inform that very aspiration. With this conclusion, we have returned to the domain of ideas. Practice, however, is not always faithful to its philosophical foundations. And by way of unfaithfulness to its doctrine, human-rights language has drifted away from the shores of utopianism. The next section will resume the analysis of such a departure.

48 Douzinas, 'Human Rights and Postmodern Utopia' (n 7) 230: '[human rights] law breaks down the body into functions and parts and replaces its unity with rights which symbolically compensate for the denied and barred bodily wholeness. Encountering rights nihilates and dismembers the body'.

49 Ibid 234.

V. Enter the Political: The Floor is the Limit?

In its dominant conceptualisation, human-rights discourse tends to splinter the human self in a multitude of units each corresponding to a given violation. Even when those units are recomposed, the resulting entity around which human rights are built emerges as the Lockean subject, whose specificity allows for a systematic marginalisation of different manifestations of the self within the discipline's domain. Extending that subject's prerogatives of absolute freedom to humanity as a whole appears impossible: it is, in this strict sense, utopian. And by such a mild utopian nature, the subject of rights denies real utopian status to the human-rights paradigm. For it is only when he (not she) enters the sphere of transnational capitalism, that the liberal self is perfectly at ease and ready to thrive. As a result, its limited notion of subjectivity aligns human-rights discourse with neoliberal ideology,⁵⁰ depriving it of counter-ideological import and making it consonant with the extant socio-economic order.

It is therefore not surprising to read influential scholars labelling human rights as *'the moral guardian of global capitalism'*,⁵¹ a movement that among its achievements includes helping *'the Chicago [neoliberal school] to escape from its first bloody laboratory [in Latin*

50 I use the term "neoliberalism" to refer to a 'class-based political project [...] initiated by the upper fractions of economic elites in the last quarter of the twentieth century to re-establish the conditions for capital accumulation and profitability and to restore their economic and political power following its decline during the post-war period': Honor Brabazon, 'Introduction' in Honor Brabazon (ed), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (Routledge 2016) xiii. This interpretation unveils the strict relationship between neoliberalism and capitalism, if one considers capitalism – from a Marxist perspective – as a set of social practices aimed at the accumulation of capital: see Peter Burnham, 'Capitalism' in Garrett W Brown, Iain McLean and Alistair McMillan (eds), *A Concise Oxford Dictionary of Politics and International Relations* (4th edn, 2018).

51 Mutua (n 32) 157.

America] *virtually unscathed*'.⁵² Moyn arrives at a very similar conclusion, when he argues that

'precisely because the human rights revolution has at its most ambitious dedicated itself to establishing status equality with an ethical and actual floor of distributive protection, it has failed to respond to – or even allowed for recognizing – neoliberalism's obliteration of the ceiling on material inequality.'⁵³

Human rights not as accomplices of injustice, thus, but as a '*powerless companion of market fundamentalism*'.⁵⁴ The reason for such helplessness is conceptual, and a very simple one at that: it lies in the fact that human rights are unconcerned with material inequality.⁵⁵ Obviously, the same is true for the dominant economic structure that human rights all too readily accommodate: for it is well-known that neoclassical economics, which provides the theoretical foundations for neoliberal policies, does not address the issue of fair distribution of resources.⁵⁶

When it comes to utopianism, therefore, the point is not that a realistic approach suggests that human rights will never be fully implemented the world over. The point is that their full realisation alone would still fall significantly short of delivering the ideal society promised by utopian imagination. Michael Ignatieff, an eminent proponent of liberal thinking, admits just as much when saying that '*[p]eople may enjoy full human rights protection and still believe that they lack essential features of a good life*'.⁵⁷ This is so be-

cause an imaginary world ruled by human rights rests on a floor of status equality; but as there can be no end to poverty without a significant decrease in inequality,⁵⁸ that floor can easily become a limit, the impassable boundary of a world that allows for everyone to be treated '*more equally than ever before, except materially*'.⁵⁹

In this sense, human rights cannot claim utopian status, if utopianism is to include something more than the impossibility of a project. The levels of inequality that characterise the global society, both within and between nation states, mandate a critique that insists on redistributive needs.⁶⁰ Because of our knowledge of the political spectrum, those needs cannot but evoke the idea of socialism: in fact, ideas of utopia tend to drift towards the left, as it already became apparent in the 19th century.⁶¹ The question therefore arises: should we be looking on the right, to find the real utopian dimension of human rights? After all, as we have seen when defining utopianism, the idea of an unequal world is compatible with utopia, for the latter has to benefit everyone, but not everyone to the same extent. This consideration is important as it reminds us that the missing utopian ingredient in human-rights discourse is a scathing critique of the existing order. What we have to consider, therefore, is whether such a critique can stem from the right of the political arena. Only if the answer is in the positive, will human rights emerge as representative of some sort of utopianism. The question, thus, becomes: can a right-wing utopia exist, in the current historical juncture?

52 Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Penguin 2007) 118.

53 Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Belknap Press 2018) 202.

54 Ibid 216.

55 Ibid.

56 James Heintz, 'Inequality, Neoliberalism, and Human Rights' in Gillian MacNaughton and Diane F Frey (eds), *Economic and Social Rights in a Neoliberal World* (Cambridge University Press 2018) 31.

57 Ignatieff (n 34) 321.

58 Abigail McKnight, 'How Are Inequality and Poverty Linked?' (UN expert meeting: New Research on Inequality and Its Impacts, 12 September 2018) <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2018/09/McKnight2.pdf> accessed 13 May 2019.

59 Moyn (n 53) 203.

60 Howard White, 'National and International Redistribution as Tools for Poverty Reduction' (2001) 13 *Journal of International Development* 343.

61 Fitting (n 17) 95.

VI. A Right-Wing Utopia of Means?

In an article from 1991, Peter Fitting devotes considerable attention to whether utopia can emanate from the right, eventually declaring himself unable to offer an answer.⁶² Now that almost three decades have elapsed since Fitting's article, we might be able to solve the dilemma for him. I argue that Fitting's examination of two works, read jointly, provides us with a proper response to the answer sought by the author. The first of those works is B. F. Skinner's *Walden Two*, published in 1948. As Fitting notes, the book represents an interesting novelty as it introduces the notion of a 'utopia of means, not ends.'⁶³ Fitting refers here to the analysis of Krishan Kumar, who notes how

'[m]ost utopias have as their main emphasis a vision of ultimate goals. [...] To [Skinner] the goals of any perfected society are self-evident. [...] What has always flawed utopian schemes [...] is the lack of a scientific theory of human behavior which would enable those values to be realized.'⁶⁴

If we retrieve the construction of the liberal subject at the centre of human-rights discourse, we might hold that human rights rest upon the very quasi-scientific theory that utopian projects usually lack, according to Skinner. And as human rights insist on status equality without paying too much attention to output equality, we might even suspect them to represent a utopia of means, not of ends.

We should not rush to conclusions, however: to qualify as utopia in the first place, human rights still need to display some critical thrust. In *Walden Two* that thrust exists, but is rooted in an analysis that vastly overlaps with left critique of modern society.⁶⁵ Let us then consider another work that is,

at least supposedly, a right-wing, capitalist utopia: HL Hunt's 1967-novel *Alpaca Revisited*. The book's protagonist is convinced that his country – the small South American nation of Alpaca – is dangerously threatened by atheism and communism. To avert the risks posed by those threats, he drafts a new constitution that is eventually adopted by Alpaca's electorate. In line with Skinner's *Walden Two*, the Alpaca constitution enumerates means intended to reach pre-determined ends: promoting the nation's independence and sovereignty, Christianity and freedom. But the critical element is, once again, missing. As Fitting notes, Hunt's insistence of American independence and sovereignty suggests that the Alpaca Constitution is not a critique of any society, but rather the exaltation of Christian capitalism, which Hunt presents 'as a way of organizing the rest of the world.'⁶⁶

This assessment goes far beyond *Alpaca Revisited*: it allows us to solve Fitting's dilemma, explaining why it is highly unlikely that we can find utopianism in contemporary right-wing ideologies. We have to bear in mind that Fitting is writing in 1991, when the collapse of the Soviet Bloc prompts Francis Fukuyama to proclaim the end of history.⁶⁷ And what does Fitting's analysis recall, if not Fukuyama's announcement of humanity's new destination – not revolution, as per Marxism, but American-style capital democracy? There cannot be a right-wing utopia, because history has witnessed the triumph of Hunt's capitalist imaginary. For even if some commentators have interpreted the 2008 financial collapse as a rebuttal of Fukuyama's paradigm,⁶⁸ that rebuttal seems to have occurred on the plane of ideas alone. No existing political force has emerged that appears capable of breaking away from neoliberal structures maxi-

62 Ibid 108.

63 Krishan Kumar, *Utopia and Anti-Utopia in Modern Times* (Basil Blackwood 1987) 349, cited in Fitting (n 17) 100.

64 Kumar (n 63) 349.

65 Fitting (n 17) 99.

66 Ibid 100.

67 Francis Fukuyama, *The End of History and the Last Man* (Penguin 1993).

68 Costas Douzinas and Slavoj Žižek, 'Introduction: The Idea of Communism' in Costas Douzinas and Slavoj Žižek (eds), *The Idea of Communism* (Verso 2010) vii.

missing capitalism within society.⁶⁹ Accordingly, projects that adhere to the pervasive capitalist paradigm – as do human rights, in their dominant formulation – carry no critical force. To sum it up with Tom Moylan:

‘capitalism destroys the utopian impulse by claiming all utopia to itself: there is no need for ideologies to compete or for utopias to be imagined if we are in utopia once and for all.’⁷⁰

VII. Delimiting Political Discourse, or Constraining Utopian Thinking

Human-rights discourse is no utopia because it is no ideology, and far less a political ideology aimed at dismantling capitalist structures. But by eschewing the ideological challenge and claiming to stand above politics, human rights also exert a significant pressure on the political arena. It is here that Moyn’s portrait of a utopia of antipolitics meets Habermas’s realistic utopia of constitutionalism, democracy and fair adjudication. In their contemporary declination, in fact, human rights perform two interconnected, albeit seemingly contradictory, tasks: on the one hand, they displace political commitment and purport to replace it with legal expertise;⁷¹ on the other, they delimit the terrain of political contestation, allowing for only certain issues to be discussed and also reducing the variety of possible solutions on offer.

This contradiction echoes the paradoxical nature of Jean-Jacques Rousseau’s political theory, as has been highlighted by Wendy Brown. And while in Rousseau we find incitement and containment of radical aims, rather than displacement and containment of politics, the double function performed by human-rights discourse raises the same

question that Brown asks with respect to the French philosopher:

‘to what extent can political paradox be read not as truth or confusion about certain political conditions, but as the constraints imposed by those conditions on the truths that may be uttered?’⁷²

In other words, not only can human rights distract us from root causes generating violence, poverty, and injustice. They are also able to ward off scrutiny of radical measures aimed at addressing those causes, presenting such measures as out of the question with an irresistible force.⁷³ That ability is made possible by the realisation of Alpaca, the construction of a society of means (not ends) in which the ultimate goal has been decided: the enforcement of market dynamics.⁷⁴ It is the world after Fukuyama, a world in which the end of history ‘conceal[s] and naturalise[s] the dominance of the right, and erase[s] the rational for debate.’⁷⁵ John Whitlow also points out that Fukuyama’s proclaim was at least partly accurate, as shown by the fact that ‘even in many progressive political spaces, the limits of the possible were constrained by the organizing logic of neoliberalism.’ Ironically, he claims, it is in times like those we are currently experiencing that ‘it makes sense to draw inspiration from the past, from a time before history was said to have ended’, to ‘recover utopian hopes turned into something that no longer exists’.⁷⁶

As human rights abide by dominant structures, they cannot be utopian. Utopias, in fact, seem to have faded once history

69 Eliane Glaser, ‘Bring Back Ideology: Fukuyama’s “end of History” 25 Years On’ *The Guardian* (21 March 2014).

70 Moylan (n 19) 163.

71 David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2004) 20, 28.

72 Brown (n 33) 238.

73 Once again, human rights seem to mirror the functioning of market forces, which present themselves as ‘an alternative to any kind of politics’ that denies ‘the need for political decisions’: Eric Hobsbawm, ‘Democracy Can Be Bad for You’ (2001) 130 *New Statesman* 25, 26.

74 Anghie, ‘Time Present and Time Past’ (n 39) 250.

75 Glaser (n 69).

76 John Whitlow, ‘Coming of Age at the End of History’ (*Law and Political Economy*, 23 April 2019) <https://lpeblog.org/2019/04/23/coming-of-age-at-the-end-of-history/> accessed 24 April 2019.

stopped. Certainly, they could not be replaced by right-wing utopias: those works, as Fitting prophesies in his conclusion, were rather premonitions of the attacks still to come against the modest improvements made by society before the end of history, *'warnings of what the future holds if we fail to resist.'*⁷⁷ In the intervening decades, that future has materialised before our very eyes, unveiling the exceptionality of the mid-twentieth century welfare state. As Paul O'Connell holds, in fact, it is when the compromise between relative democracy and growing material equality (in the West, I would add) became untenable, plunging capitalism into a deep and sustained structural crisis, *'that the class project of neoliberalism came to the fore, to break the organised strength of workers in unions and to roll back the social state.'*⁷⁸ As the neoliberal order gets stronger and stronger, human-rights discourse expands without offering proper alternatives, at the risk of dampening utopian endeavours.

VIII. By Way of Conclusion: Are There Rights in Utopia?

This article has started by noting the recurring and unquestioning portrayal of human rights as utopian in nature. The investigation has addressed two research questions: is the contemporary formulation of human-rights discourse a form of utopianism? May human rights constrain utopian thinking, instead of facilitating it, and how so? The foregoing analysis has shown that in as much as it conforms to the capitalist structure of society, human-rights discourse lacks the critical energy that it would require to qualify as utopian endeavour. This is true regardless of whether or not a full implementation of human rights the world over would bring about a better world than the one we currently live in.⁷⁹ Of course, different dec-

linations of the human-rights doctrine may draw closer to the notion of utopia. Where to find similar declinations, however, is a question that falls beyond the scope of this article.

As for the second inquiry, the article has provided two tentative examples of how human rights risk hampering utopian imagination: by disintegrating the unitary image of the self to which humans ultimately aspire, at the same time obscuring the dynamics through which subjectivities are both constituted and oppressed; and by proposing themselves as an antipolitical discourse that yet constrains the space for political debate. There can be further ways in which human rights hinder utopianism, of course: it may be the task of other investigations to explore them. To advance a hypothesis: quite apart from the way in which they splinter the human self, what about human rights putting that self at the centre of a whole system of morality? The question seems particularly relevant for environmental purposes, for example.⁸⁰

As I made clear at the outset, the two lines of inquiry pursued here are strictly interrelated. In fact, the investigation ultimately seems to suggest that if human rights hinder utopian thinking, they do so precisely by presenting themselves as the last utopia – and a realistic one at that – while not embedding utopianism at all. With its objective of curing injustices caused by a system that it tolerates and even facilitates, the human-rights project appears prisoner of the framework from which it emerged, manifesting what Fredric Jameson calls the *'miring of our imaginations in the mode of production itself, the mud of the present age in which the winged Utopian shoes stick.'*⁸¹

Finally, this paper should not be understood as an attack to human rights. The target of critique is rather the association all-too-eas-

77 Fitting (n 17) 108.

78 Paul O'Connell, 'Capitalism, Inequality, and Human Rights' (*Law and Political Economy*, 4 June 2018) <https://lpeblog.org/2018/06/04/capitalism-inequality-and-human-rights/> accessed 28 May 2019.

79 Etinson (n 10) 298.

80 Susan Glazebrook, 'Human Rights and the Environment' (2009) 40 *Victoria University of Wellington Law Review* 293, 298.

81 Fredric Jameson, *Seeds of Time* (Columbia University Press 1994) 75.

ily made between the discipline and utopianism. Importantly, there is a very last element that such an association seems to neglect. I am referring to the prominent legal dimension of human-rights discourse, which raises a fundamental question: is there law in utopia? Utopian scholarship, upon which this article has drawn significantly, is divided on the matter.⁸² As law is a responsive tool at best, and an unresponsive one at worst,⁸³ there seems to exist a good case for a negative answer. Even more

so as it is evident that law can serve doubtful purposes,⁸⁴ and so can rights.⁸⁵ As a consequence, I am not sure that I agree with Adam Etinson when he deems it self-evident that a proper utopia should '*protect and promote the human rights of all persons.*'⁸⁶ It is perhaps better to think that in utopia the issue of rights should become totally irrelevant. If that is accepted, we should conceive of utopia as the next world, one in which we do not have to settle for law, or rights, because we can finally aim for justice.⁸⁷

82 See, for instance, Shulamit Almog, 'Literary Legal Utopias - Alexander's Visit to Kasiah and Law at the End of Days' (2001) 12 *Utopian Studies* 164; Miguel Ángel Ramiro Avilés, 'On Law and Utopia: A Reply to Shulamit Almog' (2003) 14 *Utopian Studies* 132.

83 Gerry Simpson, 'Humanity, Law, Force' in Jeremy Farrall and Hilary Charlesworth (eds), *Strengthening the Rule of Law through the UN Security Council* (Routledge 2016) 79–80.

84 Whitlow notes that '[i]n the sphere of housing, [...] for example, a vast legal infrastructure [...] insulate[s] property from democratic and redistributivist intervention': Whitlow (n 76).

85 According to Jessica Whyte, for instance, 'as individuals are made responsible for fulfilling their own needs, the language of equal rights serves to block redistribution, progressive taxation, social welfare, affirmative action, and reparations for slavery and colonialism': Jessica Whyte, 'Human Rights After October' (*Legal Form*, 16 December 2017) <https://legalform.blog/2017/12/16/human-rights-after-october-jessica-whyte/> accessed 10 October 2018.

86 Etinson (n 10) 298.

87 As per the incipit of William Gaddis's novel *A Frolic of His Own* (1994): 'Justice? - You get justice in the next world. In this one you have the law.'