

Opinion Article

PRIMACY OF CARE AND HUMAN DIGNITY: DECOLONIAL TURN VERSUS ANTI-SOCIAL NEOLIBERAL CAPITALISM AND POSITIVIST AND POSTMODERN EPISTEMOLOGIES

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ABSTRACT

Background: *This article discusses the primacy of care, empathy, and dignity in human life and social relations. There is a connection among care, connection, and human dignity that forms the value-based foundation of human rights. Conversely, there is a nexus between the rise of neoliberalism and the relativisation of fundamental human rights values, including respect for equal moral human dignity, which can be recognised through empathy. Non-positivist approaches such as critical realism and decolonial perspectives critique neoliberal capitalism, as well as positivist and postmodern epistemologies, for dismissing the importance of values and separating reason and emotions. The violation of human dignity due to the denial of social rights is a global problem inherent in contemporary neoliberal capitalism, which tends to reject a universalistic understanding of human dignity. Legal minimalism in legal systems illustrates how the adverse effects of neoliberalism can undermine the development of*

DOI:

<https://doi.org/10.33327/AJEE-18-8.4-o000141>

Date of submission: 02 Jul 2025

Date of acceptance: 23 Oct 2025

Publication: 18 Nov 2025

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health rights. The neoliberal mindset has led not only to the instrumentalisation of human rights but also to the relativisation of gross violations of international law, for example, by “normalising” full-scale aggression against Ukraine, reducing everything to a “capitalistic deal” and disregarding war crimes.

Methods: This research is interdisciplinary and conceptual-normative. Epistemologically, it is based on the assumptions of meta-theoretical critical realism, the ethics of care, and the decolonial approach, as conceptualised in recent years by authors from post-socialist countries. The prioritisation of empathy, which is key to perceiving equal moral human dignity, is central to this understanding of the decolonial turn. Therefore, this article adopts conceptual, normative, and hermeneutical methods, including critical analysis of neoliberal capitalism, positivist, and postmodern epistemologies. As an example from judicial practice, the influence of the neoliberal mindset on the implementation of health rights is addressed conceptually.

Results and conclusions: This paper proposes a solution to the multiple problems generated by neoliberalism and positivist and postmodern epistemologies: a cultural change and mental revival that can be achieved through a decolonial approach, which precedes the transformation of hierarchical neoliberal economic, judicial, and political systems. Overall, it is important to frame discussions about the nature of the state, law, democracy, and security by focusing on the concepts of human dignity, care, and empathy, which go beyond conventional positivist and postmodern approaches in the social sciences and legal studies, as well as the “conventional normal” in academia.

1 INTRODUCTION

“The only objective truth is determined by the market; all other values have the status of mere opinions; everything else is relativist hot air.”¹ This statement vividly summarises the logic of the ideologues of what is today known as neoliberal capitalism, or neoliberalism. Neoliberalism is a slippery concept; nonetheless, conventional definitions tend to emphasise the free market as a panacea for all major economic, social, and political problems.²

The violation of human dignity resulting from the denial of social rights is a global problem inherent in neoliberal capitalism, which tends to reject a universalistic understanding of human dignity. Since the 1980s, neoliberalism has become a defining feature of our

1 Stephen Metcalf, ‘Neoliberalism: The Idea that Swallowed the World’ *The Guardian* (London, 18 August 2017) <<https://www.theguardian.com/news/2017/aug/18/neoliberalism-the-idea-that-changed-the-world>> accessed 5 November 2025.

2 Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso Books 2019).

collective existence; its theories have turned into dogma, its vernacular has become a kind of *lingua franca*, and its assumptions have been subsumed under "common sense".³

What is unprecedented in recent years is that neoliberal capitalism has become a major factor behind the interconnected crises of ethics, the economy, social development, health, and ecology—crises that have brought the world to a historic crossroads, necessitating a significant change of direction.⁴

The Main Concepts and Assumptions

Neoliberalism creates structural injustice and violence, as well as the hierarchies of worth in society. Neoliberal reforms laid the ground not only for oligarchic but also for authoritarian consolidation in post-socialist Eurasian countries, which was legitimised by the trauma and social injustice resulting from privatisation conducted in a legal vacuum. The capitalist triumphalism of the early 1990s has given way to the dystopian realities of an authoritarian, restrictive, and reactionary form of rentier neoliberalism in post-socialist countries.⁵

Like any complex and multifaceted social phenomenon, neoliberal capitalism is susceptible to adaptation and evolution. The emergence of new state capitalism models does not inherently oppose neoliberalism; rather, the two coexist and intertwine.⁶

Additionally, the effects of legal minimalism on health rights, explored in this article, are among the most significant examples of neoliberalism's adaptation to social, political, and cultural contexts. Although there is extensive research that addresses the adverse effects of neoliberal capitalism, there is still a lack of interdisciplinary and normative research that explores the relativisation of the fundamental values of human rights, such as the universality of human dignity (a value-based foundation of human rights rarely used in positivist and postmodern social sciences concept) and justice—as a consequence of neoliberalism's influence.

This paper adopts the universalistic understanding of dignity, meaning a value that is held universally and applies to all human beings' inherent and intrinsic worth.⁷ It does not aim to contrast the social justice-based welfare state with democracy. Instead, this paper recognises that the notion of human dignity protected by social rights is not only

- 3 Luke Savage, 'Neoliberalism? Never Heard of it' [2019, 11 March] Jacobin <<https://www.jacobinmag.com/2019/11/neoliberalism-term-meaning-democratic-party-jonathan-chait>> accessed 5 November 2025.
- 4 Stephen R Gill and Solomon R Benatar, 'Reflections on the Political Economy of Planetary Health' (2020) 27(1) Review of International Political Economy 167. doi:10.1080/09692290.2019.1607769.
- 5 Baliyar Sanghera and Elmira Satybaldieva, *Rentier Capitalism and Its Discontents: Power, Morality and Resistance in Central Asia* (Palgrave Macmillan 2021).
- 6 Ilias Alami and others, 'Quo Vadis Neoliberalism in an Age of Resurgent State Capitalism?' (2024) 1(1) Finance and Space 340. doi:10.1080/2833115X.2024.2392736.
- 7 Barbara A Misztal, 'The Idea of Dignity: Its Modern Significance' (2013) 16 (1) European Journal of Social Theory 101. doi:10.1177/13684310124492.

fundamental to the welfare state but is increasingly accepted as a core aspect of democratic society.⁸ The notion of universal human dignity is a fundamental difference between “genuine” democracy and “populist” pseudo-democracy.

Furthermore, this paper accepts that the universality of human rights is a structural, rather than a cultural or civilizational, idea. According to the interpretation of the decolonial turn it adopts, each indigenous culture is capable of producing interpretations consistent with the main principles of universality of human rights—such as respect for the equal moral dignity of all people, gender equality, freedom of choice, freedom of religion, and the creation of a political nation.⁹

The universality of human rights requires the conceptual and ideational legitimisation from doctrines which are conventionally regarded as “non-Western” and “non-positivist” for several reasons. First, human rights have been instrumentalised by neoliberalism and other hierarchical ideologies. Second, recent phenomena—such as the dramatic shifts in U.S. policies following the November 2024 election, the growing threat posed by global tech oligarchs to democratic and human rights values, and the full-scale invasion of Ukraine by Russia, along with the tacit acquiescence of some who promote an anticolonial and decolonial agenda while residing in Western countries—underscore the need for broader legitimizing foundations.

It is becoming increasingly evident that indigenous groups should spearhead the development of human rights. It should not be forgotten that the affirmation of human equality by the Universal Declaration of Human Rights (UDHR) was largely due to the role of small and middle (such as Lebanon) and non-Western countries (such as the Republic of China, whose Confucianism-inspired representative Peng Chun Chang was a key architect of this Declaration). This also indicated that chastened European powers had renounced racial and civilizational hierarchies in favour of universal humanism.¹⁰

The main assumptions of this paper, consistent with the insights of critical realism, the ethics of care, and the decolonial approach are as follows: (1) social scientists cannot avoid making evaluations in terms of well-being, justice, and morality; (2) care, concern, empathy and sense of human dignity are essential in human life, and dignity is connected to social rights and social justice; and (3) the protection of equal moral human dignity can be possible if we accept and internalise the primacy of care and concern, their connection with dignity.

8 ibid.

9 Galym Zhussipbek, ‘Why do we Need to Talk about Decolonization and Decoloniality: Empathy, Human Rights, the Kazakh Culture and Social Justice’ (Public discussion “Egin” Cultural Centre, 23 August 2025) doi:10.5281/zenodo.15108864.

10 Whyte (n 2).

Aims, Objectives and Nature of the Research

The aims of this study are twofold: first, to discuss the nexus between care, social rights, and human dignity and the challenges posed by neoliberal capitalism; and second, to apply the decolonial epistemology conceptualised by post-socialist authors to critique neoliberal capitalism, as well as positivist and postmodern epistemologies.

Accordingly, this article seeks to achieve two objectives. First, it engages in conceptual and normative discussions by applying a non-positivist epistemology and concepts such as care, empathy, and dignity, which are often overlooked in positivist and postmodern research. Second, it aims to offer solutions by referring to a decolonial approach.

This research is interdisciplinary and conceptual-normative. Epistemologically, it is premised on the assumptions of meta-theoretical critical realism (primarily based on the work of Andrew Sayer), the ethics of care (drawing on the concepts of Eva Kittay), and the decolonial approach (as conceptualised in recent years by post-socialist authors). Critical realism offers a comprehensive criticism of positivist social sciences and neoliberal capitalism, while the ethics of care and decolonial epistemology reinforce a universalistic understanding of dignity.

Through the decolonial lens, this paper argues that the structural injustice and hierarchies of worth created by neoliberal capitalism violate human dignity. The decolonial approach emphasises reclaiming dignity in the face of systemic injustice and social hierarchies. Overall, this article adopts a conceptual, normative, and hermeneutical approach, combined with a critical analysis of neoliberal capitalism.

By referring to judicial practice, this paper examines how the neoliberal mindset influences the implementation of the right to health and health care, which are vital to uphold the values of care, concern and empathy.

The first sections discuss the primacy of concern and care, the place of empathy and dignity, and a universalistic understanding of dignity, drawing on the concepts of the ethics of care and critical realism. The following sections explore the nexus between a universalistic understanding of dignity and social rights, as well as the decolonial approach, which is based on the revival of empathy and universality of human dignity.

Subsequent sections discuss the colonialities of neoliberal capitalism and the limitations of positivist and postmodern epistemologies. The paper examines the neoliberal mindset's impact on the principle of minimalism in legal systems, and the need to address the adverse effects of neoliberal capitalism and the emergence of a decolonial turn in the aftermath of the war in Ukraine.

Finally, the paper presents the perspectives of cultural change and moral revival based on the decolonial approach.

2 PRIMACY OF CONCERN AND CARE, AND THE IMPORTANCE OF EMPATHY

Our relationship to the world is one of concern. We flourish or suffer not only because of our immediate physical needs but also because of our perceptions of concern and care. The human view of the world is essentially evaluative. We are particularly vulnerable to how others treat us. Overall, human beings are, by nature, both capable and needy, active and dependent, and inherently vulnerable beings.¹¹ Care and concern are grounded in empathy and connection.

Empathy has been studied across a range of disciplines, from philosophy to neuroscience, social psychology, and legal studies. One approach attributes epistemic value by acknowledging its cognitive role, which finds its fullest expression in the phenomenological school. Another concept of empathy emphasises its biological basis primarily to explain moral behaviour in a naturalistic manner.¹²

Cognitive Empathy and Legal Studies

The so-called cognitive empathy differs from affective empathy. It denotes the ability to ascribe mental states to others—such as beliefs, intentions, or emotions. Characterised by perspective taking, cognitive empathy is important in social sciences and legal studies.¹³ As such, it involves a high degree of other-oriented reasoning and goes beyond mere emotional association with others' feelings.¹⁴

In the legal field, cognitive empathy can play a significant role, for example, in interpreting constitutional rights. It can be seen as a tool that, on the one hand, allows justices to examine the roots of rights and, on the other, requires that each opinion remain open to future questioning.¹⁵

Legal studies, like much of social theory and philosophy, still lack the awareness of context, empathy and concern for others.¹⁶ As Corso notes in her analysis of empathy's place in the interpretation of constitutional rights, empathetic judging represents a deeper form of judicial reasoning:

11 Margaret S Archer, *Being Human: The Problem of Agency* (CUP 2000) doi:10.1017/CBO9780511488733; Andrew Sayer, *Why Things Matter to People: Social Science, Values and Ethical Life* (CUP 2011) doi:10.1515/9783839427255-012.

12 Lucia Corso, 'Should Empathy Play any Role in the Interpretation of Constitutional Rights?' (2014) 27(1) *Ratio Juris* 94. doi:10.1111/raju.12037.

13 Heidi L Maibom, 'Introduction to Philosophy of Empathy' in Heidi Maibom (ed), *The Routledge Handbook of Philosophy of Empathy* (Routledge 2017) 1. doi:10.4324/9781315282015.

14 Corso (n 12) 99.

15 *ibid* 112.

16 Andrew Sayer, 'Values within Reason' (2017) 54(4) *Canadian Review of Sociology* 468. doi:10.1111/cars.12172.

“The claim that empathy should play a role in the adjudication of constitutional rights implies at least two normative assumptions. The first is that empathy may redress the wrongs of law, especially when they result from dominance and power, even when they masquerade behind a veil of neutrality. The second is that empathy leads to a way of reasoning with rules that runs counter to what is often labelled judicial minimalism. In my view, empathetic judging is an in-depth type of judging.”¹⁷

Empathy And Sense Of Dignity

According to the ethics of care, which challenges the "conventional" in the positivist Western scientific paradigm's hierarchical and masculinist understandings, dignity is a feature that must be perceived to be.¹⁸ Human dignity's universalistic nature can be perceived by empathy. Empathy is fundamental to understanding the universal and equal dignity of all human beings because it allows us to recognise that others feel and think as we do, and that our inner feelings are alike in some fundamental fashion.

Empathy, when approached from a position of a bounded self, honours the moral equality of the other persons with whom one maintains empathic feelings.¹⁹ However, due to the epistemological problems inherent in today's positivist and postmodern epistemologies (as discussed below), the concept of empathy has been largely overlooked in human rights studies in legitimising universal human dignity.²⁰ Ultimately, empathy is about care, concern, and connection, and about perceiving the equal moral dignity of human beings.

Non-positivist critical realism holds that moral sentiments such as concern, care, and respect for others are primary in human life.²¹ Among these, dignity is a fundamental concern for human beings. Although notoriously difficult to define, dignity is closely tied to how others interpret and treat us—especially in terms of relations of equality and difference.

Dignity requires acknowledgement of human vulnerability and the recognition that our connection to the world is one of concern and care. It is inherently tied to being treated with moral concern and care.²² The insights of the ethics of care and critical realism together illuminate the intimate relationship between concern, care, and dignity. In this understanding, concern, care, and connection are about the sense of human dignity.

17 Corso (n 12) 110.

18 Eva Feder Kittay, 'Equality, Dignity and Disability' in Mary Ann Lyons and Fionnuala Waldron (eds), *Perspectives on Equality: The Second Seamus Heaney Lectures* (Liffey 2005) 93.

19 Franke Wilmer, 'Empathy as Political Action: Can Empathic Engagement Disrupt Narratives of Conflict in Israeli-Palestinian Relations' (2018) 13 *Journal of Social Science Research* 2860. doi:10.24297/jssr.v13i0.7934.

20 Lynn Hunt, *Inventing Human Rights: A History* (W Norton 2007).

21 Archer (n 11); Sayer (n 11).

22 Sayer (n 11).

3 UNIVERSALISTIC UNDERSTANDING OF DIGNITY AND SOCIAL RIGHTS

Dignity is a call upon others to recognise our immaterial intrinsic worth.²³ Moreover, the universalistic understanding of dignity holds that dignity is a value inherent to all human beings. According to the universalistic understanding—which is the value-based foundation of the universality of human rights—dignity is "not gradable";²⁴ it is impossible for one human being to possess more dignity than another. All human beings possess equal dignity and, consequently, equal fundamental human rights. Thus, fundamental normative equality exists between each bearer of dignity.²⁵

As the ethics of care emphasises, dignity is unconditional—it is not determined by any factor. The ultimate source of our dignity lies not in the human capacity for autonomy or rationality (that is, the possession of intellect), but rather in the distinctly moral capacity to care. In other words, dignity is bound to the human capacity to care for another and be cared for.²⁶

As a universalistic value, dignity can be found in all major international human rights documents, as well as across many cultures and in theological sources of Judaism, Christianity, and Islam.²⁷ The universalistic conception of dignity opposes the views that ground dignity on possessing specific qualities. Dignity, being a normative concept, implies an absolute value. Hence, a person of dignity may not be sacrificed for anyone else.²⁸ Ultimately, dignity is a core social concept, and without a universalistic understanding, it can be easily neglected or appropriated.

The concept of human dignity is not merely a claim, but rather a "moral source" from which all fundamental rights derive—implying that some absolute rights exist. Dignity is also inherently connected to the rights that ensure social well-being. Hence, the acceptance and protection of human dignity require the development of economic and social human rights.²⁹

On the other hand, many philosophers argue that recognition (as a person) is an essential human need that also derives from dignity. In this framework, this need is also the fundamental principle of justice, which encompasses economic and social justice. As such, social justice is a manifestation of respecting human dignity.

23 Kittay (n 18) 113.

24 Rowan Cruft, S Matthew Liao and Massimo Renzo, 'The Philosophical Foundations of Human Rights: An Overview' in Rowan Cruft, S Matthew Liao and Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (OUP 2015) 1.

25 Klaus Steigleder, 'Human Dignity and Social Welfare' in Marcus Düwell and others (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (CUP 2014) 471.

26 Eva Feder Kittay, 'The Ethics of Care, Dependence, and Disability' (2011) 24 (1) *Ratio Juris* 49. doi:10.1111/j.1467-9337.2010.00473.x.

27 Misztal (n 7).

28 Steigleder (n 25).

29 Jürgen Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41(4) *Metaphilosophy* 464. doi:10.1111/j.1467-9973.2010.01648.x.

However, there is today a noticeable "marginalisation" of social justice in contemporary academia and social movements, where issues of race, gender, and sexuality have often been elevated to the level previously reserved for economic and social justice.³⁰ The development of social justice is hindered by a phenomenon this paper calls "neoliberal human rights" (see below).

The following section discusses the structural injustice created by neoliberal capitalism.

4 DECOLONIAL TURN, EMPATHY AND UNIVERSALITY OF HUMAN DIGNITY

Definition of Decoloniality

The dominance of neoliberal ideology and positivist epistemology creates distinct colonialities, foremost at the levels of ideas, knowledge, and perceptions. Moreover, neoliberalism's apathetic logic and positivist "cold rationality" erode human faculties like justice, empathy and care about others and the planet. The violation of human dignity resulting from structural injustice is inherent in neoliberal capitalism, and positivist epistemology is complicit in sustaining it.

Hence, in the face of colonisation by the market-centric "morality" of neoliberalism (which is prone to the relativisation of human rights values and principles and to the creation of social and economic hierarchies) and by positivist epistemology (which contributes to the normalisation of structural injustice), the decolonial turn gains importance. As Bhatia and Priya note,³¹ the decolonial turn does not reflect a single theory but rather a family of scattered positions that share the view that coloniality poses one of the central challenges for the vast majority of people living in the age of unequal neoliberal globalisation.

Following the perspectives of Mignolo and Walsh, and Tlostanova,³² this paper understands decoloniality as the recognition of, and struggle against, hegemony and hierarchies that became internalised and normalised after the end of colonialism. These hierarchies persist across economic relations, education, culture, knowledge production, and urbanisation, which are collectively referred to as colonialities. Specifically, drawing on Tlostanova this, this paper adopts a decolonial approach as a struggle against all types of systemic oppression

30 Gary Dorrien, 'Nancy Fraser, Iris Marion Young, and the Intersections of Justice: Equality, Recognition, Participation, and Third Wave Feminism' (2021) 42(3) *American Journal of Theology & Philosophy* 5. doi:10.5406/21564795.42.3.01.

31 Sunil Bhatia and Kumar Ravi Priya, 'Decolonizing Culture: Euro-American Psychology and the Shaping of Neoliberal Selves in India' (2018) 28(5) *Theory & Psychology* 645. doi:10.1177/0959354318791315.

32 Walter D Mignolo and Catherine E Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke UP 2018) doi:10.1215/9780822371779; Madina Tlostanova, *Decoloniality of Being, Knowledge and Feeling* (Tselinny 2020).

and subjugation, including hierarchies of worth and the structural injustices created by neoliberal capitalism and positivist epistemology.³³

In some cases, decolonial critique of the exclusionary and assimilatory nature of modernity and capitalism may provide the grounds to justify and legitimise moral or cultural relativism. In recent years, the decolonial agenda has been exploited by far-right and reactionary thinkers and groups in Russia, India, and Turkey. However, this paper advances a decolonial approach critical of moral relativism. Decoloniality should not be misused to legitimise exclusivist, authoritarian and oppressive understandings, norms and models. In this sense, decoloniality affirms universal human dignity as its own ethical foundation.

Acceptance of Emotions, Decolonial Turn and Dignity

Colonisation and coloniality can be understood on an emotional level: since colonisation entails humiliation, while coloniality brings disconnection and alienation from one's identity, culture, history, language, and ancestors.³⁴ Coloniality undermines self-empathy, producing low self-esteem, self-respect, and even self-hatred. Post-colonial societies are characterised by the internalisation and reproduction of violence and colonial practices, such as social hierarchies inherited from the colonial period. Harm like degradation of empathy is the defining emotional feature of colonisation and coloniality.

Thus, decoloniality represents an emotional path toward healing, in which empathy and self-empathy are crucial.³⁵ That is why decolonial thinkers³⁶ emphasise the importance of the stage of mourning—before one can begin to dream anew. Empathy enables the internalisation of ontological equality, the understanding that all human beings possess equal worth, meaning the absence of hierarchies of worth. Therefore, the acceptance and revival of empathy is essential for decolonisation and the decolonial turn.

In this sense, decoloniality leads to the interpretation and social construction of authentic cultures (local “cosmologies”) to legitimise the universalistic understanding of dignity. It also involves resisting the appropriation of dignity by conservative morality. The decolonial turn thus becomes a process of realising individual and collective human rights to self-determination in ways that do not violate others' rights, while affirming universal human dignity within indigenous, religious and social frameworks. Hence, what is said about the value-based foundation of human rights—the universal human dignity—is also about the decolonial turn in understanding culture, identity and religion.³⁷

33 Tlostanova (n 32).

34 Zhussipbek (n 9).

35 *ibid.*

36 e.g. Poka Laenui, 'Processes of Decolonization' in Marie Battiste (ed), *Reclaiming Indigenous Voice and Vision* (University of British Columbia Press 2000) 150.

37 Zhussipbek (n 9).

The decolonial approach accepts pluralism and cultural diversity like no other thought. As such, decoloniality calls for the upholding of multiculturalism at the level of epistemologies. Though pluralism and multiculturalism are related concepts, they differ in focus and application. Pluralism is a broader concept, referring to the coexistence of diverse groups (in various forms) with mutual respect. However, it does not necessarily imply active policies to support or accommodate diversity; it is more about the *de facto* society in which diverse groups coexist and interact peacefully. Multiculturalism goes beyond pluralism by actively recognising, respecting, and accommodating cultural, ethnic, and religious diversity within society. Hence, it requires institutional and policy reforms to address inequalities and ensure the inclusion of minority groups, allowing them to maintain their distinct identities while participating fully in public and political life.³⁸

5 NEOLIBERAL CAPITALISM: VIOLATION OF DIGNITY AND ITS COLONIALITY

Neoliberalism's Relativisation and Instrumentalisation of Human Rights

The main ideas and principles of neoliberal capitalism fundamentally challenge the evaluative nature of our relationship with the world and undermine the primacy of care, concern and dignity in human life. The market-oriented logic of neoliberalism celebrates wealth, profits, and money-making as ends in themselves. A competitive market is seen not only as a more efficient means of distributing resources, but as the “basic institution of a moral and society”.³⁹ A life of human dignity is obscured and removed from people's consciousness by the fetishisation of the market economy, which recognises as “objective truth” only that which is determined by market forces, while everything else, including all values, is rendered relative.⁴⁰

From its inception, neoliberal thought rejected the very idea of establishing an international, cross-cultural consensus on a list of human rights. For neoliberals, the horrors of World War II were not a product of Western civilisation, but the results of the collectivist challenge to the liberalism that had previously defined it.⁴¹ Thus, neoliberalism's belief in the “universality” of the market economy implies a relativist approach to the universality of human rights. Neoliberal moral truisms such as “human dignity and human inequality are not in contradiction” and “freedom is only possible in a market society”⁴² reveal this relativistic approach toward human dignity and rights.

38 Tariq Modood, *Multiculturalism* (John Wiley & Sons 2013).

39 Whyte (n 2).

40 Metcalf (n 1).

41 Whyte (n 2).

42 Jeanne Morefield, 'When Neoliberalism Hijacked Human Rights' [2020, 1 May] Jacobin <<https://www.jacobinmag.com/2020/01/morals-markets-human-rights-rise-neoliberalism-jessica-whyte>> accessed 5 November 2025.

Even social struggles for dignity (e.g., against racism, sexism) have been co-opted by neoliberalism, leading to an emphasis on symbolic recognition (e.g., diversity in companies) without addressing structural inequalities.

At the same time, neoliberalism has instrumentalised human rights to legitimise its ideology and neoliberal restructuring of the state.⁴³ In general, a contingent penetration of neoliberalism into human rights has helped legitimise transformative interventions that subject states to the dictates of international markets.⁴⁴ As Marks⁴⁵ argues, the consolidation of the neoliberal agenda was made, in part, by the advancement of the human rights movement. Similarly, Moyn observes that although human rights did not create neoliberalism, they proved too weak to remedy the gaps in wealth and counter income inequality produced by neoliberal globalisation.⁴⁶ In other words, human rights neither countered nor effectively acknowledged neoliberalism's obliteration of the ceiling on material inequality.

This paper contends that the above-mentioned analyses of Marks and Moyn can be best understood through the lens of what this paper calls "neoliberal human rights".

"Neoliberal human rights" are dismissive of the universalistic understanding of dignity and agnostic to social rights. They exemplify the co-optation of the once revolutionary concepts of universal human rights by neoliberals who "refashioned the idea of freedom by tying it fundamentally to the free market and turning it into a weapon to be used against anticolonial projects all over the world".⁴⁷ Ultimately, neoliberal human rights have been constructed in such a way that they are completely unthreatening to existing power structures, even legitimising the intensification of material inequality.⁴⁸

These "neoliberal human rights" bear little resemblance to Nkrumah's program of economic self-determination and were even hostile to post-colonial leaders' claims. They sharply diverge from the notion of human rights they advocated.⁴⁹

Moreover, the long-standing reluctance of philosophers to accept the doctrine of human rights—grounded in the universalistic idea of human dignity—as an important part of

43 David Harvey, *A Brief History of Neoliberalism* (OUP 2005) doi:10.1093/oso/9780199283262.001.0001; Whyte (n 2).

44 Neve Gordon, 'How Human Rights Were Defanged from Any Truly Emancipatory Potential' [2020, 24 January] *The Los Angeles Review of Books* <<https://lareviewofbooks.org/article/how-human-rights-were-defanged-from-any-truly-emancipatory-potential>> accessed 5 November 2025.

45 Susan Marks, 'Human Rights in Disastrous Times' in James Crawford and Martti Koskeniemi (eds), *The Cambridge Companion to International Law* (CUP 2012) 309.

46 Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard UP 2019).

47 Morefield (n 42).

48 Kate Nash, 'The Cultural Politics of Human Rights and Neoliberalism' (2019) 18 (5) *Journal of Human Rights* 490. doi:10.1080/14754835.2019.1653174.

49 Whyte (n 2).

political philosophy⁵⁰ demonstrates the difficulties ensuing from the dominance of positivist and postmodern epistemologies. Neoliberal capitalism has thus been able to instrumentalise human rights precisely because of the weak foundations of human rights philosophy in today's positivist and postmodern academia, where relativism inherent in postmodern epistemology fosters, at least implicitly, scepticism towards issues of justice and rights.

In sum, "neoliberal human rights" represents another dimension of neoliberalism's coloniality since it legitimises the hierarchies of worth and non-acceptance of equal moral dignity of human beings. The analysis made for Chile and other Latin American and post-colonial African states shows that "neoliberal human rights" helped to preserve the inequalities of capitalism.⁵¹

Structural Injustice

This paper emphasises that structural injustice—and the social injustice resulting from it—forms the basis for the violation of human dignity and is one of the central sources of today's coloniality. It is important to distinguish between *coloniality* and *colonialism*: while colonialism denotes a political and economic relation in which the sovereignty of a nation or a people rests on the power of another nation ("empire"), coloniality refers to the long-standing patterns of power that emerged as a result of colonialism, specifically in culture, economic relations, labour, intersubjective relations, knowledge production.⁵² In the broadest sense, coloniality means the hierarchies of worth. In the case of neoliberalism, they are created by structural injustice.

Structural injustice is characterised by systemic and institutional conditions—whether directly or through structural consequences—that prevent significant parts of society from fully accessing fundamental human needs such as housing, education, health care, and clean water.⁵³ It is thus a primary cause of systemic poverty and marginalisation. It can be argued that structural injustice means that some people are unseen and unheard, and even their lives are considered "expendable" and "disposable". In essence, neoliberal capitalism views humans as mere economic entities rather than beings with emotional and moral needs. This paper argues that reducing people to economic units—valuing human beings only for their productivity, and prioritising the pursuit of profit-seeking over human and social well-being—violates human dignity.

Structural injustice is not only a combination of inequality, social exclusion and humiliation;⁵⁴ it is also another name for the hierarchical society in which hierarchies of

50 Jonathan Wolff, 'The Demands of the Human Right to Health'(2012) 86(1) Aristotelian Society Supplementary Volume 217. doi:10.1111/j.1467-8439.2012.00215x.

51 Gordon (n 44).

52 Nelson Maldonado-Torres, 'On the Coloniality of Being: Contributions to the Development of a Concept' (2007) 21(2-3) Cultural Studies 240. doi:10.1080/09502380601162548.

53 Peter Uvin, *Human Rights and Development* (Kumarian Press 2004).

54 *ibid.*

worth are created. Hierarchies of worth can also be seen in the fact that neoliberalism creates political capital for the rich, thus leading to plutocracy, which prevents the emergence of democracy.⁵⁵

The prohibition of discrimination and the protection of vulnerable and marginalised groups are transversal minimum obligations to the concept of human rights.⁵⁶ Yet, within a neoliberal capitalist context, their fulfilment—particularly concerning social rights, is hardly possible. Neoliberalism is fundamentally hostile to the protection of social and economic human rights, which are essential for upholding human dignity. It treats social programmes as a violation of the rule of law,⁵⁷ branding them as a "totalitarian threat"⁵⁸. The idea of the state to which neoliberal capitalism is committed is anathema to the concept of the state, which underpins the human rights paradigm. Overall, the conditions for violating human rights are structurally embedded in neoliberalism.⁵⁹

By pathologising mass politics as a threat to "individual freedoms", neoliberalism has sought to construct a lexicon of "neoliberal human rights" that legitimises the neoliberal state.⁶⁰ Furthermore, more consolidated authoritarian regimes could promote more rigorous neoliberal policies. Notably, the forms of governance, like in Chile under Pinochet, were justified by neoliberals on the grounds that "progressive" market-oriented reforms can be implemented only by a "strong hand".⁶¹ Also, the so-called "shock therapy" in the transition from socialism to capitalism or IMF/World Bank-sponsored comprehensive reforms called "structural adjustment", which eschewed the alternative of "gradualism", was the extreme of contemporary utopian social engineering.⁶²

To conclude, neoliberalism's colonialities can be identified through the following manifestations: structural injustice leading to the relativisation of human dignity; the creation of hierarchies of worth; the treatment of human beings as disposable and expendable; and the instrumentalisation of human rights and the emergence of "neoliberal human rights".

55 Sanghera and Satybaldieva (n 5).

56 Maria Dalli, 'The Human Right to Health: A Retrospective Analysis after 70 Years of International Recognition' (2018) 11 *The Age of Human Rights Journal* 24. doi:10.17561/tahrj.n11.2.

57 Raymond Plant, *The Neo-liberal State* (OUP 2010).

58 Whyte (n 2).

59 Paul O'Connell, 'On Reconciling Irreconcilables: Neo-liberal Globalisation and Human Rights' (2007) 7(3) *Human Rights Law Review* 483. doi:10.1093/hrlr/ngm015.

60 Gordon (n 44).

61 Kuat Akizhanov, 'The Impact of Financialisation on Income Inequality in the Context of Neoliberalism: Country Cases Study-USA, South Korea, Argentina, Sweden' (PhD thesis, University of Bath 2019).

62 William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (Penguin Books 2006).

6 NEOLIBERAL CAPITALISM AND THE RISE OF ILLIBERAL DEMOCRACIES AND AUTHORITARIANISM: WHY DO WE NEED TO TALK ABOUT NEOLIBERAL CAPITALISM'S ADVERSE EFFECTS IN THE WAKE OF WAR IN UKRAINE?

This paper argues that the recent rise of populism and illiberal democracies is, in part, a consequence of neoliberal capitalism's assault on social and economic human rights, leading to the gradual thinning and eventual erosion of social justice. These factors have produced a sense of violated dignity among ordinary citizens, as dignity is directly associated with social well-being. The surge of reactionary politics and further rise of right-wing parties in the Eastern and Central European countries⁶³—as well as the consolidation of Putin's regime in Russia after the 2000s—would not have been possible without the adverse effects of neoliberal capitalism. Chief among these were the traumatic experience of marketisation reforms, accompanied by a sense of humiliation and social-economic “disaster”. Under the conditions of neoliberal division of labour, income, and social/economic status, specifically, in the countries that are not in the “core” of the capitalist world, the human dignity of millions, primarily due to the underdevelopment of social rights, cannot be sufficiently protected.

The full-scale invasion of Ukraine, on the one hand, reveals the myopia or “inattentiveness” of decolonial scholars—both from the so-called “global North” and “global South”—toward the colonial experiences of post-Soviet peoples and the ongoing neocolonial policies and attitudes. For this reason, this paper is based on the decolonial perspectives of the post-socialist scholars. Furthermore, the influence of positivist and postmodern epistemologies can explain the continuing racist and orientalist positions of the so-called Russian liberals and democrats.

On the other hand, a thorough analysis of the reasons and consequences of the aggression against Ukraine and the reactions to this aggression supports Amadae's⁶⁴ interpretation that neoliberalism, through the prism of political theory, can be codified in non-cooperative game theory. Within this framework, the so-called “rational choice” (a solipsistic or lop-sided “rationalism”) justifies ends irrespective of means. This understanding leads to Machiavellianism, against which positivist or postmodern social sciences remain toothless. Neoliberal capitalism thus reveals an inherent deficit in its capacity to accept justice, standing firmly against the gross violations of international law, and to show empathy for the victims of aggression by a nuclear power with a military-industrial complex.

63 See, e.g. Gareth Dale and Adam Fabry, 'Neoliberalism in Eastern Europe and the Former Soviet Union' in Damien Cahill and others (eds), *The SAGE Handbook of Neoliberalism* (SAGE 2018) 234.

64 Sonja M Amadae, *Prisoners of Reason: Game Theory and Neoliberal Political Economy* (CUP 2015) doi:10.1017/CBO9781107565258.

Moreover, the mindset of neoliberalism has helped to whitewash the militaristic leaders by commodifying everything—from gross violations of international law and war crimes to the suffering of ordinary citizens and ecological devastation—reducing all to a mere “business deal”. Ignoring the most heinous crimes committed against the people of “peripheral” (or “semi-peripheral”) countries is what characterises a significant number of the owners and chiefs of large corporations, especially techno-oligarchs in democratic countries. This “sacrificing” of entire nations and peoples for the sake of business interests and political populism is a logical outcome of the combination of the apathetic reason of capitalism (which has emerged from the lopsided reason of positivism) and relativist postmodernism.

The creation of private companies hiring mercenaries reflects a dark extension of a Machiavellian-capitalistic mindset—one that “rationalises” income generation by whatever means, including killing. This phenomenon is not merely a result of the relativisation of human values caused by neoliberalism but also of the brutalisation of personality, to which neoliberalism has a direct connection (inter alia, the structural injustice, chronic low incomes, and insufficient social programs in the neoliberal Eurasian states can push people to join the sides of militaristic leaders). The belief in a self-regulating market inculcated by neoliberal/neoclassical economics is nothing but a socially learned “cultural prejudice” that impairs empathy and hardens personality.

From a decolonial perspective,⁶⁵ contemporary international public and private law can be characterised as colonial or neocolonial. The strongest evidence lies, first, in the conduct of permanent members of the United Nations—those primarily responsible for protection of peace—who have tended to breach the underlying principles of international law, such as inviolability of territorial integrity and sovereignty of independent states, and even committed war crimes and genocides (which are, in fact, the evidences that international law is inherently political). Second, international law has failed to create effective mechanisms to sanction or restrict, let alone punish, the states and leaders who instigate war and commit war crimes.

Finally, the neocolonial character of international law can be seen in what might be called the “faulty” definition of genocide (of the 1948 UN Convention), to which the Soviet-Stalinist state directly participated. This “narrow” and “politicised” definition does not technically cover the destruction of cultural, social, and political groups. Consequently, it took decades for the Ukrainian Holodomor—a Soviet-made famine—to be recognised as genocide, while other peoples, such as the Kazakhs, who lost nearly half their population in the same period, continue to struggle for similar recognition. Ironically, one of the most significant barriers to acknowledging the Kazakh famine as genocide lies

65 See: Lena Salaymeh and Ralf Michaels, ‘Decolonial Comparative Law: A Conceptual Beginning’ (2022) 86(1) *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 166. doi:10.1628/rabelsz-2022-0007.

in positivist and postmodern academia itself, imprisoned by the “technicalities” of the existing definition of genocide (as the author has personally witnessed through the years of engagement in such debates).

7 COLONIALITY OF POSITIVIST AND POSTMODERN SOCIAL SCIENCES

There is a direct nexus between the dominance of positivist epistemology in social sciences and the rise of neoliberal capitalism. Here, the term positivism is used in a broader sense: it does not merely refer to modelling the social sciences on the natural sciences, but also believing in some “ahistorical and objective” realities, or viewing the world through an inherently a-historical lens.⁶⁶

Beyond the limitations of market-centric economic theory, positivist academia has largely remained silent in the face of social theories that justify the commodification of land, labour, and money, showing indifference to systemic injustice. Furthermore, as Barreto⁶⁷ argues, at a more fundamental level, the so-called positivist “apathy” and coldness can help explain the detailed planning, precise organisation, and consistent execution of mass murders, such as the Holocaust, by humans who were otherwise emotionally capable. Rationalising and disciplining structures of order, work and economisation contributed to the separation between reality and consciousness in modern societies; in interaction with the complex causes, these structures made the horror of the Holocaust possible. Crucially, the conditions that enabled such genocide could, in principle, allow it to recur.⁶⁸

Both positivist and postmodern epistemologies are dismissive of concepts such as care, empathy, and dignity; as such, they are reluctant to acknowledge that care, concern, and empathy are primary connectors in human life. Positivist epistemology, in particular, hardly accepts the universalistic perception of human dignity, which can be perceived through empathy.

As critical realist scholar Sayer⁶⁹ emphasises, positivism maintains a strict separation between value judgements and objectivity and often “anchors” dignity in capacities for autonomy or rationality. The culture and mindset shaped by modernity and positivism, self-described as “masculine” (or “rational and powerful”), have attributed weakness,

66 Salman Sayyid, ‘Critical Muslim Studies: Post-Positivism’ (*New Books Network*, 5 June 2024). <<https://newbooksnetwork.com/critical-muslim-studies-post-positivism>> accessed 5 November 2025.

67 José Manuel Barreto, ‘Ethics of Emotions as Ethics of Human Rights: A Jurisprudence of Sympathy in Adorno, Horkheimer and Rorty’ (2006) 17 *Law and Critique* 73. doi:10.1007/s10978-006-0003-y.

68 Hans Karl Peterlini, ‘Dialogue with Adorno. *How to Deal with Right-Wing Populism, Racism and Institutional Cruelization*’ in Hans Karl Peterlini, *Learning Diversity* (Springer 2023) 139. doi:10.1007/978-3-658-40548-9_7.

69 Sayer (n 11).

emotionality and vulnerability to non-modern or colonised “others”.⁷⁰ Therefore, in general, empathy is a notion that is alien to positivist epistemology.

That is why contemporary philosophers, critical realists, and decolonial scholars⁷¹ argue that the tendency to downplay the role of values and emotions, foremost positive ones such as empathy, and to separate reason and emotions, reason and values, is an epistemological problem of a positivist approach. However, treating values like dignity and justice as merely a-rational or subjective is misguided. This derationalized understanding of normativity, constructed through the is-ought framework, is not limited to positivists but also found in postmodern approaches such as post-structuralism.⁷²

Postmodernism emerged as a reaction to positivism, which sought certainty, linear progress and a hierarchically ordered world. Yet by avoiding “big questions” of justice and morality, postmodernism has embraced relativism. Its tendency to relativise values has not addressed the problems created by positivism and modernity, e.g. postmodern approaches appeared to be ill-equipped to protect and uphold justice, fairness and social well-being. This paper aligns with the decolonial critique, which sees postmodernism as another iteration of modernity that fails to resolve the problems that modernity has wrought on humanity.

8 PERSISTENCE OF POVERTY, NEOLIBERAL MINDSET AND MINIMALISM PRINCIPLE IN LEGAL SYSTEMS

The roots of chronic and structural inequality—manifested, inter alia, in the widening income inequality—in any society influenced by neoliberal capitalism lie in “legally” protected “unhealthy” employer-employee relations and systemic marginalisation of labour unions, which can sometimes be pushed beyond the legal framework. Although neoliberal capitalism opposes the state with an institutionalised commitment to social protection and justice, it creates the neoliberal state, which protects the rentier classes, transnational companies, and property owners against citizens claiming their rights.⁷³ By encouraging monodisciplinarity, neoliberal capitalism masks the real causes and solutions to poverty;⁷⁴ in other words, a proper understanding of poverty necessitates accepting it as a political and socially determined phenomenon.

70 Andrew Sayer, ‘Wie weit reichen soziale Konstruktionen? Critique and Naturalism’ in Urs Lindner and Isabell Mader (eds), *Critical Realism Meets Kritische-Theorie: Ontologie, Erklärung und Kritik in den Sozialwissenschaften* (Transcript Verlag 2017) 315. doi:10.1515/9783839427255-012.

71 Barreto (n 67); Sayer (n 16), Tlostanova (n 32).

72 Sayer (n 16).

73 Harvey (n 43).

74 Wendy Olsen, ‘Poverty’ In Mervyn Hartwig (ed), *Dictionary of Critical Realism* (Routledge 2007) doi:10.4324/9781315688299.

The so-called minimalistic conceptualisation of social rights dominates international human rights law and national judicial systems. For example, the right to health, according to the minimalism principle, is often interpreted as a minimum core of health care services aimed at subsistence or survival.⁷⁵ However, a human rights-based approach to health requires that health policies and programs prioritise not only the absence of discrimination, but specifically the needs of economically disaffected—those who are at the end of the road to greater justice.⁷⁶

The minimalistic approach, which is co-opted by neoliberal capitalism, lays the grounds for the slow development of social rights. This approach in some countries (e.g., in the USA, the UK, and Canada) has undermined prior gains in health and educational rights. Under the minimalism principle, legal protections of health rights can be interpreted in ways that hinder citizens' access to health care. For example, in recent decades, in the US and Canada, legal protection of health rights has led to judicial decisions that often yield negative interpretations of those rights, in line with the commercialisation of health care. In Canada, the litigation of health rights undermined equality and reinforced privatisation within established systems of universal health care.⁷⁷ In other words, due to the influence of the neoliberal mindset, health rights can be interpreted by lawyers as rights of non-interference, which cannot lead to the development of full-fledged social human rights.⁷⁸

The indivisibility of human rights necessitates that civil rights be conducted in a manner that respects, defers to, and is amicable with the scope of social rights. When social rights are not considered as an independent branch of human rights but as a part of civil rights, one can speak of the colonisation of social rights. Neoliberals use this understanding of social rights to downgrade and eventually block their development.⁷⁹ The minimalism principle paves the way for this negative phenomenon. According to one position, the system of the European Convention on Human Rights, with the Court's decisions, reflects the subordination of social rights to civil rights. Catalán observes that the development of human rights reflects the fact that courts and legal scholars have primarily focused on examining the consequences of civil rights on social rights. However, the indivisibility of human rights necessitates recognising that their interpretation is broader in scope than that of civil rights.⁸⁰

75 Eduardo Arenas Catalán, 'The Right of Access to Healthcare: Tracing Solidarity in the United Nations, Inter-American and European Human Rights Systems' (2021) ESIL Research Forum 'Solidarity – The Quest for Founding Utopias of International Law', Catania, 15-16 April 2021) <<https://hdl.handle.net/1814/74446>> accessed 5 November 2025.

76 Oleg Yaroshenko and others, 'Right to Health Care: The Practice of the ECtHR and the Case of Ukraine' (2022) 18 The Age of Human Rights Journal 239. doi:10.17561/tahrj.v18.6496.

77 Colleen M Flood and Aeyal Gross, 'Litigating the Right to Health: What Can we Learn from a Comparative Law and Health Care Systems Approach' (2014) 16(2) Health and Human Rights 62.

78 *ibid.*

79 Catalán (n 75).

80 *ibid.*

Another position argues that, although the Court distinguished between civil and social rights in the case of the right to health care, it attempts to apply an “integrated approach” when interpreting the Convention rights. This approach accepts the indivisibility of all human rights; thus, the enjoyment of civil and political rights does not impede the independent development of social rights, which are not secondary to civil and political rights. Nonetheless, the integrated approach to protecting the right to health is most evident in the jurisprudence of the Indian Supreme Court, but is largely absent in Western democracies.⁸¹

Overall, the minimalistic conceptualisation of social rights, which predominates in international human rights law,⁸² is insufficient for creating robust social human rights under the conditions of the global spread of a neoliberal mindset, which itself is prone to “mutations”. In such a context, for example, the commodification of health rights may occur, endangering the universality and equality of social rights, even in democratic states. The same is true for the human right to education, which, under a neoliberal context, is easily commodified.⁸³

9 CULTURAL CHANGE THROUGH REVIVING EMPATHY AND DIGNITY: PROMISES OF DECOLONIAL TURN

The primacy of dignity, grounded in care and concern, cannot be properly understood and protected by positivist and postmodern epistemologies. However, contrary to positivist and postmodern epistemologies, non-positivist epistemologies, such as critical realism and decolonial approach, emphasise that emotions, values and reason are not contradictory; moreover, emotions and values are not beyond reason or intellect.⁸⁴ Emotions reflect real and universal structures of the human psyche that serve to evaluate the moral rightness of social interactions.⁸⁵

The decolonial approach, as conceptualised by authors from post-socialist countries and adopted in this paper, is based on the revival of empathy. When allied with the views of critical realism and the ethics of care, it may help achieve what can be called a cultural transformation—internalising the primacy of care, concern, and dignity (understood in a

81 Maša Marochini, ‘Civil and Political, and Economic and Social Rights-Indivisible or Separable?’ (2014) 64(2) *Zbornik Pravnog fakulteta u Zagrebu* 307.

82 Catalán (n 75).

83 Galym Zhussipbek, ‘Human Right to Health, Social Rights and Human Dignity versus Relativist Challenge of Neoliberal Capitalism’ (2025) 25 *The Age of Human Rights Journal* e9272. doi:10.17561/tahrj.v25.9272.

84 For example, Sayer (n 11); Zhussipbek (n 9).

85 Ben Luongo, ‘Critical Realism, Human Rights, and Emotion: How an Emotive Ontology Can Resolve the Tensions Between Universalism and Relativism’ (2021) 22(2) *Human Rights Review* 217. doi:10.1007/s12142-021-00618-0.

universalistic sense) in personal and social life. As Putnam emphasises, mental or cultural change and moral revival should precede economic change.⁸⁶ In other words, what is important is cultural transformation, which comes before the transformation of economic, political, and legal systems; a decolonial turn in academia, the legal sector, and other areas of social life can be helpful. The international system and international law will change last.

This kind of cultural change is also about moral revival. Morality—a concept avoided by postmodernism and hijacked by positivism—is not necessarily defined in terms of social or religious conservatism. Morality involves giving people what they are entitled to: their rights and respect for the equal moral dignity of human beings. Decolonial approaches in the philosophy of law emphasise that the absolute separation between law and morality is an illusion. Law-making does not require a political sovereign, the singular obsession of the Western positivist legal approach. Hence, law existed before colonialism and law is more than the law of the modern state.⁸⁷

Overall, economic and legal systems—complex social phenomena that shape the personal and social lives of most citizens, including in areas such as education—cannot exist beyond ethical or moral considerations.⁸⁸ While legal mechanisms are crucial for developing and protecting human rights and democracy, the most important aspect is epistemology: the mindset of those who implement and interpret the law. Any “decent and good” law can be re-interpreted and misused if a specific intention exists. Recent examples include the situation in the U.S. following the November 2024 elections, when the Supreme Court’s rules contributed to the erosion of the checks on executive power, and the litigation of health rights in Canada, which undermined the principle of equality and helped erode the universal nature of universal health care.

10 CONCLUSIONS

There is a direct nexus among care, social rights, and dignity, all of which are fundamental to human life. Neoliberal capitalism—inherently hierarchical and prone to creating structural injustice—poses serious challenges to understanding these connections. Consequently, the hardening of human personality and the relativisation of justice and human dignity are natural outcomes of the neoliberal capitalist mindset.

As a key assertion, this paper proposes a cultural change or transformation to prioritise empathy, particularly cognitive empathy. Achieving this requires humanistic, nurturing

86 Judy Woodruff, ‘Robert Putnam Reflects on How America Became So Polarized and What Can Unify the Nation’ (PBS News, 19 February 2025) <<https://www.pbs.org/newshour/show/robert-putnam-reflects-on-how-america-became-so-polarized-and-what-can-unify-the-nation>> accessed 5 November 2025.

87 Salaymeh and Michaels (n 65).

88 Andrew Sayer, ‘Welfare and Moral Economy’ (2018) 12(1) Ethics and Social Welfare 20. doi:10.1080/17496535.2017.1377273.

models of upbringing and education, since empathy is formed primarily during childhood. Second, there is a need to realise the indivisibility of human rights, specifically the development of social rights as independent category of human rights, which are indispensable for protecting human dignity. The principle of indivisibility is often overlooked in neoliberal and authoritarian contexts, which are closely connected.⁸⁹ The so-called “conventional human rights approaches”, which can be hijacked by neoliberalism—leading to what this paper depicts as “neoliberal human rights”—must be reassessed.

Genuinely universal and inclusive human rights must be grounded in the uncompromising recognition of the non-gradable nature of human dignity, which is intimately linked to social rights. Accordingly, the conceptualisation and development of truly inclusive human rights, guided by a decolonial approach, can help overcome the entanglements among human rights, law, and neoliberal capitalism. At the same time, understanding injustices created by the hierarchical international system and international law also requires cultivating a mindset with a distinctive language of human dignity.

Third, addressing structural injustice generated by neoliberalism demands transformations in political economy, social relations, and the philosophy of the state and law—all of which revolve around the rebirth of the social contract. In essence, the idea of a social contract-based state should mean the protection of dignity because it is created by the agency of free and equal citizens; agency and dignity are two halves of one whole. All in all, the core purpose of the state philosophy and law, as well as political economy, ought to be ensuring that all citizens live with dignity, which is tentatively called a “dignity-based” approach, which also means not to allow the emergence of structural injustice.

Non-positivist approaches, such as critical realism and the decolonial approach, criticise neoliberal capitalism, as well as positivist and postmodern epistemologies, for dismissing the importance of values like care, empathy, and dignity, and at least for separating—if not explicitly dichotomising—reason from emotions and values. The instrumentalization of human rights in general, the misuse of legal minimalism in relation to health rights, specifically, and the relativisation of gross violations of international law—such as “normalising” or even whitewashing the full-scale aggression against Ukraine (while ignoring war crimes) by applying the logic that everything can be seen as a “capitalistic deal”, could also be possible due to the effects of the neoliberal mindset.

In this context, this paper proposes a solution to the multiple problems generated by neoliberalism and by positivist and postmodern epistemologies: a cultural change and mental revival achieved through a decolonial approach. This transformation comes before the reforms of hierarchical neoliberal economic, judicial, and political systems.

Overall, it is important to frame discussions about the state, law, democracy, and security around the concepts of human dignity, care, and empathy—concepts beyond conventional

89 Zhussipbek (n 83).

positivist and postmodern approaches in social sciences, legal studies, and “conventional normal” in academia, in general. It is not unregulated markets, as neoliberals argue, but people with moral vision—prioritising care, empathy, and dignity, and shaping their legal consciousness and social relations—who create democratic societies and foster peaceful coexistence in the international system.

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Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that his opinion and views expressed in this manuscript are free of any impact of any organizations.

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EDITORS

Assistant Editor – Mag. Viktoriia Ivanova. **English Editor** – Julie Bold.

Ukrainian language Editor – Mag. Liliia Hartman.

ABOUT THIS ARTICLE

Cite this article

Zhussipbek G, 'Primacy of Care and Human Dignity: Decolonial Turn Versus Anti-Social Neoliberal Capitalism and Positivist and Postmodern Epistemologies' (2025) 8(4) Access to Justice in Eastern Europe 407-35 <<https://doi.org/10.33327/AJEE-18-8.4-o000141>>

DOI: <https://doi.org/10.33327/AJEE-18-8.4-o000141>

Summary: Introduction. – 2. Primacy of Concern and Care, and the Importance of Empathy. – 3. Universalistic Understanding of Dignity and Social Rights. – 4. Decolonial Turn, Empathy and Universality of Human Dignity. – 5. Neoliberal Capitalism: Violation of Dignity and Its Coloniality. – 6. Neoliberal Capitalism and the Rise of Illiberal Democracies and Authoritarianism: Why Do We Need to Talk about Neoliberal Capitalism's Adverse Effects in the Wake of War in Ukraine? – 7. Coloniality of Positivist and Postmodern Social Sciences. – 8. Persistence of Poverty, Neoliberal Mindset and

Minimalism Principle in Legal Systems. – 9. Cultural Change through Reviving Empathy and Dignity: Promises of Decolonial Turn. – 10. Conclusions.

Keywords: *dignity; empathy; social rights; neoliberal capitalism; structural injustice; decolonial approach.*

DETAILS FOR PUBLICATION

Date of submission: 02 Jul 2025

Date of acceptance: 23 Oct 2025

Publication: 18 Nov 2025

Whether the manuscript was fast tracked? – No

Number of reviewer report submitted in first round: 5 reports

Number of revision rounds: 2 rounds with major revisions

Technical tools were used in the editorial process:

Plagiarism checks - Turnitin from iThenticate <https://www.turnitin.com/products/ithenticate/>

Scholastica for Peer Review <https://scholasticahq.com/law-reviews>

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Аналітична стаття

ПРІОРИТЕТ ТУРБОТИ ТА ЛЮДСЬКОЇ ГІДНОСТІ:
ДЕКОЛОНІАЛЬНИЙ ПОВОРОТ ПРОТИ АНТИСОЦІАЛЬНОГО
НЕОЛІБЕРАЛЬНОГО КАПІТАЛІЗМУ ТА ПОЗИТИВІСТСЬКИХ
І ПОСТМОДЕРНІСТСЬКИХ ЕПІСТЕМОЛОГІЙ

Галим Жусіпбек

АНОТАЦІЯ

Вступ. У цій статті розглядається пріорит турботи, емпатії та гідності в людському житті та соціальних відносинах. Існує зв'язок між турботою, взаєминими та людською гідністю, який формує ціннісну основу прав людини. І навпаки, існує зв'язок між піднесенням неолібералізму та релятивізацією фундаментальних цінностей прав людини, що стосується і рівності права на повагу до людської гідності, яку можна розпізнати через емпатію. Непозитивістські підходи, такі як критичний реалізм та деколоніальні перспективи, критикують неоліберальний капіталізм, а також

позитивістські та постмодерністські епістемології за ігнорування важливості цінностей, а також за розмежування розуму та емоцій. Порушення людської гідності через заперечення соціальних прав є глобальною проблемою, властивою сучасному неоліберальному капіталізму, який схильний відкидати універсалістське розуміння людської гідності. Правовий мінімалізм у правових системах ілюструє, як негативні наслідки неолібералізму можуть підірвати розвиток права на охорону здоров'я. Неоліберальний спосіб мислення призвів не лише до інструменталізації прав людини, але й до релятивізації грубих порушень міжнародного права, наприклад, через «нормалізації» повномасштабної агресії проти України, зведення всього до «капіталістичної угоди» та ігнорування воєнних злочинів.

Методи. Це дослідження є міждисциплінарним та концептуально-нормативним. Епістемологічно воно базується на припущеннях метатеоретичного критичного реалізму, етики турботи та деколоніального підходу, що останнім часом концептуалізували автори з постсоціалістичних країн. Пріоритет емпатії, яка є ключем до сприйняття рівності права на повагу до людської гідності, є центральним для розуміння деколоніального повороту. Отже, у цій статті використовуються концептуальні, нормативні та герменевтичні методи, зокрема критичний аналіз неоліберального капіталізму, позитивістської та постмодерністської епістемології. Як приклад із судової практики, концептуально розглядається вплив неоліберального мислення на реалізацію прав на охорону здоров'я.

Результати та висновки. У цій статті пропонується вирішення численних проблем, породжених неолібералізмом, позитивістською та постмодерністською епістемологіями: культурні зміни та ментальне відродження, яких можна досягти за допомогою деколоніального підходу, що передувє трансформації ієрархічних неоліберальних економічних, судових та політичних систем. Загалом, важливо формувати дискусії про природу держави, права, демократії та безпеки, зосереджуючись на концепціях людської гідності, турботи та емпатії, які виходять за межі традиційних позитивістських та постмодерністських підходів у соціальних науках та юридичних дослідженнях, а також «традиційної норми» в академічних колах.

Ключові слова. Гідність; емпатія; соціальні права; неоліберальний капіталізм; структурна несправедливість; деколоніальний підхід.