Redistributive Human Rights?

University of New South Wales
Faculty of Law Building [Building F8 on this map]
Thursday 31 January and Friday 1 February 2019

The workshop is sponsored by the Australian Human Rights Institute (UNSW Sydney), La Trobe University and the Institute for International Law and the Humanities (Melbourne Law School).

Program with Abstracts

Day 1: Thursday 31 January

11.00-11.30: Registration [outside Room 303] and Morning Tea [Student Lounge, Level 1, at the top of the escalators]

11:30-12:00: Welcome and Introductions [Room 303]
Julia Dehm (La Trobe University), Ben Golder (University of New South Wales) and Jessica Whyte (University of New South Wales)

12:00 – 1.30: Constitutional Rights and National Contexts [Room 303]
Chair: Daniel McLoughlin (University of New South Wales)

Rosalind Dixon (UNSW) & David Landau[*] (Florida State University), "Redistributive Social Rights? Rereading the Colombian Constitutional Experience"

Much of the current literature on constitutional social rights suggests that rights of this kind have limited redistributive potential: they tend consistently to be enforced by constitutional courts in the Global South in ways that favour the middle class, rather than the poor, and thus undermine or at least fail to advance goals of economic redistribution. This paper, however, challenges the universality of this account: in some cases, it suggests, courts have effectively created a jurisprudence that is simultaneously pro-poor *and* pro-middle class. While less economically efficient at achieving economic redistribution than a wholly pro-poor approach, this kind of 'mixed approach' we suggest has clear political 'spill-over' benefits: it helps increase political support for courts' entire social rights jurisprudence. How these economic and political costs and benefits wash out will depend largely on the specific context. But there may be cases in which a mixed approach is more effective at promoting the overall goal of economic redistribution. The paper makes this argument drawing on examples from the Colombian constitutional context.

Jackie Dugard (University of the Witwatersrand) & Angela María Sánchez[*] (Universidad de los Andes), "Bringing Gender and Class Back In: An Intersectional Analysis of the Use of Law for Social Change in the Global South - the South African Case"

[*] non-presenting author

During 2017, South African critical race theorist, Tshepo Madlingozi argued in relation to the ongoing socio-political and economic exclusion of the black majority in South Africa that the post-1994 rights-based constitutional order represents more continuity than rupture, consolidating a triumph of social justice over liberation and a privileging of the democratisation paradigm over the decolonisation one. In Madlingozi's critique of the 'neo-apartheid' social justice order, race continues to be the most important dividing line, and human rights constitute a western 'perpetuation of the coloniality of being'.[1] This argument resonates with broader contemporary critiques of the weak, compromising and imperial nature of human rights.[2]

Against this backdrop, and based on the observation by EP Thompson that law structures social relationships and the opportunities for action,[3] we examine the potential, as well as the limits, of using human rights as a tool for social change. Engaging an intersectional analysis informed by the seminal work of Kimberlé Crenshaw[4] and Nancy Fraser,[5] we find that the focus on decoloniality and race obscures other critical fault lines to the detriment of progressive change, and that a radical reading of human rights is capable of correcting this flaw. We argue that integrating class and gender lenses provides a powerful tool to change the narrative about the drivers of inequality among capitalist democracies, as well as the role of socioeconomic rights adjudication within them. Our paper is also an invitation to rethink the domestic constitutional histories of the Global South by acknowledging redistributive transformations within the context of market and development policies, and to push for the uptake of rights to empower social struggle and tackle structural disadvantage.

Jon Piccini (University of Queensland), "The Australian Labor Party and the Redistributive Roots of Human Rights in the 1940s"

Australia's involvement in formulating the global human rights system is well known; the exploits of Attorney General HV Evatt are periodically employed by both sides of politics to demonstrate the nation's historic and ongoing commitment to international order. Yet, the actual demands that Evatt brought to Paris in 1947-8 strike a discordant note with the rhetoric of today's human rights crusaders. Rather than the rights of the individual or minority groups – particularly migrants – Evatt saw the UDHR as a potential to globalise ideas at the centre of his party's political imaginary: economic equality via full employment and ever rising standards of living.

In this paper I draw on research undertaken for my forthcoming book *Human Rights in Twentieth Century Australia* (Cambridge University Press, 2019) to explore the Australian career of Evatt's belief in the vital importance of economic equality to stable national politics and a peaceful international order. While the idea of human

[1] Tshepo Madlingozi, 'Social Justice in a time of Neo-Apartheid Constitutionalism: Critiquing the anti-black economy of recognition, incorporation and distribution', 28 (1) *Stellenbosch Law Review* (2017) pp. 123-147 at pp. 123-127, p. 135.
[2] See for example Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (2018).
[3] EP Thompson, *Poverty of Theory and Other Essays* (1978).
[4] Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', 1989 (1) *University of Chicago Legal Forum* (1989): https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf.
[5] Nancy Fraser, 'From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age', 212 *New Left Review* (1995) pp. 68-93.

rights became hostage to the Cold War quickly after Evatt's return from Paris, shorn of grand ambitions to economic redistribution in the face of attacks on the communist party in particular, later decades proved more fruitful.

Three campaigns show the possibilities and limits of human rights' demand for economic equality. Indigenous campaigners in the 1960s, women's liberationists in the 1970s and campaigners for a bill of rights in the 1980s each utilised, contested or ignored economic rights. Drawing on demands that coalesced in 1974's declaration of a New International Economic Order, indigenous campaigners shifted from calls for civil and political rights to compensation and what was to become land rights.

Women's liberationist Elizabeth Reid questioned the dominance of economic concerns in International Women's Year 1975, declaring women to be the oldest colonised group on earth and demanding cultural as well as economic change. Such debates have however been missing in action amongst protagonists for an Australian bill of rights. In the prescient words of Labor's Gareth Evans, to talk of social and economic rights as human rights in 1980s Australia would be "beyond the scope of the topic 'human rights' as that term has currency in this country". I conclude the paper by asking how questions of economic equality evaporated from rights discussions, and how we might bring them back.

Dylan Lino (University of Western Australia), "Redistributive Bills of Rights? An Australian Story"

If human rights today are a common moral language of global politics, one of the central institutional expressions of that lingua franca at the national level is the bill of rights. On this score, to the dismay of many antipodean progressives, Australia remains a global outlier: it is (the lament goes) the only democratic country in the world that lacks a national bill of rights. That is not for want of trying, though. Federal governments controlled by the Australian Labor Party have since the 1940s sought unsuccessfully to institutionalise judicially enforceable protections of human rights against legislative or executive infringement. Thwarted at the national level, several Labor governments at the subnational level have stepped into the breach, enacting statutory bills of rights in the Australian Capital Territory (2004) and Victoria (2006) and moving to do the same in Queensland (2018).

In this paper, I trace the historical emergence of left-wing demands for a bill of rights in Australia, focusing on the Labor Party at the national level. Labor agitation for a bill of rights came to the fore from the 1970s, largely as a project of lawyer-politicians. This turn to bills of rights represented a significant shift within the history of left-wing constitutional politics in Australia, where throughout most of the twentieth century the central aim was to overcome judicially enforceable constraints on national political power rather than to impose new constraints on it. In particular, the Labor Party's central constitutional battle until the 1970s was against federalism and the obstacles it posed to a socialist agenda for national economic management and redistributive welfare provision. The ascendance of bills of rights in Australia is thus deeply entangled with the waning political fortunes of socialism and the constitutional politics that had gone with it. The bill-of-rights ascendancy also broadly coincides with the emergence of a neoliberal political economy in Australia and globally. Recovering this history raises questions about how far a fixation with

bills of rights has constrained the progressive legal imagination and displaced political ambitions for egalitarian redistribution in Australia.

1.30 – 2:30: Lunch [Student Lounge, Level 1]

2:30 – 4:00: Rights and Redistribution in Post-Colonial Africa [Room 303]
Chair: Ntina Tzouvala (University of Melbourne)

Souheir Edelbi (UNSW), "Land Inequality and Colonial Violence: Tracing the Missing Link in the International Criminal Court's Investigation in Kenya"

This paper engages in a critique of the relationship between international criminal law and economic inequality in the Global South. Focusing on the International Criminal Court (ICC) in particular, the paper presents some preliminary findings on the ways by which the Court perpetuates economic inequalities in the ongoing 'aftermath' of colonialism. In order to develop these insights, the paper explores the function of colonial discourse in and surrounding the Court's investigation in Kenya concerning the question of mass violence arising from a disputed presidential election and allegations of electoral fraud. To date, international criminal law discourse has grappled with the political and legal implications of the mass violence based on a liberal account of international criminal justice. From this angle, the violence has been depicted as a 'crisis of governance' in Kenya's institutions; a 'failure' of democracy, human rights and development 'post-independence' and a 'retreat' from the rule of law.

However, this understanding of the violence, which has prevailed within the field, for the most part, has failed to consider deeper structural causes of the violence. This includes land, class and related wealth inequality. At the heart of the 2007/2008 mass violence lies a much deeper problem stemming from the establishment of a colonial settler capitalist economy in the early twentieth century that saw the expropriation of highly arable land for agricultural use and a succession of failed attempts at land redistribution during and after British colonisation of Kenya. Economic inequality was a focal point of the mass violence in 2007/2008, yet this issue did not register in the ICC proceedings.

My paper dwells on the economic dimensions of the political violence stemming from land inequality. Specifically, I ask after the Court's complicity in the reproduction of colonial violence in the form of economic inequality in Kenya. In doing so, I argue that the ICC may exclude and simultaneously perpetuate longstanding land inequalities by rehearsing myths of rupture from the colonial 'past', thereby closing off possibilities of redistributive justice. Further, I argue that the ICC's narrow 'distributional imagination and political economy' appears to preclude serious engagement with broader notions of redistributive justice, and obscures deeper power structures upon which the ICC's anti-impunity project rests.

Coel Kirkby (University of Sydney), "Common Dreams: The Uses of Human Rights in Reconstituting the African Postcolony"

[O]ur community, though seemingly self-contained, was imperfect. – V.S. Naipul. This talk examines the discourse and use of human rights in the re-constitution of the postcolonial state in Africa. It focuses on two men, Yash Ghai and Mahmood

Mamdani, born under British imperial rule in Uganda and Kenya, respectively. As 'Asiatics,' both men were assigned to a legally-constructed community segregated from 'white' and 'native' fellow subjects. Their common communal origins partly explains their intense yet ambivalent relationship with international human rights movements. In different ways both men argued that 'communalism,' not human rights or economic underdevelopment, was the key constitutional challenge for reconstituting the postcolony as a society of equals.

The paper first recovers their early diagnoses of the colonial and postcolonial state in the 1960-70s. Both men were sceptical of human rights—namely, in the form of bills of rights in independence constitutions—as checks on the economic aspirations of the 'developmental state'. For Ghai human rights were insufficient to address the deep structure of colonial-era communalism, especially the racialized distribution of wealth it legitimized and reproduced. Mamdani went further to critique human rights as an alibi enabling the reproduction of colonial forms of authoritarian rule and radical economic inequality. Ghai and Mamdani both rightly feared that constitutional bills of rights failed to address the deep structure of inequality, and thus could not contain future outbursts of communal violence.

The paper next examines how the mature judgments of Ghai and Mamdani converged on a critique of human rights as an imaginative failure to overcome communalism as the fundamental constitutional problem of the postcolony. Both men were key figures in the reconstitution of African societies after the intra-communal violence of the 1970-80s. Mamdani joined the National Resistance Movement as it drafted a revolutionary constitution based on rights derived from its distinct political struggle. Ghai earned a reputation as a constitution-maker across the former British Empire before returning to Kenya in a failed attempt to draft a democratic constitution. Both men would later reflect on the new liberal human rights orthodoxy characterized by justiciable socio-economic rights. Ghai questioned whether such rights were sufficient without a 'civil society' that transcended ethnic communities, while Mamdani insisted on prioritizing political justice over individual human rights. They did agree that only a radical reckoning with the legacies of colonial communalism could hope to create a common society of true equals.

Randi L. Irwin (The New School for Social Research), "Self-Determination and Human Rights: Blocking Resource Extraction and Appeals to Corporate Social Responsibility in a Non-self-governing Territory"

This paper tracks Saharawi-led legal and financial strategies that aim to shut down extractive industries in Western Sahara, a non-self-governing territory that is partially occupied by Morocco. From a refugee camp in Algeria, displaced Saharawi refugees have invoked the language of international law and human rights in their demands for self-determination and decolonization. After more than forty years of displacement, Saharawi activists have sought to end all extractive operations carried out by the Moroccan state in Western Sahara - a strategy they have often dubbed 'the new war'. This paper will focus on how international law and self-determination as a human right have been invoked by Saharawis who seek to prove that the Moroccan state's extractive activities do not meet the required threshold of operational standards. I turn to Saharawi projects that challenge Morocco's hold on Western Sahara's resource markets, rejecting the language of development justifications for economic actions. At the core of Saharawi projects aiming to

dismantle Moroccan-led industries in the territory is a reconfiguration of the legality on which investment is based. Saharawis have sought to end the justification of infrastructure-as-benefit and challenged the World Bank's development guidelines; infrastructure development which Saharawi activists see as facilitating their dispossession (See Asad 1992; Coronil 1997; Escobar 2008; Li 2007 & 2014).

Drawing on fieldwork, I put forth an analysis of protests in the refugee camp in order to demonstrate how Saharawis have used their right to decolonization in order to assert the illegality of the Moroccan state's actions under international law. Following the Saharawi campaigns, Social Impact Assessments led to the Norwegian sovereign wealth fund dropping three oil companies due to their "unlawful" activities in Western Sahara. This paper asks: How has the language of human rights, through the demand for a self-determination process, been invoked in order to block further economic exploitation and end the financing of corporations working in conjunction with the Moroccan state in Western Sahara? How has the ethics of corporate social responsibility and the language of human rights offered a new avenue for Saharawis to demand an end to resource extraction and a vote on self-determination beyond international courtrooms and UN-mediated spaces?

4:00 – 4:30: Afternoon Tea [Student Lounge, Level 1]

4:30 – 6:00: Rights, Social Solidarity and Austerity: The European Experience [Room 303]
Chair: Marco Duranti (University of Sydney)

Anna Delius (Freie Universität Berlin), "Universal Rights or Basic Necessities: Discourses on Repression and Protest among Polish Intellectuals, Workers, and the Western European Left in the 1970s"

The Polish labour opposition against state socialism is oftentimes associated with a nationalist movement that was deeply rooted in both the Catholic faith and anti-communism. This paper, however, shows how Poland's contemporary oppositional history was in fact strongly shaped by left-leaning intellectuals and Marxian thinkers like Jacek Kuroń or Adam Michnik. Reacting to state violence against protesting workers all around the country and envisioning a strong democratic alliance between the world of labour and the intelligentsia, these left-leaning intellectuals reached out to Polish workers in 1976. They formed the "Workers' Defence Committee" in Warsaw providing material and legal help to the repressed workers and founded an underground magazine. Here, the intellectuals advocated for self-organization at the workplace and called for reporting repression while simultaneously addressing left-wing intellectuals and communist politicians in Western Europe through open letters.

Based on an analysis of different underground (samizdat) publications, this paper challenges the depiction of the 1970s as a peak period for an internationally salient human rights language being the main tool for political empowerment. Whereas repression was indeed presented negatively in a universalizing human rights discourse at the transnational level, the debates happening between intellectuals and workers within Poland presented internationally binding workers' rights as a 'basic necessity', being deduced from concrete problems. Polish workers and their allies criticized social inequality without using a 'human rights language'. Instead, workers described repression and problems at the factory-level by referring to specific occurrences or, more broadly, as lack of democracy, which, in turn, they understood as social control

over elites. However, a 'language of rights' was not invoked in these discussions by neither the workers nor the intelligentsia. The proposed paper presents two main historical arguments: First, that the main driving force for the democratic transformation in Poland was not an anti-communist milieu, but a left-leaning, previously pro-communist Polish *Bildungsbürgertum* advocating for democratic socialism. It argues, secondly, that instead of using a universalizing human rights language that oftentimes serves for translating a cause to people not affected by it, in the context of the emerging Polish labour opposition, it made more sense to depict demands as 'basic necessities', which were not tied to any particular ideology.

Anna Saunders (University of Melbourne), "'Animated by the European Spirit': European Human Rights as Counterrevolutionary Legality"

In the context of the rise of 'populist', ethno-nationalist and fascist governments, prominent scholars have faulted critical legal scholarship for breaking faith with human rights, as a means of combatting these politics and as a vehicle for achieving a just world.[6] Revisiting Golder's work on critiques of rights, however, shows us that, far from opening up or actualising new conceptual horizons, much of critical scholarship still implicitly performs a 'redemptive return' to rights.[7] For this reason, this paper takes up Golder's challenge to 'provide an account of the process by which that possibility [of human rights' radical reinterpretation] is sustained and yet never quite made real'.[8] It will do so through revisiting the history and conceptual precursors of European human rights compacts, examining how their progenitors were conscious of a need to juridify political freedoms without also making those freedoms available to serve a different and revolutionary politics.

The paper will begin by examining early European examples of a legal instrument for the protection of rights and the thought of its progenitor, Andre Mandelstam, in the interwar period. It will argue that aspects of this early conceptualisation, which responded to the revolutionary Soviet state, carried through in important ways to the postwar period, to be incorporated in the 'abuse of rights' prohibition contained in article 17 of the European Convention on Human Rights.[9] Namely, it attempts to show the persistence of a theory of rights which was designed to be politically and legally bounded while also seemingly accessible. It further examines how the tying of this theory to particular institutional forms, in the drafting of the Convention, was a means for conserving rights' political orientation. It will finish by exploring how article 17, as a justification for limiting politics incompatible with the liberal–capitalist European imaginary, has played a role in shaping European politics both during the early Cold War as well as in more recent history.

[6] See, eg, Philip Alston, suggesting that much critical work is 'unenlightening dead-end scholarship', of little use in combatting the 'populist challenge' to human rights: 'The Populist Challenge to Human Rights' (2017) 9 *Journal of Human Rights Practice* 1, 13.

[7] Ben Golder, 'Beyond Redemption? Problematising the Critique of Human Rights in Contemporary International Legal Thought' (2014) 2 *London Review of International Law* 77.

[8] Ibid 96.

[9] The article reads: 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention'.

Holly Cullen (University of Western Australia), "Social Rights in a Time of Austerity: Testing Solidarity in the Second Decade of the European Social Charter's Collective Complaints Mechanism"

From 1998 through 2008, the European Committee on Social Rights decided just over fifty collective complaints from European unions and NGOs on alleged violations of rights in the European Social Charter. In that period, which coincided with relatively benign economic conditions in Europe, the Committee developed a range of interpretative techniques which supported a redistributive approach to social rights and enshrined solidarity amongst the values underlying the Charter. In particular, in Complaint 13/2002, *Autism-Europe v France*, the Committee said that a State Party must take measures 'that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.' In Complaint 33/2006, *International Movement ATD Fourth World v. France*, it asserted that both legislation and adequate resources were essential for the realisation of Charter rights. Complaints brought in the second decade of the collective complaints mechanism have tested the Committee's commitment to redistributive principles due to the context of economic hard times and austerity policies in many European states. In particular, several complaints have been brought against Greek anti-austerity programmes and several complaints are pending against French labour market reforms. The second decade has also seen more complaints from unions seeking to protect existing rights in the face of conditions which have favoured employers and created more precarious employment for many. Drawing in part on its dicta in *Autism-Europe* that policies to implement social rights must prioritise the most vulnerable, the Committee has also addressed the social rights claims of marginalised groups such as young workers, pensioners, the disabled and transgender persons. Greater use of the collective complaints mechanisms suggests that European civil society has confidence in the capacity of the Committee at least to ameliorate the harshness of austerity policies, but the Committee remains unable to order remedies, although it has continued to blur the distinction between declaratory and remedial orders. This paper will review the Committee's second decade of decisions on collective complaints and evaluate how successful it has been in protecting redistribution and solidarity, and what structural, conceptual and practical limits it faces in enhancing social rights protection in Europe.

7pm: **Dinner (speakers and chair only)**

Day 2: Friday 1 February

10:00 – 11:30: **Different Perspectives on Human Rights and Inequality [Room 303]**
Chair: Jessica Whyte (University of New South Wales)

James C. Fisher (University of Tokyo), "Rights: The Idiom of Inequality"

My paper alleges a necessary (rather than merely contingent) relationship between litigable human rights and the intersecting inequalities, oppressions and structural cleavages that characterise the capitalist political economy, drawing on—and partially synthesizing insights from analytical jurisprudence and Marxist theories of law.

Whereas classical Left critiques of human rights law emphasised a logical connection between human rights and the forces and ideologies of capital, a softer position prevails among the academic Left. The connection between human rights and capitalism is now typically treated as a descriptive, historical enquiry—i.e. to what extent in fact did human rights organisations/instruments facilitate the hegemony of neoliberalism? A prominent view insists on the neutrality of the human rights idiom with respect to wealth distribution, presenting human rights as merely vulnerable in light of historical contingency to co-option in the service of capital, rather than predisposed by their nature to reinforce the political status quo. My proposed paper resists this historicist turn, drawing selectively from analytical jurisprudence and the Marxist tradition to offer new support for the proposition that human rights are inseparably invested in an environment of inequality as a matter of logical necessity. This emerges from an inquiry into the nature of the right itself as the basic unit of juridical currency, which draws principally on (i) the expanded Hohfeldian tradition, (ii) Razian approaches to law, authority and reasons for action and (iii) Dworkin's exploration of the interactions between rights and social interests.

My paper suggests that rights by their nature are structurally reactive, inarticulable except in partnership with material vulnerabilities, and therefore are by their nature unable to unmake the oppressions and vulnerabilities that define their parameters and essence. This logical feature is predictably reproduced in the operation of rights within the political community—the invocation of litigable rights is a palliative, mitigating the most conspicuous effects of oppressions and vulnerabilities that the political community as a whole lacks the will actually to deconstruct. While the articulation of particular human rights may co-occur with material social change, this is indeed purely contingent. Indeed it occurs typically when an appeal to "rights" is simply the decorative phrasing of what is in substance a direct emancipatory redistribution of power through political struggle. My proposed paper suggests that, even if under certain favourable conditions the vocabulary of rights can assist in the material struggle to redistribute social power, the essence of the right as a legal concept makes them ultimately the agents of an unsocialised world.

Ryan Mitchell (Chinese University of Hong Kong), "Hegemony and Fate: The Origins and Influence of China's Developmentalist Vision of Human Rights"

In the sphere of human rights as well as in economic policy, China's conciliatory positions during its post-1978 Reform Era were widely seen by international observers as forces moving it towards inevitable convergence with Western liberalism. This perceived process of convergence (despite major "aberrations") characterized much of the 1980s and 1990s, as China joined treaty regimes and made major domestic legal reforms while pursuing a managed integration into neoliberal economic institutions.

Even into the second decade of the 21st century, China in many respects espoused a convergence (if very gradual) with Washington Consensus interpretations of human rights protection. China's grudging support of the 2011 humanitarian intervention in Libya via UN Security Council Resolution 1973 was, perhaps, the culmination of this conciliatory position. However, in the years since, a major shift in policy has seen China not only openly reject "hegemonic" liberal doctrines regarding the Responsibility to Protect, the authority of international monitoring bodies, and other

such issues, but actually to positively promote its own alternative definitions and normative frameworks for international human rights law and policy.

China's still-emerging human rights doctrine has already been expounded in numerous international forums, including at the UN Security Council, the Human Rights Council, and in bilateral and multilateral agreements. It has been especially embodied in documents such as the 2016 Joint Declaration on Promotion and Principles of International Law by China and Russia and in China's Human Rights Council resolutions focused on "mutually beneficial cooperation" between states in promoting human rights, the emphasis on second generation rights rather than civil and political rights, and the establishment of a "community of fate for humankind." This last phrase, in particular, has become the byword for China's developmentalist projects in international relations, especially the massive infrastructure investments of its Belt and Road Initiative.

This paper examines the intellectual origins and present impact of China's human rights vision. Its origins of course include the discourse of positive rights already associated with the 1966 International Covenant on Economic, Social, and Cultural Rights, but also include surprising influences ranging from Max Weber (who popularized the concept of the "community of fate" or *Schicksalsgemeinschaft*) to Western Marxists associated with the Frankfurt School. Two significant impacts of China's model seem especially likely: first, reducing the viability of both humanitarian intervention and economic sanctions as human rights enforcement tools, and, secondly, promoting the decline of the "NGO era" in international human rights advocacy.

Caroline Compton (UNSW), "Climate Change, the Emergency, and the Trumping of Rights: Relocation after Disaster"

Typhoon Haiyan, which struck the Philippines in late 2013, killed at least 6,300. Four million people were displaced, and the storm totally or partially destroyed over a million houses. In the wake of the storm, the government decided to implement a large-scale relocation plan, to move a quarter of a million people away from the shoreline where they were vulnerable to climate-change exacerbated weather events. The stated objective was to protect households from climate change and to provide them with economic security in the form of property. The Philippines is, in legal terms, profoundly rights-rich. Women, home-owners, internet-users, informal settlers, and the disabled (amongst others) are all rights bearing groups. Nominally, residents subject to relocation were entitled to many rights-protections when, not unexpectedly, the relocation process went awry. However, tens of thousands of households were both not relocated in the long-term, while being deprived of transitional assistance in the meantime on the grounds that they would receive a relocation package. The result was that the most vulnerable victims of Typhoon Haiyan were those that received the least assistance.

There were multiple reasons this happened. Firstly, relocation plans were the obligation of local governments, yet many lacked the technical and financial capacity to design and implement them. Secondly, where such capacity existed – such as in Tacloban City – the plans could be co-opted into an elite land-grabbing exercise. Finally, the humanitarian workers involved in delivering the transitional assistance chose not to, prioritising discourses of sovereignty, 'legality', and climate-adaption

over rights discourses that could have been deployed to ameliorate harm to storm survivors. This paper asks why, of the available discourses, did workers reify the state and executive direction over fundamental rights? It highlights the constraining effect of the humanitarian timeline, which predicates future funding on rapid completion of projects incentivising the selection of easier-to-complete activities. Related to this is the short-term tenure of most humanitarians in any given disaster site, leading to what Redfield calls "the unbearable lightness of expats".
Finally, and most importantly, it highlights the function that the 'climate emergency' played as a meta-narrative, effectively operating as a trump card over more 'mundane' and less existential rights claims. This paper highlights the challenge the Anthropocene presents to human rights, through its co-option of a discourse of the imperative and urgent, even as projects purport to protect the same.

11:30 – 12:00: Morning Tea [Student Lounge, Level 1]

11:00 – 12:30: Status Inequality and Distributional Concerns [Room 303]
Chair: Ben Golder (University of New South Wales)

Paul van Trigt (Leiden University), "Redistributive Human Rights and Disability Policies in the 1980s and 1990s"

Recent debates have pointed to neglect of the issue of global socio-economic inequality in previous decades while other concerns such as status inequality and international human rights have received increasing attention. In this paper, I will view these debates from a new perspective by undertaking a case study of disability policy at the United Nations (UN). According to the literature, beginning in the 1970s, a shift emerged in the ways disability was perceived in official UN discourse. Until that time, it was viewed primarily from a social welfare perspective, but that approach had gradually begun to lose traction. Instead, another approach became dominant, one that identified disability as a human rights issue. This alleged shift, which alludes to the neglect of social-economic inequality, has not been investigated or explained sufficiently in existing literature. Based on analyses of the main disability policy documents issued by the UN in the 1980s and 1990s and the underlying debates, I will argue that the UN disability policies showed a greater degree of continuity in their framing of the (in)equality of people with disabilities than hitherto suggested. The analysis of international disability policies does inform the larger debate about redistributive human rights in at least two ways. Firstly, it suggests a more complex chronology: attention to socio-economic inequality was not waning since the 1970s as is suggested in the literature. Only in the 1990s, socio-economic inequality came to be seen as less urgent and a human needs approach began to become dominant. Secondly, my analysis sheds new light on the supposed relation between the increasing attention to status inequality and the neglect of material inequality. During the 1990s the situation of 'vulnerable groups' like people with disabilities came to be seen as a policy area in itself and was approached less as part of a general policy aimed at changing global inequality structures. However, the increasing attention to the status equality of 'vulnerable groups' did not mean that economic inequality necessarily lost importance. Human rights even kept the door open for addressing socio-economic inequalities: the Convention on the Rights of Persons with Disabilities for instance, includes socio-economic rights and is compared to other international law sensible to structural inequalities.

Anthony J. Langlois (Flinders University), "Rights, Inequality and Redistribution: Critical Engagements

The global human rights regime has made a decisive turn toward the protection of lesbians, gays, bisexuals, transgender and queer people. In many jurisdictions (including Australia) this has been mirrored by the removal of laws which discriminate on the basis of sexual orientation, gender identity expression and sex characteristics (SOGISC), and by providing for marriage between same sex and gender partners ("Marriage Equality"). At the United Nations, the focus of these developments has been protection against violence and discrimination.

The focus on Marriage Equality in global north states, to the detriment of a wide range of other economic and social rights issues (particularly when viewed at the global level and through queer and critical lenses) is taken in this paper as a provocation to think in more detail about the relationship between rights (citizenship and human rights) and economic justice. This is vital for queer communities, where being cast out of housing, losing one's job, being denied access to health care or social support, being thrown out of one's parent's home and subsequently losing school enrolment, disaffiliation from one's religious community, and so on (often in criminalised contexts), are common global experiences of queer precarity with much greater salience for redress than the matter of marriage.

Because LGBT rights are often figured as primarily civil and political rights, the damage being done to people in the domain of economic and social rights is often not captured. The material conditions of precarity for queer people are commonly displaced by the discourse of romantic love and traditional partnering found in the contemporary narrative of marriage. Consequently, the granting of LGBT rights, particularly as civil and political marriage rights, may change nothing for marginalised queer populations who suffer continuing disenfranchisement attendant upon their material exclusion.

The paper will discuss critical avenues opened by consideration of economic and redistributive rights through the lenses of the achievements of the recent turn to LGBT rights, including institutional developments at the UN level. Its larger ambition, however, is to take up and extend queer theoretical engagement and critique of rights - critique which has often focused on the material conditions of exclusion - at a moment when the broader human rights movement has become more attentive to matters of material inequality and the redistributive opportunity.

Cheah Wui Ling (National University of Singapore), Taking a "Redistributive Justice Approach to the 'Comfort Women' Movement"

This paper argues that the 'comfort women' movement's fight for reparations should be understood in redistributive rather than reparative terms. Through a fine-grained analysis of claims put forward by the movement in various fora, and by drawing on transitional justice and strategic litigation scholarship, this paper proposes that the concerns and discontent of the 'comfort women' movement are rooted in matters of redistribution or transformation rather than injury reparations. Specifically, the peace treaties concluded by Japan with neighbouring countries at the end of the Second World War entrenched structural inequalities while failing to address the gains obtained by Japan through its wartime aggression and occupation

of other Asian countries. The same network of peace treaties is repeatedly cited by national courts and authorities as a barrier to claims put forward by war survivors, including 'comfort women'. 'Comfort women' and their supporters have nevertheless dismissed the relevance of these peace treaties by arguing that these treaties do not cover the serious human rights violations suffered by survivors. This paper argues that these treaties should be seriously revisited and treated not only as a barrier to survivors' claims but as a source of survivors' grievances. A closer examination of survivors' concerns shows an intertwining of justice claims for wartime harms with broader nationalistic issues and other contemporary affairs. This intermingling of diverse and seemingly unrelated topics reflects an underlying redistributive discontent that stems, in part, from the structural political and socio-economic imbalance locked into place by the network of post-war peace treaties. The current reparative framework employed by survivors, supporters, and national authorities fails to capture these multiple dimensions. I argue that a redistributive or transformative justice approach better sheds light on, and accommodates, the multi-dimensional claims put forward by the 'comfort women' movement. The first part of this paper traces the emergence of the 'comfort women' movement and its eventual adoption of a predominantly reparative framework to pursue the claims of survivors. It then closely studies the claims put forward by survivors and their supporters before different national and international fora, highlighting the redistributive concerns underlying these claims. The third part of this article moves to exploring how a redistributive or transformative justice framework better captures the 'comfort women' movement's concerns and moves justice efforts in the right direction.

1:30 – 2:30: Lunch [Student Lounge, Level 1]

2:30 – 4:30: Neoliberalism and Human Rights [Room 303]
Chair: Barbara Keys (University of Melbourne)

Zachary Manfredi (UC Berkley / Yale law School), "Social and Economic Rights, Before and After Neoliberalism"

This paper explores an alternative genealogy of the political imaginary of social and economic rights in order to reconsider that imaginary's relationship to neoliberal political economy. Recent historiography has observed the temporal and spatial co-habitation of international human rights movements and neoliberalism: framing them as either complicit with neoliberalism's ascent or as "a powerless companion" to its rise, many scholars have tended to see human rights as inadequate tools for challenging the decades-long growth of inequality within states of the global north. Even social and economic rights, like those enshrined in the ICESCR, have been analyzed as "flexible tools," developed within a framework of neoliberal political economy such that they can easily serve to support programs of deregulation, privatization, and welfare-state dismantling.

This paper complicates this narrative by looking at an earlier scene of debate over social and economic rights. I examine exchanges between jurists of the Italian communist party (e.g., Galvano Della Volpe) and philosopher Noberto Bobbio over human rights in the 1950s; these debates concerned the degree to which socialism could adopt international human rights (and the legal concept of individual rights more generally), while remaining committed to radical redistributive politics. This

debate offered socialist thinkers a chance to contemplate the reconciliation of social and economic rights with "bourgeois" civil and political rights, while also relying on human rights as a tool to critique Soviet authoritarianism. Significantly, socialist thinkers developed insights from Gramscian political thought, and wrestled with new ways of framing social and economic rights as "technologies of socialist government" rather than individual legal entitlements to property. The heterodox political thought of this era offers a distinct left conception of social and economic rights that predated neoliberalism's political and intellectual hegemony.

The paper concludes with an extended examination of how post-financial crisis invocations of international human rights on the left have been deployed in the global north to challenge economic inequality. I attempt to offer a conceptual map of how neoliberal theories of rights and the rule of law intersect with the legal frameworks of social and economic rights in contemporary international law; I then contrast a socialist project of reimagining social and economic rights as redistributive with the decade-long recasting of human rights as an instrument of neoliberal governance. I conclude by drawing on the insights of earlier socialist thinking about social and economic rights to reconsider how contemporary left political actors might mobilize human rights frameworks to challenge the latest far-right, authoritarian variations of neoliberalism.

Michelle Carmody (University of Melbourne), "The Lost Utopia? The Development of Amnesty International's Human Rights Politics, Throughout the 1960s, 70s and 80s"

Formed in 1961, Amnesty International shaped, and was shaped by, the multiple social, political and economic developments of the long 1970s. During this time Amnesty rapidly became the most high-profile human rights advocacy organisation, attracting new members at an exponential rate. As the organisation grew, many of these new members argued that Amnesty should be addressing these developments as an essential part of what it meant to be a human rights organisation. The membership and leadership debated the scope of Amnesty's action and its methods of taking action; these debates and the various proposals made within them provide a window onto the development of human rights politics.

This paper focuses on one particular element of this debate, in which Amnesty members discussed taking action around what they termed Military, Economic, and Cultural (MEC) relations. This proposal, which focused on leveraging these relations in order to ameliorate or even prevent human rights violations, implied an analysis of the way that international economic relations intersected with human rights. As part of this discussion, Amnesty members considered issues such as requests from other groups to support boycotts, the impact of economic action on a population and on regime behaviour, the fraught politics of using unequal international relations in pursuit of human rights goals, as well as internationally-circulating proposals for structural change such as the New International Economic Order and the social and economic context that gave rise to human rights violations.

At the same time, many other members and leaders of Amnesty worried that entering into the fraught area of economic and military relations, where the direct link between any particular transfer or interaction and a specific human rights violation was difficult to establish, would jeopardise the organisations' reputation as a source of accurate and infallible information. The professionalisation of human

rights work and Amnesty's reputation as an 'expert' within the field, stood in tension with proposals to move into more politically contentious territory. This paper will examine the debates around MEC relations and around the economic aspects of human rights work, as well as the counter-debates around Amnesty's reputation and professionalism, outlining what was at stake for the various participants and why, ultimately, Amnesty chose to hold back from actively involving itself in direct, economic action.

Roland Burke (La Trobe University), "Human Rights, Universal, Liberal, and Democratic: The 1993 World Conference on Human Rights and the Recession of Redistribution"

The 1993 UN World Conference on Human Rights, the second held in the history of the UN, and the sequel to the 1968 conference in Tehran, was convened as the faith in the liberal democratic human rights order was renascent - and rising. Confident pronouncements from the Western democracies on the apparently imminent triumph of universal human rights sat uneasily with activists who worked within the ellipses of the emerging post-Cold War human rights discourse. Economic and social rights, one of the dominant notes of Tehran a quarter century earlier, were - in comparative terms - at least as marginal in Western diplomatic verbiage as they had been decades earlier. The substance of those rights was diminished and diminishing in the domestic realm, after a decade of Neo-liberal reform that spanned from the 'Rogernomics' of New Zealand to the austerity reforms of post-bankruptcy New York. Internationally, the platitudes of the 60s and 70s were less readily invoked. The state patrons of something approximating economic and social rights, typically coupled to global redistribution, were a discreditable collection - an axis of a post-Tiananmen PRC, the Islamic Republic Iran, and a more nuanced assembly of authoritarian East Asian states flush with developmental success. For the activists which assembled in the basement of the Vienna Centre, and at the regional Preparatory Conferences, the ecosystem of rights concerns had exploded, with environmental, gender, and indigenous activisms all beginning to find place in the human rights order. The church of rights was broader than ever, yet the redistributionist strand of human rights, a near peer in 1948, and a formal co-equal in 1968, was strangely understated within an otherwise militant congregation. This paper will draw on new archival research on the 1993 Conference, and examine the consecration of a refashioned human rights discourse. Vienna marked a post-Cold War rights vision that was remarkably diverse in its cohort and its concerns, but with striking in its aversion to what had once been orthodoxy, the interrelationship between political, civil, and legal freedoms, and economic and social provisions. The cumulative work of the 1970s Breakthrough was manifest. Everyone had begun to conform their cause to the language of human rights - a language which seemingly required the excision of economic radicalism as a prerequisite for drawing on its newly inflated moral currency.

Kári Hólmar Ragnarsson (Harvard Law School), "Roads Not Taken: The Neglect of Economic Inequality in the Work of the Committee on Economic, Social and Cultural Rights in the Decade Post-2008"

The surge of interest in economic inequality has not reached the UN Committee on Economic, Social and Cultural Rights (CESCR). A review of three directly relevant General Comments published since the 2008 financial crisis reveals not only that

economic inequality remained unaddressed by the CESCR but that the Committee had opportunities to enter the debate but chose not to make use of them:
1) The CESCR's General Comment on the right to just and favorable conditions of work rejected efforts to interpret of the concept of "fair wages" so as to address structural inequalities, wage structures and the relationship between labor and capital. Instead it focused on the sufficiency/decency threshold of minimum wages.
2) The General Comment on states' human rights obligations in the context of business activities does not address the crucial impact of businesses on economic inequality. The paper analyzes the assumptions of political economy underlying the General Comment and highlights several aspects of business activities obviously relevant to the intersection of human rights and inequality yet neglected by the CESCR. The same neglect of economic inequality has been prevalent in the "business and human rights" community.
3) Finally, the General Comment on non-discrimination in economic, social and cultural rights rests on a vision of equality that almost entirely neglects economic inequality. This is contrasted with competing theoretical understandings of equality and the more progressive approaches of other actors within the international human rights system.

The analysis of the General Comments is supplemented by a review of the CESCR Concluding Observations on state reports of OECD countries in 2008-2018, confirming the lack of attention to economic inequality, despite long-term trends within most or all of these states of spiraling inequality, stagnant wages, etc. and a hegemony of neoliberal policies exacerbating these trends.

The paper argues, contrary to recent academic critique, that human rights law does provide underexplored themes and concepts directly related to struggles against economic inequality. However, the example of the CESCR's work is one of missed opportunities due in part to unstated assumptions of political economy and an inability to articulate visions of human rights that challenge the neoliberal worldview.

4:30 – 4:45: Concluding Comments

4:45 – 5:30: Afternoon Tea [Student Lounge, Level 1]

5:30 – 7:00: Keynote Address [Law Theatre, Room G02]

Samuel Moyn (Yale University), 'Human Rights, Distributive Ethics, and Political Economy'

The contents of ethical ideas and the priorities and successes of reform movements depend on the political economy of the place and time in which they emerge. This talk tries to make sense of the relation of human rights ideas and mobilisation to evolving forms of political economy in the modern era.