

Human Rights, The Pandemic, and the Turning Tide of the Populist Wave: Can COVID-19 be a catalyst for change?

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Abstract

Within the last decade, support for authoritarian populist rhetoric has increased exponentially and brought with it a re-surgency of ‘illiberal democracy’. Consequently, the ability of institutions and civil society organisations who advocate human rights to effectively operate has been threatened, to the detriment of the wider international human rights legal framework. With the unprecedented political and economic disruption that came with the COVID-19 pandemic, it seems that the immediate post-COVID climate may bring with it a potential impetus for change. As this article illustrates, evidence is mounting that the grasp of populist leadership and of populist rhetoric has been in steady decline since the beginning of the pandemic. Though we cannot be certain that such a decline will persist, this article argues that during this new era of weakened populist support, now is the time for targeted human rights advocacy to strengthen the turning tides away from authoritarian populism.

Keywords: Populism, Human Rights, COVID, Neoliberalism, Populist wave

Introduction

The human rights movement has been undeniably haunted by the spectre of populism for several years. The increasing support for authoritarian populist rhetoric has, particularly from 2016 onwards, posed what seemed to be an exponential threat to institutions with mandates to protect and enforce human rights, while reducing the space for civil society organisations who advocate for human rights to operate freely. With populations increasingly disenfranchised by the concept of human rights which seemingly have favoured ‘winners of globalisation’ and abandoned ‘normal people’, the tide of what was termed the ‘populist wave’ did not seem to be receding. With the increasing success of these populist authoritarian leaders in the polls, this rhetoric has threatened to undermine the very international pluralist sentiment upon which the human rights legal framework relies.

However, the extensive failures of many populist authoritarian leaders in effectively addressing COVID-19, paired with the unity that has flowed from the pandemic, has arguably catalysed a

decline in support for populist authoritarian leadership. This is to the extent that some have speculated on a ‘Great Reset’¹; that during a time of weakened populist support, there could be a restoration of ideals of civil unity over the divisiveness which populist rhetoric exploits.

It is perhaps too soon to guarantee the sustainability of this decline in populist support in the modern political climate, but this article argues that there can be value for human rights advocates in capitalising on this ‘Great Reset’ to gain advantage over divisive populist rhetoric. It is grounded on the premise that where human rights advocates look to the root causes of the last decade’s increased support for populist authoritarian rhetoric, it becomes clear that there is an urgent need for greater innovation within the human rights legal framework to both reinvigorate human rights and to find practical solutions for the enforcement of economic, social and cultural (ESC rights).

Ultimately, this article speculates on the following question: should human rights advocates capitalise on the post-COVID-19 climate, to target advocacy on systemic change and towards a restored balance between neoliberalist economic market forces and the support and protection of human rights and civil unity? It argues that, though the state of world politics can make it difficult, there is value in re-strategising for great human rights protection and that this is better than to act with ‘despondence and despair’.

Section 1 of this article looks to explain the threat that populist rhetoric has posed to the international human rights legal framework. Section 2 outlines how the ineffective handling of the COVID-19 pandemic by some populist authoritarian leaders has contributed to the decline in public support for populist rhetoric and collaterally for populist leadership. It explains that this post-COVID-19 climate is a time for a potential ‘Great Reset’ and describes how human rights advocates should capitalise on weakened populist support to sustain a movement away from populist rhetoric, and a restored faith in human rights and civil unity. Section 3 urges advocates to re-strategise to emphasise the need for global effort to address the imbalance between the libertarian, capitalist, neoliberal desire for trade liberalisation and free markets at the expense of ESC rights. In recognising the limitations of such an argument, it suggests that, at minimum, this is a time for a significant research effort and advocacy to push for systemic change.

¹ Klaus Schwab and Thierry Malleret, *Covid-19: The Great Reset* (World Economic Forum, 2020)

Section 1: Populism and the Threat to Human Rights

1.1. Populism as a Diverse Rhetoric

Populism cannot be described as antithetical to human rights in and of itself. In fact, through tracing the term ‘populism’ to its roots, Johnson found that its first significant use had described a political party in the United States whose goal was for the protection of rights and whose work record showed only that of positive human rights protections.²

Therefore, to grasp how populism has become a threat to human rights, one must understand that populism is considered a ‘thin ideology’.³ It is not a full political ideology and as Bonadiman and Soirila stated, it does not itself contain ‘any substantive government programme’.⁴ Rather, it is a ‘chameleon-like’⁵ rhetoric or ‘discourse’⁶ that is somewhat parasitic to varying ideologies⁷ including, but not limited to, nationalism or socialism. It is utilised by political leaders when vying for popular vote in democratic elections to push their own agenda through questioning and encouraging the public to question who should be perceived as holding legitimate power. In doing so, leaders who utilise this rhetoric separate society into two homogenous and antagonistic groups: ‘the people’ and ‘the corrupt elite’, as per Mudde’s early influential definition.⁸ As such, populist leaders perceive ‘the people’ to be a group ‘whose identity, ideas and will can be fully represented’⁹ and on this basis, claim that ‘they, and only they, represent the people’.¹⁰ They therefore present themselves as ‘unified, authentic and unquestionably and morally right’¹¹ and argue that ‘the elite’ are morally

² Douglas Johnson, ‘In Defence of Democratic Populism’ in Gerald L. Neuman, *Human Rights In A Time of Populism: Challenges And Responses* (2020, Cambridge University Press)

³ Ben Stanley, ‘The Thin Ideology of Populism’ (2008) 13 *Journal of Political Ideologies* 95

⁴ Luca Bonadiman and Ukri Soirila, ‘Human Rights, Populism and the Political Economy of the World’ (2019) 37 *Nordic Journal of Human Rights* 308

⁵ Jan Petrov, ‘The Populist Challenge to the European Court of Human Rights’ (2020) 18 *International Journal of Constitutional Law* 479

⁶ Jan-Werner Müller, ‘What is Populism’ (Penguin Books 2016)

⁷ Cas Mudde, ‘The Populist Zeitgeist’ (2004) *Government and Opposition* 542

⁸ *Ibid*, page 543

⁹ Tore Sager, ‘Populists and Planners: We are the People. Who are you?’ (2020) 19 *Planning Theory* 83

¹⁰ Müller *op cit* (n6)

¹¹ Pippa Norris, Ronald Inglehart, ‘Cultural Backlash: Trump, Brexit and Authoritarian Populism’ (Cambridge University Press 2019) pp 5

wrong.¹² With this as a backing, leaders who prescribe to this rhetoric challenge the legitimate authority of existing governing bodies. They make claims that these bodies are ‘the establishment’ who are far removed from ‘the people’ to be truly representative and suggest instead that existing elected leaders are ‘immoral, technocratic and plutocratic’¹³ and therefore are not representative of ‘the voice of ordinary citizens’.¹⁴

Upon this foundation, any opposition to the populist’s ideology are considered as ‘internal or external enemy’¹⁵ of the people, including opposition politicians,¹⁶ ‘public sector bureaucrats’ (known as the ‘deep state’) alongside international organisations such as the European Union. Populist leaders later base their campaigns on the cleavages they create between ‘the people’ and ‘the elite’ to ‘supply the narratives required for political mobilization around common concerns’.¹⁷

Immediately, the populist rhetoric’s distinctive and dangerous characteristic is that it is divisive. As the following section illustrates, the ‘cleavages’ that populist leaders typically create do not end with ‘the people’ and ‘the elite’ but have also manifested in the progression of anti-pluralist and discriminatory policy agendas that scapegoat anyone who exists outside ‘the homogenous people’. The danger is compounded by attacks on the wider international human rights legal framework and are concerningly justified by claims of being the true representatives of the people.

1.2 Populism in Practice: The Threat of Authoritarian Populism on Human Rights

The real danger to human rights emerging by populist rhetoric is that the latter has increasingly been used over the last decade as a ‘tactic or tool’¹⁸ of leaders considered ‘modern

¹² *ibid*, page 4/5

¹³ Eric Posner, ‘Liberal Internationalism, and the Populist Backlash’ (2017) 49 *Arizona State Law Journal* 797

¹⁴ Norris *op cit* (n11) page 5; see Dinyar Godrej, ‘The Will of The People’ (*New Internationalist*, 2017) <<https://newint.org/features/2017/04/01/the-will-of-the-people>> accessed 8 December 2020.

¹⁵ Bonadiman and Soirila, *op cit* (n4) pp309

¹⁶ see Charlotte Klein, ‘Surprise: Trump’s “Drain the Swamp” Promise Was a Load Of Hot Garbage’ (*Vanity Fair*, 2020) <<https://www.vanityfair.com/news/2020/07/surprise-trumps-drain-the-swamp-promise-was-a-load-of-hot-garbage>> accessed 3 December 2020.

¹⁷ Dani Rodrik, ‘Populism and The Economics of Globalization’ [2017] SSRN Electronic Journal

¹⁸ Bonadiman and Soirila, *op cit* (n4) pp308

authoritarians'.¹⁹ Müller outlines that, similar to authoritarian leaders, once in power, populists 'hijack the state apparatus'²⁰ and 'oppose and attack institutions whose outcomes are not in line with their interests'.²¹ He suggests that populist leaders can only be distinguished from outright authoritarian leaders by their claims to represent the true people,²² which can make it more difficult to argue against their legitimacy. Upon this moral throne, these authoritarian populists form 'illiberal democracies'²³ which are characterised by having the outward appearance of a true democratic regime, but in which elections are 'rarely as free and fair'²⁴ as Western liberal ideals of democracy advocate. This resurgence of 'illiberal democracy'²⁵ has been considered a beginning of a 'breakdown of democracy'²⁶ and as the 'degradation of freshly attained liberal constitutionalism toward ... outright authoritarian governance'.²⁷

The following two sub-sections illustrate how, under this form of anti-democratic authoritarian governance, it has become increasingly difficult for human rights to effectively operate. Amnesty International states that 'democracy, the rule of law and human rights are necessarily intertwined and interdependent' and that 'it is difficult for one of them to fully function without the presence of the other'.²⁸ They briefly outline the immediate concerns of such a divisive

¹⁹ Arch Puddington, *Breaking Down Democracy: Goals, Strategies, And Methods Of Modern Authoritarians* (Freedom House 2017)

<https://freedomhouse.org/sites/default/files/June2017_FH_Report_Breaking_Down_Democracy.pdf> accessed 10 December 2020

²⁰ Müller *op cit* (n6)

²¹ Jan Petrov, 'The Populist Challenge to the European Court of Human Rights' (2020) 18 *International Journal of Constitutional Law*. 486

²² Müller *op cit* (n6)

²³ Fareed Zakaria, 'The Rise of Illiberal Democracy' (1997) 76 *Foreign Affairs*, 23; See Miklós Haraszti, *Resisting Ill Democracies in Europe* (Human Rights House 2017)

<<https://humanrightshouse.org/noop-media/documents/22908.pdf>> accessed 5 December 2020. Viktor Orbán stated 'the new State that we are constructing in Hungary is an illiberal state'

²⁴ Zakaria *op cit* (n23) 'The Rise of Illiberal Democracy' (1997) 76 *Foreign Affairs*, 23

²⁵ 'The Rise Of Illiberal Democracies' (*Council on Foreign Relations*, 2018) <<https://www.cfr.org/event/rise-illiberal-democracies>> accessed 29 May 2021.

²⁶ Puddington *op cit* (n19); see also Tore Sager, 'Populists and Planners: We are the People. Who are you?' (2020) 19 *Planning Theory* 83 'the democratic process is pointless under authoritarian populism, because 'the people' speaks with one voice'

²⁷ *Ibid*, page 6

²⁸ *Will Human Rights Survive Illiberal Democracy?* (Amnesty International 2019)

rhetoric and its effects on minority groups and individual rights, before delving into more pressing concerns regarding attacks on the international human rights legal framework and the institutions which enforce it.

A) Minority Groups as Scapegoats: Attacks on Individual Human Rights

At its most basic level, the most immediate threat to human rights posed by authoritarian populist rhetoric exists on account of it being ‘an exclusionary form of identity politics’.²⁹ If populist rhetoric states that ‘only some of the people are actually the real, authentic people who are deserving of support’,³⁰ then this rhetoric adopted by authoritarian leaders (naturally) creates ‘out groups’³¹ in terms of those perceived to ‘threaten heartland values’.³² This rhetoric therefore ‘fuel[s] social resentment, xenophobia or even persecution’³³ of these groups, that are often ‘ethnic, racial minorities or immigrant population[s]’.³⁴ These groups are often scapegoated as the root of all problems within a ‘narrative of blame’³⁵ that ‘seeks to identify and blame those guilty of causing the anxiety of the common people’.³⁶ Roth used Trump as an example: ‘he stereotyped migrants, vilified refugees, attacked a judge for his Mexican ancestry, mocked a journalist with disabilities’.³⁷ Such behaviour has significant repercussions on the individual rights of these groups, where the individual rights of people within minority groups are violated, and such violations are justified as simply being the exercise of pure democracy.

B) Anti-Pluralistic Political Agendas and the Disassembling of the Human Rights Framework

²⁹ Müller *op cit* (n6) page 3

³⁰ *ibid*, page 28

³¹ Tanya Voss, *The Threatening Troika of Populism Nationalism and Neoliberalism* (2018) 3 *Journal of Human Rights and Social Work* 109

³² Paul Taggart, ‘Populism and Representative Politics in Contemporary Europe’ (2004) 9 *Journal of Political Ideologies*. 274

³³ Bonadiman and Soirila, *op cit* (n4) page 311

³⁴ Voss *op cit* (n31) page 110

³⁵ Jan Petrov *op cit* (n21) pp 478

³⁶ *ibid*, 482

³⁷ Kenneth Roth, ‘The Dangerous Rise of Populism: Global Attacks on Human Rights Values’ (2017) *The Next World Order Anniversary Issue, Journal of International Affairs*. 80

More concerning to the wider human rights legal framework, is the threat authoritarian populist leaders pose because of their anti-pluralistic beliefs. As Posner states, ‘international law is inherently pluralist’,³⁸ but authoritarian populist leaders reject ‘liberal internationalism’, collaterally they reject the existence of a ‘supranational system of law’.³⁹ They include international law in the narrative that ‘international decision-makers act in the interest of elites – not ordinary people’⁴⁰ and have increasingly cherry-picked which international legal provisions they will conform with to sustain diplomatic relations and consolidate their power, whilst disengaging with international law that contradicts their own political agenda, often at the expense of liberal ideals such as human rights.⁴¹

Consequently, Miklos states: ‘illiberal regimes wage a ...battle against any form of international togetherness of worldwide civic aspirations’.⁴² International human rights law is no exception. Populist leaders claim the ‘enforcement of universal human rights standards or judgements from transnational legal bodies represent undue interference in their domestic affairs’⁴³ and are a bureaucratic ‘regime of governance ... and expert language’⁴⁴ and are ultimately an impediment to their conception of majority will.⁴⁵ Populist leaders ‘portray[s] rights as protecting only the terrorist suspect or the asylum seeker at the expense of safety, economic welfare, and cultural preference of the presumed majority’.⁴⁶ Eszter Zalan suggests this has been a particular problem within the EU, whereby ‘most populist far-right parties are critical of human rights legislation and of constitutional protection of minority rights and minorities’ religious freedoms’.⁴⁷ Therefore, suggesting that if these parties believe most of their electorate want to create discriminatory laws, then they will do so regardless of human

³⁸ Posner *op cit* (n13) page 797

³⁹ *ibid*

⁴⁰ Petrov *op cit* (n21) 484

⁴¹ See Tom Ginsburg, ‘Authoritarian International Law?’ (2020) *The American Society of International Law*.

⁴² Haraszti *op cit* (n23), 7

⁴³ Puddington *op cit* (n19), 7

⁴⁴ Bonadiman and Soirila, *op cit* (n4), 308

⁴⁵ Roth, *op cit* (n37) page 81

⁴⁶ *ibid*, page 80

⁴⁷ Eszter Zalan, ‘A Warning from Hungary: Building an illiberal zombie in the EU threatens political rights and democratic freedoms’ in *Will Human Rights Survive Illiberal Democracy?* (Amnesty International)

<<https://www.amnesty.nl/content/uploads/2019/11/summaries-pdf.pdf?x50292>> 49-50

rights legislation that condemns this.⁴⁸ In doing so, these authoritarian populist regimes ‘rais[e] their own cultural norms and particularities above international law and standards, hence undermining universal human rights as a principle’.⁴⁹

This has manifested in attacks by international populist leaders on the wider international human rights legal framework. For example, authoritarian leaders have attempted in the last decade to rid or de-legitimise the existing organisations, mechanisms and institutions mandated to uphold international human rights standards. This was to be expected, as Roth states: ‘when populists treat rights as an obstacle to their vision of the majority will, it is only a matter of time before they turn on those who disagree with their agenda’.⁵⁰

Accordingly, the last decade has seen what has been considered the ‘biggest crackdown in a generation’ of human rights organisations.⁵¹ Sherwood, writing for *The Guardian*, quoted James Savage of Amnesty International who considered that this crackdown on human rights organisations to have a ‘rapidity and breadth that ... arguably represents a seismic shift and closing down of human rights space not seen in a generation’.⁵² Viktor Orbán, for example, ‘accused NGOs of doing the bidding of foreign powers ... label[ed] them as foreign agents and accuse[d] them of treason’.⁵³ As a result, non-governmental organisations in Hungary have become ‘targets of harassment and smear campaigns’.⁵⁴ At least fifty countries have adopted laws restricting NGO funding⁵⁵ while ‘ninety-six countries have taken steps to inhibit NGOs from operating at full capacity’.⁵⁶ Of course, all had been on the basis that these foreign NGOs were inherently foreign bodies intervening in international affairs against majority will.

Perhaps even more concerning to the human rights movement is the threat to international human rights courts, which have become common targets of populist parties. Voeten discusses

⁴⁸ Article 2 The Declaration of Human Rights 1948

⁴⁹ Haraszti *op cit* (n23), 8

⁵⁰ Roth, *op cit* (n37); examples in Posner *op cit* (n15) pp 817

⁵¹ Harriet Sherwood, 'Human Rights Groups Face Global Crackdown 'Not Seen in A Generation' (*The Guardian*, 2015) <<https://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation>> accessed 8 December 2020.

⁵² *ibid*

⁵³ *Will Human Rights Survive Illiberal Democracy?* (Amnesty International 2019) pp 18

⁵⁴ Haraszti *op cit* (n23), 23

⁵⁵ *ibid*

⁵⁶ Sherwood *op cit* (n51)

how populist parties perceive international courts, finding that ‘authoritarian populists see international courts as ... tools for liberal elites to cement their preferred policies against the will of the people’ and are problematic for populist agendas where these courts ‘make judgements that protect elites or minorities against whom there is a pre-existing populist mobilisation’.⁵⁷ Populist governments argue they want to protect their own rights agenda without the ‘watchdogs’⁵⁸ of international courts. This has, in practice, happened under the guise of protecting ‘national security’, particularly with the legitimisation of excessive counter-terrorism measures.⁵⁹ Voeten suggests such outward criticism of international courts can be a tactical move of populists, where criticising rulings that protect ‘the minority’ against ‘the majority’ can be ‘a source of popularity for leaders who rely on populist mobilization’.⁶⁰

Though the ECtHR has been argued to be ‘relatively robust in resisting attacks to its existence and its structural integrity’ it also is arguably not currently equipped to deal with the threat populists pose to ‘gradual erosion of a court through de-legitimisation’.⁶¹ This is to the extent that some scholars argue the result has been ‘an implementation crisis in the ECtHR system’, which undermines the very existence of human rights.⁶²

1.3. Conclusions

Thus, whilst populist rhetoric is not inherently antithetical to human rights, populist rhetoric in practice and in the hands of modern authoritarians certainly has the potential to entirely undermine and restrict the authority and the legitimacy of international organisations and

⁵⁷ Erik Voeten, *Populism and Backlashes against International Courts* (2019) SSRN Electronic Journal 408, pp 408

⁵⁸ Puddington *op cit* (n19)

⁵⁹ See Petrov *op cit* (n21) page 497 – for examples from the United Kingdom; and see Eszter Zalan, *op cit* (n47) page 45; see also Sarantis Michalopoulos, ‘Orban Attacks the European Court of Human Rights’ (www.euractiv.com, 2017) <<https://www.euractiv.com/section/global-europe/news/orban-attacks-the-european-court-of-human-rights-at-epp-congress/>> accessed 5 December 2020.

⁶⁰ Erik Voeten, *Populism and Backlashes against International Courts* (2019) SSRN Electronic Journal 408, pp 411

⁶¹ Petrov *op cit* (n21) pp 478, 506

⁶² Basak Cali, ‘Coping with Crisis: Whither the Variable Geometry in the Jurisprudence of the European Court of Human Rights’ (2018) 35 *Wisconsin International Law Journal*. 237; see also Philip Alston, ‘The Populist Challenge to Human Rights’ (2017) 9 *Journal of Human Rights Practice*. “Russia and Turkey are virtually unresponsive members these days, and there is a pushback from a range of other states”

institutions with a mandate to enforce human rights. Without a change in trajectory for populist support, the danger to human rights could be exponential. This Section accentuates what is outlined in Section 2; that with COVID-19 and the failures of authoritarian populist regimes that have ensued, perhaps it is time for this trajectory to turn.

Section 2: COVID-19, Human Rights and the Great Reset

The emergence of the COVID-19 pandemic and its unprecedented implications on the global political and economic climate provide evidence that the trajectory of rising populist support is beginning to change. Arguably, in the face of COVID-19, the strength of populist authoritarian rhetoric has weakened and so too has the grasp of modern authoritarians. If the populist wave is receding, is the threat to human rights also receding? The following section substantiates this question. It outlines the impact of the COVID-19 climate on both human rights and on the strength of authoritarian populist rhetoric and provides the foundation for an argument that this time of weakened support for populist authoritarian leadership provides an ideal opportunity for human rights advocates to capitalise on and strengthen the movement away from authoritarian populist support, and push for a restored public faith in human rights. In doing so, human rights advocates should look to the root of the success of populist rhetoric's feat over faith in human rights and strategise to resolve these issues. Where advocates are successful, perhaps this decline in support for populist rhetoric will continue.

2.1. COVID-19, Human Rights and the Populist Decline

The pandemic brought with it an unprecedented human rights quandary. In the face of a global public health crisis the likeness of which had not been seen for a century, governments had to make widespread judgment calls on how best to tackle this unknown virus. Political leaders were dependent on technocratic support, seeking guidance from experts with incomplete and consistently developing information. With the backing of technocratic advice on how best to balance the need to prevent the spread of the disease to protect individuals and to ensure the economic survival of the nation, several fundamental freedoms were derogated from on an unprecedented scale since the creation of the modern human rights legal framework, both in duration and scope.⁶³

⁶³ Martin Scheinin and Helga Molbæk-Steensig, *Pandemics And Human Rights: Three Perspectives On Human Rights Assessment Of Strategies Against COVID-19* (European University Institute 2021)

Such a scale of rights derogations naturally provided human rights challenges in of itself, and certainly tested the robustness of the international human rights legal framework in protecting human rights from arbitrary derogations.⁶⁴ The exceptional circumstances led to significant innovations in human rights law to ensure that derogations were compatible with international law.⁶⁵ On the whole, the exceptional circumstances created by the COVID-19 pandemic and the need to prevent the spread of the virus for the protection of rights to life and to health, rendered derogations of rights in the form of lockdowns (etc) arguably legitimate (subject to the requirement of proportionality being satisfied).⁶⁶ However, as Scheinin and Molbæk-Steensig point out, the approach to COVID-19 taken by populist authoritarians often fell short on two counts; human rights compliance and practical effectiveness.

Driven by the rhetoric's inherent distaste and dissatisfaction/fear of technocratic governance, it was no surprise that authoritarian populist leaders' response to COVID-19 was often ignorant to expert advice, with damning implications on support for populist leadership. As the following section suggests, this handling of COVID-19 was arguably the catalyst for a decline in support for authoritarian populist rhetoric.

2.2. Populist Authoritarian's COVID-19 Response: The Beginning of A Populist Decline

The handling of the pandemic by populist authoritarians was met with some hostility from many of their archetypal supporters. Anderson and Bolet elucidated this issue well. They first illustrate that the supporters of these leaders often have little respect for technocratic governance, and (particularly where right-wing populist supporters are concerned) their

<https://cadmus.eui.eu/bitstream/handle/1814/69576/LAW_2021_01.pdf?sequence=1&isAllowed=y> accessed 10 May 2022.

⁶⁴See Audrey Lebet, COVID-19 Pandemic and Derogation to Human Rights (2020) *Journal of Law and the Biosciences* – provides argument that some government's excessive derogations were over-zealously infringing the rights of specific groups.

Also; Martin Scheinin and Helga Molbæk-Steensig *op cit* (n66) elucidate that many leaders would use human rights emergency derogation allowance to justify excessive and arbitrary human rights violations (like Matteo Salvini linking the spread of COVID-19 with the disembarkation of boat refugees in Italian harbours).

⁶⁵ International Covenant on Civil and Political Rights 1966, Article 4; see Martin Scheinin and Helga Molbæk-Steensig *op cit* (n66) - these scholars created guidelines for a human rights compliant COVID-19 response.

⁶⁶ *COVID-19 And Human Rights: We Are All In This Together* (United Nations 2022)
<https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf> accessed 7 May 2022.

libertarian distaste for over-zealous government intervention in the everyday lives of individuals. This facilitates an argument that because these supporters are thereby ‘pre-disposed’ to inherent discontent with the government’s handling of the pandemic, they were more likely to be dissatisfied with restrictions put in place to mitigate the spread of the virus. Leaders appealing to the desires of these supporters therefore responded both with rhetoric and with COVID-19 policy that catered to these sentiments. Therefore, as Scheinin and Molbæk-Steensig put it ‘many rulers that generally score high on populism scales ... downplayed the emergency and blocked/reversed evidence-based measures to contain it’.⁶⁷ Brazil’s President Jair Bolsonaro, for example, called COVID-19 a ‘meany little flu’ and insisted ‘we will all die some-day’.⁶⁸ These leaders instead used ‘securitisation tactics’ to paint a picture that restrictions to mitigate the spread of COVID-19 were a threat to their nation’s heartland values.⁶⁹

The resistance of populist authoritarian leaders to take positive action to mitigate the spread of COVID-19 had some significant repercussions. Jair Bolsonaro’s negligent response to COVID-19, for example, was dubbed ‘genocidal’ for having left Brazil ‘adrift on an ocean of hunger and disease’.⁷⁰ The pandemic cost of populism was evident in numerous states whose populist leadership failed to effectively address COVID-19; with Mexico, Bolivia, Ecuador and the Philippines also qualifying as ‘among the world’s worst-hit nations’.⁷¹

COVID-19 has thereby placed a spotlight on the reality of populist authoritarian rhetoric in practice and exposed ‘how incompetently populists and authoritarians are likely to react to real crises’.⁷² Consequently, COVID-19 has arguably catalysed a decline in support for populist rhetoric. As Anderson and Bolet’s empirical research on right-wing supporters in France

⁶⁷Martin Scheinin and Helga Molbæk-Steensig *op cit* (n66); pp2

⁶⁸Michael Burleigh, *Populism: Before and After the Pandemic* (Hurst & CoPublishers, 2022); pp 89

⁶⁹ Securitisation: rendering a political topic into a security threat, a danger to life of the nation, the necessity of a decisive response which is not up for debate and which can be used to justify extraordinary politics; Martin Scheinin and Helga Molbæk-Steensig *op cit* (n66), pp 9

⁷⁰ Tom Phillips, 'Bolsonaro's 'Genocidal' Covid Response Has Led To Brazilian Catastrophe, Dilma Rousseff Says' (*the Guardian*, 2021) <<https://www.theguardian.com/world/2021/apr/10/brazil-bolsonaro-dilma-rousseff-coronavirus-crisis>> accessed 10 May 2022.

⁷¹ Yascha Mounk, 'How Populism Has Proven Lethal In This Pandemic' (*Council on Foreign Relations*, 2021) <<https://www.cfr.org/article/how-populism-has-proven-lethal-pandemic>> accessed 9 May 2022.

⁷² Martin Scheinin and Helga Molbæk-Steensig *op cit* (n66), pp 9

illustrated, even those ideologically aligned with populist authoritarian rhetoric were ‘no less compliant with health and policy measures’ and were ‘more sensitive to elite cues’.⁷³ Burleigh concurred that even those (libertarians) more pre-disposed to populist rhetoric have been increasingly reluctant to support these leaders, given that they then ‘[found] themselves in the company of those who think 5G masts cause COVID-19’.⁷⁴

These sentiments seemingly translated in the polls, as evident in a recent ‘mega-dataset’ that analysed the attitudes of over half a million people across 109 countries since 2020. This evidence demonstrated that there has been a ‘collapse’ in support for both populist leaders and populist political parties both during, and seemingly, after the pandemic. Their research found that ‘individual populist leaders exhibit declining approval ratings, electoral support for populist parties is falling, and most tellingly of all, public approval for core populist ideas – such as belief in ‘will of the people’ or that society is divided between ordinary people and a “corrupt elite” – has fallen dramatically.’⁷⁵ To contextualise, survey evidence illustrated that ‘on average, populist leaders saw a 10-percentage point drop in their approval from the second quarter of 2020 to the final quarter of this year.’⁷⁶ They highlight where the popularity has already been put to ‘the electoral test’, two significant populist candidates have been removed from office or failed in their pursuits for electoral success. Donald Trump in 2020, who lost his bid for a second term incumbency - mounting evidence of an electoral collapse of populism, was followed by the failures in the polls for Benjamin Netanyahu of Israel, MORENA (the governing party) in Mexico, Andrej Babiš in the Czech Republic and presidential candidate Jose Antonio Kast in Chile in 2021. Of course, it would be an oversight to suggest that the handling of COVID-19 alone was the single contributing factor to the downfall of these leaders in the polls. However, the aptness of their declining support within the COVID-19 climate, as the authors of the ‘mega-dataset’ concur, can imply that the handling of the pandemic by these

⁷³ Christopher J Anderson and Diane Bolet, *Are Right-Wing Populists Immune To COVID-19? Health Risks, Elite Cues And Compliance Among Right-Wing Populist Voters In France* (London School of Economics 2021) <<https://www.lse.ac.uk/european-institute/Assets/Documents/News/Anderson-and-Bolet-2021-MPSA.pdf>> accessed 9 May 2022. ‘when push comes to shove, right wing populists listen to public authority’

⁷⁴ Burleigh *op cit* (n71) page 89

⁷⁵ RS Foa, X Romero-Vidal, Klassen, AJ, J Fuenzalida Concha, J. M Quednau. And LS Fenner, ‘The Great Reset: Public Opinion, Populism, and the Pandemic.’ (University of Cambridge, Centre For the Future of Democracy, 2022)

⁷⁶ RS Foa, X Romero-Vidal, Klassen, AJ, J Fuenzalida Concha, J. M Quednau. And LS Fenner *op cit* (n80), p.

leaders may have been amongst the contributing factors. Yet from this evidence, they predict the same fate for Jair Bolsonaro in the Brazilian election in October 2022 and Viktor Orbán in the Hungarian presidential election next year.⁷⁷

It is not simply the practical application of populism itself that has lost support, but the divisive rhetoric itself. The dataset points out that voters are not only distancing themselves from populist parties and leaders, but also the worldview they espouse. Since 2019, the YouGov Globalism Survey has asked citizens around the world whether they agree or disagree with key populist ideas, such as the notion that one's country is 'divided between ordinary people and the corrupt elites' or that the 'will of the people' should govern one's country's politics. The evidence suggested that since the start of the pandemic, there has been almost universal rejection of such beliefs.⁷⁸ The authors suggest that this is a sentiment that began in 2020 at the beginning of the pandemic and accelerated ever since. They have thus attributed this deterioration of support to the 'populist (mis)handling of the pandemic', a 'decline in political tribalism' and a decline in the 'spatial divide' between regions that had recently been considered to have been left behind by the global economy.⁷⁹

2.3. Conclusions: Capitalising on the Decline during 'The Great Reset'

Considering the evidence in Section 2.2, there is much to suggest that the populist wave that has increased exponentially from 2016, may have started to recede. For the purposes of the article, the question becomes: what can be done now to prevent a second wave of authoritarian populism and restore greater faith in human rights and social cohesion?

Whilst the existing populist wave ebbs, some scholars have considered the implications of this involuntary retreat. Materialised from this question is the hypothesis that this post-Covid era could become a 'Great Reset'. Coined by Klaus Schwab and Thierry Malleret, the Great Reset refers to the idea that the pandemic has forced society to 'confront us with our own fears and anxieties and afford great opportunities for introspection'.⁸⁰ They highlight that the social and economic disruption caused by Covid-19 has created an opportunity to reflect on what changes

⁷⁷ *ibid*

⁷⁸ *Ibid*, p.21

⁷⁹ RS Foa, X Romero-Vidal, Klassen, AJ, J Fuenzalida Concha, J. M Quednau. And LS Fenner *op cit* (n80), see pages 21-28

⁸⁰ Schwab and Malleret *op cit* (n1), pp4

are needed to form a more inclusive, resilient, and sustainable world. In doing so they suggest we need to ‘explore the root causes’ of the status quo to strategise moving forward and posit that ‘the power of human beings lies in being foresighted and having the ingenuity... to take their destiny into their hands and plan for a better future’.⁸¹ Sutcliffe further builds on Schwab and Malleret’s work, suggesting that COVID-19 has exposed on an un-ignorable scale the social construction of the status quo, and the fact that it can be undone and recreated. Using the work of accredited scholars Thomas Piketty and Rutger Bregman, she argues that we can dismantle the capitalist ideology upon which current global economics is based and puts forward the notion that: ‘if we made it up once, we could make it up again’.⁸² Thus, the implication is that if the status quo can be undone, there is hope that this can be the same for various facets of modern society.

What is crucial for Schwab and Malleret is that in this time while we are freshly moving into a post-Covid climate, ‘we are at a crossroads’ at which there is danger in either going back to a ‘world that resembles the one we just left behind – but worse and constantly dogged by nasty surprises’ or to a ‘better world: more inclusive [and] more equitable’.⁸³

Section 3: The ‘Great Reset’: A Time for Human Rights Reset?

Following from the previous section which outlines the decline in support for populist authoritarian rhetoric and ‘modern authoritarian’ leadership in democratic States, this section aims to capitalise on this concept of a ‘Great Reset’ to consider whether it can be applicable to the human rights framework. It seeks to address the question; if populism’s recent failures contributed to a sustained decline in populist support, can the incumbent weakness of populist authoritarian rhetoric be capitalised on by human rights advocates to the advantage of the human rights framework? To that end, it adds weight to the argument that in this time of populist authoritarian weakness, human rights activists should re-strategise to create a system that can be more robust to the threat posed by such populist rhetoric.

The need for a new approach to tackle this threat is not new to scholarship. Some scholars have speculated on the threat to populist politics on human rights, and often vaguely outline a need

⁸¹ *ibid*

⁸² Hilary Sutcliffe, ‘COVID-19: The 4 Building Blocks Of The Great Reset’ (*World Economic Forum*, 2020) <<https://www.weforum.org/agenda/2020/08/building-blocks-of-the-great-reset/>> accessed 13 April 2022.

⁸³ *ibid*

to create strategies that prioritise advocacy or ‘doubling down’⁸⁴ on ESC rights, but fall short of explaining the urgency of this strategic shift and have not offered sufficient guidance on *how* to push for this change. This section attempts to highlight the necessity for further research to fill this chasm in the literature. Through capitalising on the concept of the ‘Great Reset’, this section will outline whether the Great Reset can and should apply to the international human rights framework.

This section takes the stance that there is value and truth to the notion that ESC rights should be at the forefront of human rights advocacy to tackle the increasing support for authoritarian populist rhetoric. It explains that if ESC rights are the focus of advocacy efforts, citizens that have been susceptible to populist rhetoric may be less enticed by the (often false) claims of economic security that populist authoritarian leaders claim, and the grasp of authoritarian populism may continue to waver in the polls.

Constructing this argument adds to existing literature that calls for increased enforcement of ESC rights. Through an interdisciplinary analysis of the roots of populist support, this section demonstrates the greater value in innovating and re-focussing the efforts of human rights advocates and building upon the existing human rights framework, rather than simply doubling down on that which already exists.⁸⁵ Similarly to scholar Douglas Johnson, it argues that learning from the origins of the increase in authoritarian populist support will allow advocates to capitalise on the issues that led to an increase in support for divisive authoritarian values and target their human rights advocacy on these areas effectively counteracting this support. It agrees and capitalises on the notion that ‘a crisis of a discipline is always also an opportunity for development, either through *refocusing or intervention*’⁸⁶ and takes the view that ‘refocusing’ should not be based on ‘merely announcing the relevant treaty article and expecting violators to change their behaviour’ but through a ‘prognosis ... based on more

⁸⁴ See Philip Alston, ‘The Populist Challenge to Human Rights’ (2017) 9 *Journal of Human Rights Practice*. See Olivier De Schutter, *Economic, Social and Cultural Rights as Human Rights: An Introduction* (2013) <<https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP2013-2-ODeSchutterESCRights.pdf>> accessed 27 December 2020.

⁸⁵ *ibid.*

⁸⁶ Bonadiman and Soirila, *op cit* (n4) page 301

elaborate diagnosis of what exactly are the sources and manifestations of the current crisis of human rights advocates'.⁸⁷

3.1. The Roots of Populist Authoritarian Support and Human Rights Re-Strategising

Why do people support populists?

In reviewing literature that explains the origins of increased support for authoritarian populist rhetoric, it becomes clear that there is value in human rights advocates using such information as a basis for strategy towards sustaining the post-COVID-19 decline in support for populist authoritarian rhetoric. Such an understanding of the roots of populist support highlights an urgent need to restore faith in human rights and international solidarity amongst populations who are increasingly disenfranchised by the existing human rights framework.

Philip Alston articulated the reasoning behind the success of authoritarian populist leaders in democratic election:

‘The reality is that the majority in society feel that they have no stake in the human rights enterprise, and that human rights groups really are just working for ‘asylum seekers’, ‘felons’, ‘terrorists’, and the like. This societal majority seems far less likely today than it might have been in the past to be supportive of the rights of the most disadvantaged merely out of some disappearing ethos of solidarity.’⁸⁸

This is a notion that is echoed by numerous political scientists whose work delves into the origins of support for divisive and authoritarian values that has re-surfaced on the last decade. Pippa Norris, for example, in developing a cultural backlash theory to this end, came to similar conclusions. Amongst a series of contributing factors, Norris exposed two crucial factors that explain the faltering faith in human rights: economic grievances and immigration. Whilst the latter refers to the notion that many socially conservative people feel that their basic values are being eroded by rapid cultural change, it is the stance of this article that this ‘fear’ is aggravated by the existence of the former, economic grievances.

⁸⁷ Ron Dudai, ‘Human Rights in the Populist Era: Mourn then (Re)Organise (2017) 9 *Journal of Human Rights Practice*. 17

⁸⁸ Alston *op cit* (n92)

Economic grievances as an explanation for support for authoritarian populist leadership refers to the idea that people become susceptible to the appeal of authoritarian leadership (the appeal of the strongman⁸⁹) when feeling anxious about their own economic security. Norris explains that ‘the growing electoral success of authoritarian-populist parties and leaders has often been attributed to several related economic developments occurring during the late twentieth century’⁹⁰ and has been conflated by Putzel with ‘legacies of neoliberalism’⁹¹ and ‘mass cynicism of neoliberal elites.’⁹² Putzel concurs that the increasing support for populist leadership has ‘thrived on anger caused by the economic impact of neoliberal globalisation’.⁹³

Whilst neoliberalism is an economic philosophy characterised by the idea that ‘free, unregulated, and competitive markets are both efficient and socially responsible’⁹⁴ and was adopted on the basis of ‘producing the greatest good for the greatest number’,⁹⁵ it has instead bred huge inequality.⁹⁶ Putzel states that ‘by encouraging finance to move much more freely around the globe, the reforms saw the destruction of many old industrial activities and communities in the developed countries’.⁹⁷ While this has done a lot to alleviate poverty in developing economies⁹⁸ the ‘less-educated population in advanced industrialized economies’ have become ‘losers’ from globalisation⁹⁹ who have lost job security and income as a result.

⁸⁹ Roth, *op cit* (n37) page 82

⁹⁰ Norris *op cit* (n7) pp 135

⁹¹ James Putzel, ‘The ‘Populist’ Right Challenge to Neoliberalism: Social Policy between a Rock and a Hard Place’ (2020) 51 *Development and Change*, 418

⁹² *ibid*

⁹³ *Ibid*, page 421,

⁹⁴ Tanya Voss, ‘The Threatening Troika of Populism, Nationalism and Neoliberalism’ (2018) 3 *Journal of Human Rights and Social Work*. page 110 *Ibid*, page 110

⁹⁵ *ibid*

⁹⁶ See Chris Newdick, “Global Capitalism and the Crisis of the Public Interest” (eds) S. Breau and K Samuel, *Research Handbook on Disasters, and International Law* (Edward Elgar, 2016) Chapter 2

⁹⁷ Putzel *op cit* (n100) page 421

⁹⁸ Norris *op cit* (n7) pp135 ‘millions of people in low and middle-income countries, particularly China and India, have benefitted from international trade and finance ... which has halved the proportion of the world’s population living in extreme poverty since 1990’

⁹⁹ Norris *op cit* (n7) pp132-135

It is these people, Norris suggests, that ‘provide the strongest support for authoritarian and populist values’.¹⁰⁰

Newdick, writing about the effects of global capitalism states that ‘globalisation tends to replace domestic politics with an unaccountable, economic policy-elite with no instinct to protect social and economic rights.’¹⁰¹ Rather than being concerned with welfare, ‘governments [have] compete[d] with one another to lower capital taxes to attract investment by multinational corporations.’¹⁰² Lower taxes means less money in the public pocket, and less money to dedicate to welfare. This yields a ‘reduced capacity of government to insulate citizens from the hardships of inadequate housing, education and social welfare’.¹⁰³ Piketty considers that ‘Europe is the most extreme case ... it has both the highest level of private wealth in the world and the greatest difficulty in resolving its public debt’¹⁰⁴ which can explain the increasing populist trend within Europe.¹⁰⁵ Amnesty posit that ‘for many years the US government described economic, social and cultural rights as ‘goals’ or ‘aspirations’, rather than rights.’¹⁰⁶

Therefore, whilst neoliberal policies are somewhat premised on the notion that as a country becomes more developed and has greater wealth, it is likely to be in a greater position to enforce human rights obligations, this is not the case in practice. Instead, ‘politics everywhere has become a shadow of economics’¹⁰⁷ where governments are buffeted by economic forces and

¹⁰⁰ Norris *op cit* (n7) pp 132

¹⁰¹ Newdick *op cit* (n105) page 39

¹⁰² *ibid* page 38, see also Chris Newdick, 'International Trade and The Public Interest' (2020)

<<https://chpi.org.uk/blog/international-trade-and-the-public-interest/>> accessed 11 December 2020. ‘The UK needs to be able to protect its comprehensive and accountable public health service, health equality and the right to control drug prices, as well as the fast-food industry, consumer and employee rights, food and animal welfare standards, and the environment.’

¹⁰³ Newdick *op cit* (n105) page 39

¹⁰⁴ Thomas Piketty, *Capital in the Twenty-First Century* (A Goldhammer trans, Belknap Press of Harvard University Press, 2014) Chapter 9

¹⁰⁵ Rodrik *op cit* (n17) “In Europe, the rise of populism is very recent and swift – from below 5 percent of the vote in the late 1980s to more than 20 percent by 2011-2015”

¹⁰⁶ *Human Rights for Human Dignity* (Amnesty International 2014)

<<https://www.amnesty.org/download/Documents/8000/pol340012014en.pdf>> accessed 27 December 2020. Pg 28

¹⁰⁷ D Kennedy, ‘Law and the Political Economy of the World (2013) 26 *Leiden Journal of International Law* 7, 12

are deadlocked and disengaged with human rights in a bid to raise GDP. In reference to the failures of neoliberalism, Cooper and Szepter suggest that ‘humankind has inadvertently become trapped within an unsustainable, high-carbon, high-inequality, globalised economy that worships growth’.¹⁰⁸ It is with this reasoning that scholars such as Dudai suggest that ‘even those who are ideologically aligned with human rights values have grown frustrated with the ability of human rights to deliver the goods’¹⁰⁹ where economic concerns trump rights concerns.

How does this understanding explain a need for a shift in human rights advocacy?

Widespread concerns regarding the failures of the neoliberal economic infrastructure to adequately protect individuals from poverty and the realisation of basic ESC rights, paired with the notion that economic grievances are a significant reason for authoritarian populist leadership, therefore provide some explanation for why individuals (particularly the ‘losers’ of globalisation who are pre-disposed to engage with populist rhetoric) have become disenfranchised by the concept of human rights protection. These individuals are seemingly more susceptible to the allure of a ‘populist strongmen’ whose agenda suggests that they will represent and protect the interests of ‘the people’ and that ‘the establishment’ are the source of these economic issues. Ironically, the neoliberal economic policies that are creating these ‘losers of globalisation’ are, in many instances, endorsed by those populist leaders professing to be the solution to these economic concerns.¹¹⁰

Nevertheless, Dudai found that ‘even those who are ideologically aligned with human rights values have grown frustrated with the ability of human rights to deliver the goods’¹¹¹ where economic concerns trump rights concerns. It is arguable, therefore, that the human rights framework has, so far focused too heavily on enforcing top-down principles that force states to abide by vague notions of morality, rather than taking lessons from development economics that aims to increase real living standards through the provision of resources for

¹⁰⁸ Cooper H, Szepter S, *After the Virus: Lessons from the Past for a Better Future* (Cambridge University Press, 2021) pp xvii

¹⁰⁹ Dudai *op cit* (n95) page 17

¹¹⁰ See Janan Ganesh, 'Donald Trump'S Faults Are More Libertarian Than Authoritarian' (*Financial Times.com*, 2020) <<https://www.ft.com/content/806895a0-2aca-4a3e-9ea2-a104636ae7d5>> accessed 20 May 2022.

¹¹¹ Dudai *op cit* (n95) pp 17

development.¹¹² From this analysis, an argument emerges that some infrastructure change that acknowledges a need for greater emphasis on globalised regulation of the free market may be necessary to tackle the incumbent lack of ECR rights enforcement.

If a rise in populist support over the last decade has come from the failures of neoliberalism to protect ESC rights and the congruent failure of the international human rights law framework to recognise and capitalise on the understanding, then this is where human rights advocacy should focus its' attention to sustain the decline in populist support.

3.2. Re-Strategising Human Rights Efforts to Address Economic Grievances

To address ESC rights enforcement failures stemming from neoliberal capitalist global economic climate, there is a need now to consider the potential of new approaches that can regulate the negative effects of neoliberal policies in exacerbating economic inequality. This sentiment is shared by Bonadiman and Soirila, who state that the human rights agenda must engage with the issues presented by neoliberalism if any *real* change is to occur to reduce the threats posed by populism to human rights. They suggest that 'there is a need for a human rights movement... that sees and reveals rather than denies connections between rights and markets'.¹¹³ In their view, human rights law and the existing rights framework should adapt and expand to have a greater stake in decision-making concerning taxes, trade and labour.¹¹⁴ In similar vein, this conclusion was met by Nagaraj who found that placing excessive emphasis on existing human rights did not bring about practical change where it 'ignored issues of economic harms and distributive justice' in Sri Lanka¹¹⁵ and that human rights should take a more active approach in resolving these issues.

Rosella De Falco believes this change should be facilitated by expanding government's focus on the welfare state. She believes that the neoliberal policy of cutting social spending *is not and should not* be the only fiscal option available to governments in times of economic crisis

¹¹² Eric Posner, 'The Twilight of Human Rights Law' (Oxford University Press, 2014)

¹¹³ Bonadiman and Soirila, *op cit* (n4) page 326

¹¹⁴ *Ibid*, 315-322

¹¹⁵ found in Bonadiman and Soirila, *op cit* (n4); VK Nagaraj, 'Human Rights and Populism: Some More Questions in Response to Philip Alston' (2017) 9 *Journal of Human Rights Practice*.

and that it is ‘time for a rights-based welfare state’.¹¹⁶ Dudai, more radically, states ‘perhaps the time has come to go even further: to argue against inequality as such, to develop a principled position against ‘free market[s] ... [and] to call for redistribution from rich to poor.’¹¹⁷

This is a difficult stance to promote, particularly from a legal realist perspective, given that capitalist values which dominate most democratic states are averse to excessive state intervention. Arguably, the COVID-19 pandemic may have facilitated some removal of the rigidity and strength of this libertarian value, particularly where health inequalities are concerned. For example – Anderson and Bolet’s empirical research demonstrated that even ‘citizens attached to right-wing populist parties are sensitive to elite cues, especially when there is an objective risk to their health’.¹¹⁸ Cooper and Szreter concur that in the wake of COVID-19, an understanding of the historic merits of the welfare state particularly in the modern history of Britain can ‘emancipate us to think differently’¹¹⁹ and thereby challenge existing libertarian values. Using Britain as an example, they demonstrate that an increased emphasis on welfare can be ‘not just a moral, but an economic argument’.¹²⁰ They highlight that historically, ‘initiative-taking by individuals flourished most when [British] society ... committed itself to generous collective support and security for all’.¹²¹ They advocate the dispersal of this understanding could assure people that the welfare state is not the ‘enemy of individualism’ and rather that ‘welfare’s focus on nurturing human and social capital is a promoter of economic prosperity and well-being’.¹²² The authors suggest that this understanding should be advocated by policy makers in the wake of COVID-19 to build a ‘better future’. To that end,

¹¹⁶ Rossella De Falco, ‘Time for A Rights-Based Welfare State’ (*Human Rights Centre Blog*, 2020)

<<https://hrcessex.wordpress.com/2020/05/25/time-for-a-rights-based-welfare-state/>> accessed 5 December 2020.

¹¹⁷ Dudai *op cit* (n95) page19

¹¹⁸ Anderson and Bolet, *op cit* (n76) pp 1

¹¹⁹ Cooper H, Szreter S, *op cit* (n117)) pp xvii

¹²⁰ *Ibid*, pp xx

¹²¹ *Ibid*, pp xx. In constructing this argument, they highlight that Britain’s success as a global economic leader at the turn of the 19th century was not built on ‘unrestrained, individualist, free-market economics’ but was rather built on the generous welfare state that existed following the Elizabethan Poor Law of 1601. When this was replaced by ‘outright individualism’ rather than welfare during the 1830s, the country’s economic leadership in international productivity ebbed away, only to come back 70 years later following the next great welfare expansion that followed the Second World War.

¹²² *Ibid*, pp xx

they prescribe to Scwab and Melleret's concept of Great Reset and suggest 'seven pillars of empowerment' to guide post-COVID-19 policy making. Perhaps if this understanding of welfare was shared by human rights advocates/activists, the resistance to state intervention could be mitigated.

Nevertheless, whilst recognising the libertarian limitation to this argument, this article speculates that at minimum, health inequalities could be an ESC right where a balance could be struck between economic concerns and rights concerns. Though desires to address health inequalities pre-date the Coronavirus pandemic, there is some argument that the post-COVID context has provided impetus for some of these practical changes to be made. Lucchese and Pianta, argue that 'the pandemic has dramatically shown the price of ... a neoliberal turn'¹²³, finding that 'market globalisation creates health threats that is completely unable to respond to emergencies'¹²⁴ due to a neglect of the welfare state and the economic, social, and cultural rights of individuals (such as rights to health¹²⁵ and to an adequate standard of living¹²⁶).

In this way, the pandemic has put a microscope on the 'absence of global rules and coordination on the protection of health'.¹²⁷ It is clear more now than ever that we cannot rely on the free market to protect individual needs. Steiglitz illustrates 'Trumpism' is a relevant example whereby during the pandemic, crucial public-funding in scientific research was side-lined to accommodate greater tax cuts fed to big business.¹²⁸ The pandemic has shown a new approach is necessary if we want to move towards greater protection of basic rights – such as to health. Lucchese and Pianta rightly concur that 'it would be a mistake to believe that, once the pandemic has passed, the economy could go back to 'normal''.¹²⁹ They posit that exposed disparities exacerbate the need for a welfare state that 'produces public goods and services ...

¹²³ Matteo Luccese and Mario Pianta, 'The Coming Coronavirus Crisis: What can we learn?' (2020) 2 *Intereconomics Review of European Economic Policy*, Pp 102

¹²⁴ *Ibid*, 102

¹²⁵ Article 14 International Covenant on Economic Social and Cultural Rights (ICESCR)

¹²⁶ Article 11 ICESCR

¹²⁷ Luccese and Pianta *op cit* (n132) Pp 102

¹²⁸ Joseph Stiglitz, 'Plagued By Trumpism' (*Social Europe*, 2020) <<https://socialeurope.eu/plagued-by-trumpism>> accessed 5 March 2022. "Scientific research requires resources. But most of the biggest scientific advances in recent years have cost peanuts compared with the largesse bestowed on the richest US corporations by Trump and congressional Republicans' 2017 tax cuts."

¹²⁹ Luccese and Pianta *op cit* (n132) Pp 103

based on the rights and needs of citizens, rather than the ability of customers to spend'.¹³⁰ Bibby et al speculate it should be a time for a 'new social compact' including an 'enhanced role for the State in providing social protection ... increased public spending on prevention ... and better quality of jobs for workers who have been undervalued and underpaid'.¹³¹

Therefore, human rights advocates could capitalise on this momentum to take more radical measures for the implementation of economic, social, and cultural rights. Whilst the current attitude is that 'to address these global issues, we need to radically rewrite the rules of globalisation',¹³² the same sentiment should stand for the re-invigoration of human rights. Human rights advocates should push for international standards to be updated to better protect 'health, welfare, labour rights and the environment' and, as Lucchese and Pianta suggest, these should perhaps be binding for the international movement of capitals and goods.¹³³

International human rights lawyers and activists could innovate and collaborate with those working in international trade law and push wealthy States to introduce a new order that mitigates the inequality that pervades modern society. These changes should be drawn from the likes of Piketty, who states:

'The right response to this crisis would be to revive the social state in the global north, and to accelerate its development in the global south... This new social state would demand a fair tax system and create an international financial register that would enable it to bring in the largest and richest firms to that system. The present regime of free circulation of capital, set up in the 1980s and 90s under the influence of the richest countries – especially in Europe – encourages evasion by millionaires and multinationals. It prevents poor countries

¹³⁰ Ibid, Pp 102

¹³¹ Bibby, J., Everest, G. and Abbs, I., 2020. *Will COVID-19 be a watershed moment for health inequalities?*. [ebook] The Health Foundation. Available at: <<https://www.health.org.uk/sites/default/files/2020-05/Will%20COVID-19%20be%20a%20watershed%20moment%20for%20health%20inequalities.pdf>> [Accessed 4 January 2021].

¹³² Ibid

¹³³ Lucchese and Pianta *op cit* (n132), Pp 103

from developing a fair tax system, which in turn undermines their ability to build a social state.’¹³⁴

If human rights advocates capitalise on these arguments and exploit them to the advantage of the human rights legal framework, perhaps the threat to human rights could be alleviated.

3.3. The Possibility of a Strategy Change in Practice?

Recent action taken provides some evidence of a shift that can facilitate the practical implementation of this new agenda. For example, at a recent G7 conference a group of wealthy nations signed a tax agreement aimed at preventing abuse of the international tax system and reduce the use of tax havens by both multinational corporations and online technology companies.¹³⁵ This illustrates effort to restore balance to the issue of global inequality and infers some incentive from States to gain greater revenue from taxing the super-rich.

Further, Felice Gaer recently illustrated that the defeat of Trump in the polls has sparked a momentum back towards rights universality in international human rights law. Although this perspective is isolated solely to the United States’ attitude towards human rights, it provides an apt example of a move back to the universality of human rights institutions to levels that preceded and were threatened by populism. For example, since Biden has been in office, the US has shifted back to pre-populist engagement the Human Rights Council. She argues that such re-engagement with the Council has restored some faith in the ‘sacrosanctity of universality’ of human rights affirmed in the Vienna Declaration and Programme of Action 1993 that has been under siege by populist leaders trying to ‘pick and choose’ which rights they were to prescribe to.¹³⁶

Both of the above arguably reinforce a sense of urgency for a strategy change to sustain this restoration of pre-populist human rights enforcement. They suggest that within this climate, perhaps human rights advocates can push for some framework that encourages states to utilise

¹³⁴ Laura Spinney, 'Will Coronavirus Lead to Fairer Societies? Thomas Piketty Explores the Prospect' (*The Guardian*, 2020) <<https://www.theguardian.com/world/2020/may/12/will-coronavirus-lead-to-fairer-societies-thomas-piketty-explores-the-prospect>> accessed 20 June 2021.

¹³⁵ 'G7 Tax Reform: What Has Been Agreed And Which Companies Will It Affect?' (*The Guardian*, 2021) <<https://www.theguardian.com/world/2021/jun/07/g7-tax-reform-what-has-been-agreed-and-which-companies-will-it-affect>> accessed 1 March 2022.

¹³⁶ See Felice Gaer, Rights Universality Restored (2022) 46:1 The Fletcher Forum of World Affairs.

the revenue gained from taxing these wealthy companies on facilitating guaranteed minimum income, minimum health care, education and housing, global access to medicines for the realisation of ESC rights. The momentum starting in 2006 to bind corporations to human rights via the Ruggie Principles could be persuasive in constructing this argument¹³⁷ alongside necessary strengthening of the enforcement of the Ruggie Principles in and of themselves.¹³⁸ Clearly, it is in these areas that provide a mechanism for the enforcement of economic, social and cultural rights and/or resolve existing issues of inequality that should be targeted by human rights advocates.

However, the writing is not yet on the wall that this decline in populist support is inevitable. The current decline in support due to COVID-19 does not exist in a vacuum and is not the only issue existing in the international legal and political framework. Any aforementioned predictions about the end of COVID-19 and its implications on international relations and global politics – and international law – pre-date the understanding of the globalised economic implications of COVID-19. In the same vein, these predictions could not have foreseen the Russian invasion of Ukraine in February 2022, nor the economic disruption that has ensued. As Gilles Ivaldi, writing for the *Cogito Research Magazine*, outlined, ‘we should not hastily conclude that these [populist] forces are in retreat. The issues and anxieties that drive support for those parties continue to deeply shape public opinion in Europe and the United States and form a potential reservoir that could still play into the hands of populist entrepreneurs’.¹³⁹ Michael Burleigh recently concurred. Whilst speculating on the likelihood of a populist decline, he stated that ‘some [populists] may profit if there is a major economic depression on the back of [COVID-19]’.¹⁴⁰

¹³⁷ Ibid, see John Ruggie ‘Report of the special representative of the secretary-general on the issue of human rights and transnational corporations and other business enterprises: Guiding principles on business and human rights: implementing the united nations ‘protect, respect and remedy ‘framework.’ (2011) *Netherlands Quarterly of Human Rights* 29, 224-253.

¹³⁸ Robert Eccles, 'Human Rights Really Aren't All That Important: Just Ask 200 Leading Companies' (*Forbes*, 2020) <<https://www.forbes.com/sites/bobeccles/2020/03/09/human-rights-really-arent-all-that-important-just-ask-200-leading-companies/?sh=f4264726e519>> accessed 1 October 2021.

¹³⁹ Gilles Ivaldi, 'Will the Covid-19 Crisis Mark The Decline Of The Populist Right?' (*Cogito*, 2021) <<https://www.sciencespo.fr/research/cogito/home/will-the-covid-19-crisis-mark-the-decline-of-the-populist-right/?lang=en>> accessed 5 March 2022.

¹⁴⁰ Burleigh *op cit* (n71), pp 87

Furthermore, arguments cannot be ignored that we may have crossed the Rubicon in international law where, as aforementioned, international law has been easily manipulated and cherry-picked to the advantage of leader's own political agendas. This is to the extent that Ginsburg argues that international law will henceforth be divided between 'authoritarian international law' and 'pro-democratic international law',¹⁴¹ with only the latter having true concern to comply with international human rights law and the former 'prefer[ring] segmentable public goods ... that can be delivered to their supporters and withheld from opponents'.¹⁴²

It is difficult to see the momentum towards this changing but in the same breath, perhaps with the correct advocacy and strategic changes in human rights enforcement, even this momentum can decelerate. Therefore, even with the above being true, the usefulness of analysing the 'what if?' of capitalising on the existing crossroads of the Great Reset back towards human rights and civil unity should not be de-valued. Much like Alston's position, 'dejection and despair are pointless and self-defeating'¹⁴³ and it is better that human rights advocates use this time to push for systemic change.

Conclusion

With the populist retreat as a backdrop, this article has illustrated the value in capitalising on the 'Great Reset' to sustain a movement away from populist rhetoric and towards a restored faith in human rights. In doing so, it should be recognised that the real issue with human rights is less about whether people like and support human rights, but more that rights are not perceived as a mechanism that can truly improve individual lives. The focus of human rights advocates should be on ensuring that there are economic frameworks in place in countries to ensure that people's rights to basic needs fulfilment are affordable and can be prioritised over neoliberal policies. Where these mechanisms don't exist, it's a bit like fighting for the right that all men can bear children. Absent a womb, securing that right for men is pointless.

The solution to the continuance of the human rights movement and the feat over the threat of populism is to facilitate mechanisms with which to improve ESC rights allocation, reducing the appeal of the populist strongman and thereby hitting populist leaders at the root. Current

¹⁴¹ Ginsburg *op cit* (n41), pp 227

¹⁴² Ibid, pp 229

¹⁴³ Alston *op cit* (n92)

decisions infer an existing momentum towards this goal that should be capitalised on and developed alongside efforts to develop the long-accepted movement to bind multinational corporations to human rights. If these efforts are made, inequality is mitigated and individuals begin to feel they have a greater stake in human rights, perhaps the appeal of the populist strongman will continue to dim and the grip of populist authoritarian leadership on the world stage will loosen. With it, perhaps the threat to the human rights framework could be mitigated.

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