New Social Movements and Neoliberalism: The Two-Faces of Employment Equity

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Introduction

This paper addresses the following questions: what is the relationship between the new social movements (NSMs) and the political-philosophical credo that goes by the name of neoliberalism? How have NSMs structures new regimes of organizational and industrial governance, and how do these compare to those regimes that characterized the receding class-based society? Our starting point is the observation that the latter half of the twentieth century witnessed the “rebirth of a neoliberal creed” (Fourcade-Gourinchas and Babb 2002) across polities worldwide. For our purposes, we can think of neoliberalism as synonomous with “market fundamentalism,” that is, the idea that all relevant goods and services should be treated as commodities while the exchange relations among them should be guided by principles of supply and demand (as signaled through price mechanisms). Since approximately the 1970s, neoliberal principles came to guide policy decisions in a variety of social spheres, and especially in realms of employment and industrial governance (Harvey 2005). The current financial crisis has in turn stimulated debate among scholars as to whether neoliberal currents will be tamed or even reversed as policy-makers rethink basic principles of economic and social governance.
The rise of Neoliberalism is often said to represent the flip side of another phenomenon: the end of a labor-management “truce” negotiated in developed countries during and after World War II. In the United States, this accord was represented most visibly in the political sphere by the New Deal (whereby citizens were granted an array of benefits providing them a baseline of social security) and in the economic sphere by the collective bargaining system (whereby workers, especially those in heavy manufacturing industries, were contractually granted a share of a firm’s profits in the shape of wage increases, benefits, and pensions). As state regulations and policies were reconfigured to privilege the bargaining position of employers, and as globalization exposed many national firms for the first time to international competitors, firms exerted new leverage upon workers and their organizations. These developments, many argue, represent the end of a “class-based” society. One dramatic and highly-visible result has been a shrinkage in the size and clout of the trade union movement. In the US, for instance, union membership has shrunk from 40% of the general workforce to only around 10% today. Such figures suggest that for the individual worker, identities and rights-claims based upon one’s class position (i.e., one’s social location vis-à-vis ownership of the means of production) or occupational status (i.e., one’s spot in the division of labor) are less and less salient. Many researchers have argued that today’s workers think of themselves as “hired guns” (Barley and Kunda 2004) and of labor unions and other class-based movements as anachronistic and hostile to their interests (Lopez 2004; Fantasia and Voss 2004).

Such debates about the decline of class miss much about what has happened in the realm of work and employment during the late twentieth century. For if trade unions have lost sway, their place has been eclipsed by that of New Social Movements (NSMs) organized
not along class-lines, but rather identities such as those relating to one’s race, ethnicity, or gender (Skrentny 2002). While some have criticized NSMs as inherently weaker than class groupings, much recent scholarship asks precisely how NSMs can structure regimes of workplace governance. Piore and Safford (2006), for instance, argue that the modern workplace is a new sort of regime, one structured by law, policy, and administrative ruling. Perhaps the single word that best describes this new regime is diversity. Courts, activists, and specialized human resource personnel implement a variety of policies and procedures to insure that individuals are not discriminated against on the basis of their internal beliefs or external phenotypes (Dobbin et al. 1993). There can be no doubt that this development is due directly to the success of civil rights struggles waged by the NSMs. As a result, the modern workplace is one replete with rules and governance mechanisms to protect the rights of individuals as defined by their racial, ethnic, gender, etc identities, rather than their class positions.

Lurking beneath such debates, but rarely brought into the light, is the more general question of the relationship between New Social Movements and market fundamentalism. Are the former’s claims, arguments, and mobilizations compatible with the principles of the latter? It is hardly controversial to argue that class-based movements think of themselves as a neoliberal foe. Unions universally argue that workers should be protected from exploitation, degradation and despotic treatment; nor need one be a staunch Marxist to recognize at least some of the logic of Karl Polanyi’s argument (1957) that human labor is a fictitious commodity. What though of the new “NSM regime” that characterizes the modern workplace? Is it possible to discern a common logic underlying its various dimensions, and, if so, what does this logic have to say about the process whereby workers’ labor power
is commoditized? My argument concerning these issues is as follows: *the various mobilizations on the part of new social movements in regard to work and employment are essentially Janus-faced in relation to neoliberalism*. Attempts to promote “diversity” or “employment equity” are *prima facie* neither pro- nor anti- free market. The key issue is the conception of liberty underlying such claims: what I label “negative equity claims” are compatible with central tenets of neoliberalism, while “positive equity claims” are hostile towards market fundamentalism. Empirical evidence derive from case studies of the United States and South Africa, with consideration as well of the new global field of employment equity regimes.

**I. Two Conceptualizations of Freedom**

Dating back to Kant and forward through such thinkers as Berlin (1969), freedom, or liberty, can be conceptualized as either a negative or positive phenomenon. To advance a vision of negative liberty is to adopt the view that individuals are freest when there is no external constraint preventing them from achieving their goals. In contrast, a vision of positive liberty is one in which active intervention may be required to allow individuals to reach their human potential (Christman 2005). Negative versus positive conceptions of liberty are associated with differing views of the state. For negative liberty entails a libertarian perspective whereby “the best government is that which governs least;” while positive liberty is compatible with the progressive view that states have an obligation to intervene into various arenas so as to advance both the common and individual good (Crocker 1980).
Again, when considering the perspective of classic class-based movements, it is unproblematic to discern the idea of liberty advanced. Consider Marx’s cynical take upon the notion of “free labor.” A capitalist system, he argued, is one in which everyone must be free to sell their labor power on the market to the highest bidder. All external and archaic restrictions (such as those imposed by the church, royalty, or family) must be removed. This ideology was of course one of negative liberty, and it obscured many structural truths of the capitalist system, such as the economic insecurity that compelled workers to sell their labor power to the capitalist class. The move from capitalism to communism can in turn be considered a shift from negative to positive liberty. Under a communist system there would be some minimum social organization to insure each and all a necessary subsistence wage, thereby allowing the fulfillment of the species being character of humanity (Cohen 1989).

To bring about not communism but a socially equitable division of labor within capitalism entails thinking differently about freedom. In fact, we find that both negative and positive liberty may be compatible with a conception of employment equity. Let us consider first the relation between negative liberty and discrimination. Again following Berlin, we can postulate that negative liberty focuses upon factors or forces that are external to the individual, social in nature, and brought about by some sort of intentionality. In turn, employment equity claims grounded in this notion would seek to identify obstacles or barriers that hinder individuals as they pursue their callings. The most immediate and visible of such obstacles must be discrimination itself, that is, prejudices and stereotypical thinking on the part of employers. For instance, imagine a situation where two individuals apply for a promotion, Person A possesses better credentials than does Person B. But
Person A happens to be a minority (a woman, an immigrant, a homosexual, etc.), while Person B is a member of the majority group (a man, native-born, heterosexual, etc.). The manager in charge of evaluating the two portfolios in turn possesses some sort of bias (perhaps he prefers to work only with those “of his kind” or perhaps he simply thinks that, say, women are naturally inferior). He thus offers the promotion to Person B. This is a situation that would represent a major problem from the perspective of negative liberty. An external barrier has been erected preventing Person A from achieving his or her potential. It is an external, social, and intentional interference that should be eliminated.

How, concretely, to remedy this situation? What mode or regime of organizational governance would best allow Person A in the anecdote above to achieve his or her desired (and deserved) ends? This is a question of deciding what course of action to take in order to remove the barrier—i.e., the managers’ prejudices or at least his or her ability to act upon them. But to seriously address this question is to assume a slightly different though related one: what is the source of the manager’s prejudice in the first place, and is this prejudice rational? Let us assume for a moment that the manager’s actions are irrational. They derive from the lingering effects of what Weber labeled an ideology of traditionalism (nepotism, machismo, religious fundamentalism, etc.), and are thus in contrast to a pure legal-rational approach which evaluates individuals solely on the basis of merit. It is the ideology of the clan or tribe lingering around like a vestige inside the modern organization. The discriminating manager is here neglecting his or her duties as an administrator, for the bureaucracy can achieve maximum efficiency only when its administrators have been properly socialized into and execute an instrumentally rational approach to personnel
decision-making: i.e., hire the most qualified candidate, and treat employees on the basis of merit rather than their ascriptive characteristics.

It is here, with the assumption of managerial irrationality, that we find negative equality claims and neoliberal thought to dovetail entirely. Both would advocate a disembending of labor markets from social relations, to make labor markets fully free. But more importantly, both would propose that the appropriate solution to the issue is, paradoxically, to do nothing. As Gary Becker argued (1974), rather than invest in new laws, agencies, and instruments of enforcement, we could most effectively combat the problem (i.e., physically remove the barrier of the discriminating manager) by allowing market forces to work their course. Managers with irrational prejudices will repeatedly hire workers who are less qualified, their firms will perform suboptimally, and they will be driven out of business by rational non-discriminators (an argument reflected as well in Weber’s claim that bureaucracies are power instruments of the first order, destined to outperform clans, tribes and cults).

The situation is slightly different if we assume that the discriminating manager is not acting irrationally. Many argue that economic actors can in fact exploit general correlations between visible identifiers (such as skin color) and objective qualifications (such as IQ or language proficiency) to minimize the information costs associated with evaluating employees. Or she may prefer to hire her friends and kin, regardless of their qualifications, because she knows they can be trusted. Now the story is more complex, for we can imagine scenarios in which a job applicant is denied a position for which he is qualified—i.e., his freedom has been constrained by another individual acting intentionally—but it is no longer clear that a hands-off approach will remedy the situation.
Furthermore, the danger is raised that intervention to remove the obstacle (i.e., the manager’s autonomy to choose) will infringe upon the manager’s freedom itself. Here, a governance regime of some sort is needed, and it may even entail a place for the state to regulate workplace practices. But this is not necessarily antithetical to a free market approach. For as long as the rules of the game are transparent and agreed upon by all parties, they are compatible with neoliberal governance. Both parties to the employment transaction—workers and employers—could be educated as to when a decision crosses the line from acceptable to discriminatory, while individuals who believe their freedom has been violated would then have recourse to file complaints or charges. Piore and Safford (2006) label such a system an “employment rights regime,” and argue that its existence in the US is demonstrated by a rapid recent growth in employment litigation (see also Sutton, Dobbin, Meyer, and Scott 1994). For our purposes, the point is that a neoliberal (i.e., individualized) employment regime is not incompatible with a New Social Movement focus on the rights of various minorities at work. They can be connected via a negative conception of individual liberty.

A New Social Movement concern with employment equity can take a very different path if the idea of liberty underlying it is a positive one. The notion of positive freedom is itself more complex than its negative counterpart, and has been the subject of much debate and speculation. For our purposes, we highlight one aspect of it that is generally accepted among different schools of thought and that starkly differentiates it from negative freedom: a focus on collectivities and/or the place of the individual within some larger collectivity. It emphasizes a society’s responsibility to provide each individual with the necessary means to reflect upon, rationally decide, and pursue a set of ends. The classic liberal position as
espoused by Friedrich Hayek (1960) critiques positive liberty as opening the door to authoritarianism. And there can be no doubt that social movements that adopt this definition of liberty do advocate a greater degree of intervention by the state or some other such external regulator. Nor are pure market forces accorded any special status as a priori beneficent for society. If a particular constellation of exchange relations are seen as hindering a group’s capacity for self-realization (and even though these relations may not be generating any immediate obstacles to a particular member of the group), they must be considered problematic.

As this narrative suggests, an organizational governance regime grounded in positive liberty sits uneasily beside neoliberal ideology. First, it expands the purview of governance beyond the individual and his or her perceptual environment and to a much larger field or environment. Imagine the case of Jose, a Mexican immigrant living legally in the United States. Jose applies for a job with a computer firm, but because he does not have a college degree, is not even invited in for an interview. The manager in charge of evaluating applicants was acting rationally in making this decision. And from the perspective of negative liberty, there appears to be no violation of any actor’s freedom. But if we adopt a positive liberty approach, then we would ask a series of other questions, such as: why do Hispanic Americans have such low rates of college graduation? Why are their incomes lower than that of Caucasian Americans? Why does this particular firm have no Hispanics working in it? As these queries convey, statistics play a role in positive equality arguments not found in negative ones. Second, to address such systemic inequalities may entail fringing upon the autonomy of private firms and other organizational actors. It may require them to move outside of the realm of strict commodity exchange, by reshaping
organizational practices and procedures in ways that do not necessarily benefit the “bottom line.” New employment equity procedures, for instance, may impose transaction costs upon personnel decisions (for instance, by requiring that managers maintain a “paper trail” on their hiring, promotion, and termination decisions). Third, and most fundamentally, it tends not to treat a person’s labor as a simple commodity to be bought and sold; rather the emphasis is placed upon the person’s larger horizon—does, for instance, the work performed allow one to develop and exercise socially meaningful skill?

To summarize the argument thus far: we are in agreement with Piore and Safford that the post-WWII regime of class and union-based collective bargaining has eroded, while a new regime of employment rights spearheaded by the New Social Movements has taken its place. If the paradigmatic workplace of 1950 featured a union contract and a craft identity, the paradigmatic workplace of 2010 was non-union though regulated by various laws protecting the rights of minorities. But we have further interrogated the relationship between this trend and another: the rise of neoliberal market fundamentalism since the 1970s. The class-based organizational regimes of the mid-twentieth century advocated a notion of worker’s rights grounded in a conceptualization of positive freedom—most likely because of the strong influence of Marx’s philosophy in the trade union movement. It is less clear, though, as to whether New Social Movements have a natural affinity with a positive or negative view of freedom. We thus tried to explicate the implications of each these viewpoints for both creating employment equity and adhering to the principles of Neoliberalism.

II. Two Cases of Employment Equity Regimes in Practice
On a global level, we find that nations are converging towards policies proscribing discrimination in the workplace. Even societies that do not officially classify citizens based upon race or ethnicity (such as France), as well as those that use fluid classification schemes (such as Brazil) are finding ways to institute safeguards protecting the rights of minority employees. All of these emergent regimes of employment equity can be categorized in a variety of ways: according to which groups are protected, according to the resources devoted to enforcement, etc. This paper, however, argues that we may classify such regimes according to their degree of fit with neoliberal ideology, by probing the bases of their claims for equality. Negative equity claims actually pose little challenge to neoliberalism, while positive equity claims threaten the principle that firms and labor markets are capable of self-regulation.

This section compares two governance regimes—that of the United States and South Africa. Both feature the substantive goal of ensuring employment equity, both were brought about through the direct struggles of widespread social mobilization by racial minorities, and both were subsequently extended to a variety of other protected categories (women, religious minorities, the disabled, etc.). However, the two nations differ significantly in the formal mechanisms in place to advance these goals. Dominant employment regimes in the contemporary US embody a negative conception of freedom, one quite compatible with the general philosophy of Neoliberalism, while post-apartheid South Africa has implemented an employment regime of positive freedom, one which proponents of Neoliberalism at best tolerate.

Insofar as we suppose that positive equity regimes are, on the whole, more favorable to the rights of minorities, we could rightly conclude that the positive valence of
South Africa’s employment regime represents the relatively greater strength of its liberation movement. Indeed, compared to the US, where the Civil Rights movement reached its apogee in the late 1960s, the movement for black liberation in South Africa occurred much more recently (the mid 1990s) and ushered in a much more dramatic social revolution. Indeed, it is almost nonsensical to speak of a “minority rights movement” there, where the non-white population exceeds the white population by a 4 to 1 ratio. Nonetheless, it is important to consider in detail the contours of these two regimes. On one hand, how they emerged, for in both cases the final definition of equity was not obvious from the start but rather was the outcome of a political struggle between employers and NSMs. And on the other hand, how they operate in practice.

The employment equity regime in the US today fits our definition of a negative one. It is highly individualistic, in that it looks at how specific managers treated specific employees, who must then go on to file a lawsuit. To move beyond the individual level is difficult, as illustrated by the current class-action lawsuit being brought against the Wal-Mart corporation by thousands of current and former female employees. After nearly a decade of court battles, the case has just recently been certified to proceed. Employment equity in the US also requires minorities to provide indisputable proof that some powerful figure intentionally served as an obstacle to his or her advancement—a principle known as the establishment of “disparate treatment.” Finally, it is highly controversial for the state to act proactively in order to influence or engineer the composition of an organization’s workforce, or even to remedy basic social disparities that affect the composition of labor markets.
How to account for the negative character of equity law in the US? It must be considered in relation to the struggle by civil rights groups to change federal law, which achieved success in 1964 with the passage of Title VII of the Civil Rights Act. Throughout US history, laissez-faire regulation of the economy had left private sector labor markets beyond the purview of the state (Dobbin 1997). Up until the 1960s, it was common for job advertisements to be blatantly racist in specifying what sorts of workers they were or were not looking for. Accordingly the civil rights movement, though its agenda and demands were varied, took the issue of job discrimination as its top priority (Burstein 1985: 2). During the 1940s, the federal government had implemented anti-discrimination measures for the military and government contractors, while public opinion was liberalizing in favor of civil rights legislation. By 1964, proponents of a bill were able to secure enough votes in Congress to pass legislation, known as Title VII, banning employers from discriminating “on the basis of race, color, religion, sex or national origin.”

Title VII possessed several flaws, from the viewpoint of its supporters who sought a more expansive plan to intervene into the private sector so as to redress inequalities. For decades civil rights legislation had been held up by the structure of the US political system, which allowed a small number of conservative legislators (mainly from the south) to block a straight up vote on a civil rights bill through their control of various subcommittees. In order to overcome such recalcitrance, civil rights proponents crafted a bill that stated general principles rather than concrete means to achieve them (Dobbin et al. 1993). For instance, the terms discrimination and equality were not defined, leaving a great deal of leeway for employers to subsequently combat civil rights policy in the courts and the media. Also, the bill provided inadequate resources to systematically monitor labor market
practices in the private economy. It created the Equal Employment Opportunity Commission, or EEOC, to enforce Title VII. But the EEOC was given authority only to investigate and conciliate discrimination claims, making the agency a “toothless tiger” (Pedriana and Stryker 2004). The extent to which Congress had not provided enough resources to establish positive labor market regulation was made clear in the first year of the EEOC. With only 100 staff persons, the agency was inundated with over 9000 complaints (commonly called charges)—7000 more than what had been projected.

Despite this inadequacy of resources, the EEOC, in tandem with civil rights groups, at first achieved success in reconfiguring US employment regimes in a positive direction. Much of this effort centered on the idea of “quotas,” that is, numeric goals for achieving the representation of minority groups throughout an organization. Quota-systems, we argue, represent a challenge to negative views of equity (for they take a broad, systematic view of the organization and labor markets—above and beyond the situation of any one individual) along with neoliberal principles (for they require employers to provide information on their personnel practices and to change these practices as well). In a 1977 case, Hazelwood School District v United States (433 U.S. 299), the Supreme Court ruled that the government could consider as evidence of discrimination the degree of disparity between an organization’s workforce and the surrounding labor market; while the controversial “Philadelphia Plan” established the right of the government to require firms to submit “manning tables” when bidding for state contracts. Beginning with the Reagan administration, however, the meaning of employment equity was reversed in a negative direction. Any sort of quotas or requirements for firms to take affirmative action are forbidden. For instance, in Wards Cove Packing Co v. Antonio (1989), the supreme court
ruled that plaintiffs must prove that a manager acted towards them with discriminatory intent and made a decision that adversely affected them individually. In sum, in the US, those politicians who adopted a neoliberal agenda also steered employment law in a negative direction, away from the positive meaning advocated for by social movements.

The case of contemporary South Africa can be considered as diametrically opposed to the US. Following the end of apartheid in 1994, the African National Congress (ANC) entered into a power-sharing agreement with the incumbent (white) government, headed by the National Party (NP). During this time were drafted many key pieces of policy and legislation—including the country's new constitution. Many progressive scholars consider this period a missed opportunity for the country. While the ANC had historically defined its principles as socialist, it was at this moment that key figures within the party took a sharp rightward turn in their economic thinking (Bond 2000). This was crystallized by the party's decision to drop its redistributive “Redistribution and Development Program” (RDP) in favor of a more market-friendly “Growth, Employment and Redistribution” (GEAR) policy (Williams 2009). Partly as a result of these policies, trade union membership in South Africa has declined since the end of apartheid. Meanwhile, this rightward shift has led to ongoing tension between the ANC and its official partners in the governing tripartite alliance: the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP).

However, at the same time that macro-economic policy was moving in a neoliberal direction, the new state enacted many laws to create substantive, not simply formal, equality between various categories of South Africans (no longer officially referred to as races but rather as population groups). As Section 9(2) of the new Constitution stated, the
state should act “[t]o promote the achievement of equality, legislative and other measures designed to protect or advance persons...disadvantaged by unfair discrimination must be taken.” What this means is that the government, when designing and implementing actual policies, must take “a consideration of the actual social and economic conditions of groups and individuals” (Stone and Erasmus 2008). This entails widespread intervention into the private sector generally, and firms’ internal labor markets specifically, thus representing a direct challenge to the neoliberal principle that employer-employee contracts should be guided by market forces alone. For instance, South Africa’s Skills Development Act of 1999 recognized the problem of a skill and education shortage among the country’s black population, and so established sectoral education and training authorities, or SETAs, to be funded by the government. But it also required firms to provide ongoing training to current workers, which managers complain is unnecessary, especially for relatively unskilled positions (Sallaz 2009).

The point at which the employment regime in South Africa most sharply diverges from the US is in regard to the notion of numerical quotas. As stated above, these represent a prime example of a positive definition of equity; they move from the individual to the social, and the reactive to the proactive. In the neoliberal US, affirmative action style quotas are now practically unheard of, insofar as they are perceived to be a form of punishment imposed upon firms that have been found culpable of no misdoings. Both South Africa’s Employment Equity Act 55 of 1998 and the follow-up Broad Based Black Economic Empowerment Act 53 of 2000 establish a different perspective. Without vilifying or accusing any particular actor, they nonetheless establish the imperative for firms to engage in positive discrimination (Webster and Omar 2003). This refers to the imposition
of hard numerical goals for the hiring and advancement of previously disadvantaged individuals, or PDIs (understood to denote Africans, coloured, Indians, women and people with disabilities). Although it may violate the short-term economic logic of an individual employer, empowerment law is justified as both fair and rational insofar as it advances the larger developmental goal of bringing social and economic equality to PDIs.

Detractors do take issue with South Africa’s affirmative action policy. On one hand, many progressives argue that the pace of transformation has been too slow, with whites and a small cadre of connected blacks remaining in charge of key position in the economy. My own reading is that such critiques are too harsh, considering the fact that apartheid ended with near total inequality along with the considerable gains that have been made: consider that between 2000 and 2007, the percentage of PDIs in management increased from 20% to 30%, and in the professions from 33% to 48% (Budlender 2009). On the other hand, some have pointed to a fundamental contradiction in the government’s equity regime. It simultaneously proscribes discrimination as adverse to the principles of the country’s color-blind constitution, and prescribes discrimination as a temporary remedy to the structural inequalities generated by apartheid. It is simultaneously backward-looking, in that it is embedded in the categories and inequalities of the inglorious past, and forward-looking, in that it strives to bring into being a time beyond inequalities and arbitrary categories. But will there ever come a time when such positive redress is no longer necessary, when all individuals are evaluated solely on their talents and interests, such that “social inequalities express precisely natural inequalities,” to invoke Durkheim’s felicitous phrase? Such questions must be addressed by all systems of employment equity, not just in South Africa.
Concluding Remarks

This paper considered the United States and South Africa, two countries that *converge* insofar as popular social movements successfully mobilized to implement employment equity regimes. But at the same time they *diverge* insofar as they today represent ideal-typical cases of negative versus positive equity. In the US, conservative politicians and business interests have successfully countered attempts to proactively regulate firms’ labor market practices (most notably by demonizing the idea of state-imposed “quotas” for hiring women and racial minorities). This negative view of equity was confirmed in the Supreme Court’s recent Ricci v. New Haven decision. In South Africa, in contrast, a dramatic revolution ushered into power a political party (the ANC) dedicated to a principle of black empowerment and linked organically to the trade union movement. Both domestic capital and foreign firms must accept, as a cost of doing business in the country, the presence of a strong regulatory state in the area of labor relations. When seen through such a lens, the relationship between new social movements and Neoliberalism is dependent upon the context. Neoliberalism is not the coherent ideological entity that its detractors assume; it is rather a loose assemblage of actors and programs. New social movements in turn have not focused their claims solely upon “non-work” issues; in fact, these movements have been successful in restructuring employment regimes in novel ways.
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