

# Neoliberalism and the Retraction of Welfare Law: A Theoretical Critique

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This article provides a comprehensive critical analysis of the relationship between neoliberalism and the retraction of welfare law. It investigates how neoliberal ideologies, characterized by market deregulation, privatization, and reduced state intervention, have reshaped welfare policies and impacted social equity and access to welfare services. Through an interdisciplinary approach, the article examines the theoretical underpinnings of neoliberalism, analyzes its socio-economic effects, and explores its legal implications for welfare provision. Case studies from the United Kingdom and Australia serve to illustrate the real-world impacts of neoliberal policies on welfare law. Furthermore, the article engages with counter perspectives, offering insights into theoretical and practical alternatives that challenge neoliberal approaches, such as social democracy, participatory democracy, and post-Keynesian economics. It proposes reforms aimed at mitigating the adverse effects of neoliberal policies, emphasizing the reinstatement of welfare as a universal right, adopting progressive taxation policies, promoting cooperative welfare models, and enhancing accountability in welfare service delivery. This critique contributes to the ongoing debates on the role of the state, market, and individual in securing social welfare, advocating for a paradigm shift towards more equitable, inclusive, and democratic welfare policies.

**Keywords:** Neoliberalism, Welfare Law, Theoretical Critique, Policy Retraction.

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## 1. Introduction

The ideological premise of neoliberalism, with its emphasis on market freedom, individual responsibility, and minimal state intervention (Hartman, 2005), has profoundly shaped the legislative frameworks that govern welfare provision. This theoretical critique aims to unpack the complexities inherent in the relationship between neoliberal policies and the retraction of welfare law, critically evaluating the socio-economic implications of such a nexus.

Neoliberalism, posited as an economic and political ideology that has gained prominence since the late 20th century, champions the deregulation of markets,

privatization of publicly owned entities, and reduction of state expenditures on social services (Pierson, 1996). This neoliberal agenda, Hartman (2005) argues, has paradoxically coexisted with the welfare state, leading to a reconfiguration rather than dismantlement of welfare provisions (Hartman, 2005). In this respect, Hartman (2005) and Calkin (2015) suggest that neoliberal policies have not abolished the welfare state but have transformed its functions, priorities, and modalities of service delivery (Calkin, 2015; Hartman, 2005).

Critics of neoliberalism have highlighted its detrimental impacts on social equity and welfare law (Benish et al., 2016). These impacts are often manifested through



increased privatization and commodification of social services, leading to greater social stratification and inequality. Moreover, as Soldatic, Somers, Spurway, and Toorn (2017) demonstrate, such neoliberal reforms disproportionately affect marginalized communities, further exacerbating pre-existing vulnerabilities (Soldatic et al., 2017). The phenomenon of "neoliberal communitarian citizenship" outlined by Houdt, Suvarierol, and Schinkel (2011) encapsulates the shift towards a model of citizenship based on market participation and individual responsibility, thereby redefining the very essence of welfare entitlements (Houdt et al., 2011).

The theoretical backdrop against which this critique operates is further complicated by the notion of 'green neoliberalism' (Bakker, 2010), which integrates environmental concerns into the neoliberal agenda, often at the expense of comprehensive welfare policies. This inclusion of environmental priorities within a neoliberal framework underscores the ideological versatility of neoliberalism and its capacity to reconfigure public policies across different domains, including welfare law.

Furthermore, Maron (2021) expounds on the ideational diversity within neoliberal states, suggesting a potential for policy variegation that could ameliorate some of the adverse effects of neoliberal policies on welfare law (Maron, 2021). This perspective highlights the importance of a nuanced understanding of neoliberalism that acknowledges its heterogeneity and its varied impacts on social policies.

The theoretical critique offered in this article is rooted in a comprehensive analysis of neoliberalism's multifaceted influences on welfare law. By exploring the intersections between neoliberal ideologies and the legislative frameworks governing welfare provision, this critique aims to provide a nuanced understanding of the complex dynamics that shape contemporary social policy. It is within this context that the works of scholars like Maron (2021), Hartman (2005), and Benish, Haber, and Eliahou (2016) become invaluable, offering insights into the ways in which neoliberal policies have reconfigured the welfare state and, by extension, the laws that underpin welfare provision (Benish et al., 2016; Maclean, 2012).

In examining the retraction of welfare law under neoliberal governance, this article critically engages with

existing scholarly literature to explore the broader socio-economic and legal ramifications of neoliberal policies. By analyzing the theoretical underpinnings and practical manifestations of neoliberalism, this critique endeavors to illuminate the challenges and contradictions inherent in the relationship between neoliberalism and welfare law. Through this analysis, the article seeks to contribute to ongoing debates on social policy and welfare provision, advocating for a critical reevaluation of the neoliberal agenda and its impact on the welfare state.

In conclusion, the nexus between neoliberalism and welfare law represents a complex and contentious domain that warrants thorough examination. This article aims to unpack this relationship, critically analyzing neoliberalism's theoretical assumptions and practical implications for welfare law. By engaging with the works of scholars across various disciplines, this critique endeavors to offer a comprehensive understanding of the challenges posed by neoliberal policies to welfare provision and social equity.

## 2. Methods and Materials

The methodology of this article is designed to provide a robust framework for the critical examination of the relationship between neoliberalism and the retraction of welfare law. The approach adopted is interdisciplinary, drawing upon theories and methods from political science, economics, sociology, and law. This blend of disciplines enables a comprehensive analysis of both the ideological underpinnings of neoliberalism and its practical manifestations in the domain of welfare law.

### 2.1. Literature Review

The backbone of this critique is an extensive review of the existing literature, spanning scholarly articles, books, policy documents, and case studies pertinent to neoliberalism and welfare law. The selection of sources was guided by several key criteria, including relevance to the subject matter, methodological rigor, and diversity of perspectives. Special attention was given to works that explicitly address the intersection of neoliberal policies with welfare legislation, as well as those that provide insights into the socio-economic consequences of such policies.

To ensure the recency and relevance of our analysis, the literature review focuses primarily on studies published

within the last two decades. This timeframe captures the most significant developments in neoliberal policy-making and their impact on welfare law. Sources were identified through comprehensive searches of academic databases such as JSTOR, PubMed, and Google Scholar, using keywords related to "neoliberalism," "welfare law," "policy retraction," and "theoretical critique."

## 2.2. Theoretical Framework

The analysis is anchored in a theoretical framework that draws on key concepts from neoliberal thought, as well as critical perspectives on welfare provision. This framework serves to elucidate the core principles of neoliberalism, including market liberalization, privatization, and the reduction of state intervention in the economy. It also captures the diverse critiques of neoliberalism, particularly concerning its effects on social equity and welfare rights.

## 2.3. Case Studies

To illustrate the practical implications of neoliberal policies on welfare law, the critique incorporates comparative case studies. These case studies were selected based on their relevance to the themes of the article and their capacity to highlight the variability in the enactment and outcomes of neoliberal policies across different jurisdictions. Data for the case studies were sourced from official government reports, scholarly analyses, and reputable news outlets, ensuring a balanced and accurate representation of each case.

## 2.4. Analytical Approach

The critique employs a qualitative analytical approach, synthesizing insights from the literature review, theoretical framework, and case studies. This approach allows for an in-depth examination of the complexities surrounding neoliberalism and welfare law, beyond the limitations of quantitative analysis. The synthesis of diverse sources and types of data facilitates a nuanced understanding of the multifaceted relationship between neoliberal ideology and welfare policy.

## 2.5. Limitations

The methodology of this article is subject to certain limitations, primarily related to the scope of the

literature review and the selection of case studies. While effort was made to ensure a wide-ranging review of literature, constraints on length and focus may have excluded certain relevant works. Similarly, the choice of case studies, while illustrative of key points, may not encompass the full breadth of neoliberal impacts on welfare law worldwide.

## 3. Theoretical Framework

### 3.1. Definitions

Neoliberalism, as a pivotal concept in this analysis, refers to a political-economic philosophy that emphasizes the value of free market competition, reducing state intervention in the economy, and enhancing the role of the private sector in providing public services (Hartman, 2005). Welfare law, conversely, is the body of legislation and policies designed to provide assistance and protection to various segments of the population, particularly the vulnerable, elderly, unemployed, and disabled, ensuring their basic needs are met. Other key theoretical concepts pertinent to this discussion include 'market liberalization,' the process of removing restrictions on the free exchange of goods and services, and 'privatization,' the transfer of ownership of enterprises from the public (state) sector to private individuals or organizations (Mladenov, 2015; Pierson, 1996).

### 3.2. Historical Overview

The development of neoliberal thought can be traced back to the mid-20th century, emerging as a reaction against the prevailing Keynesian welfare state model that was characterized by significant government intervention in the economy (Pierson, 1996). Prominent figures like Friedrich Hayek and Milton Friedman championed neoliberalism, advocating for individual freedom as paramount, achievable through free markets and limited government. This ideological shift gained political traction in the late 1970s and early 1980s, notably under the leadership of Margaret Thatcher in the UK and Ronald Reagan in the US, leading to widespread implementation of neoliberal policies, including deregulation, tax cuts for the wealthy, and reductions in public spending on social services (Harlow et al., 2012).

The expansion of neoliberalism has had profound implications for welfare legislation, notably a retreat from the post-war consensus on the welfare state's role in mitigating inequality and providing for citizens' basic needs. This retreat is embodied in the privatization of public services, the introduction of market mechanisms into the provision of welfare, and the framing of welfare dependency as a problem to be eradicated (Harlow et al., 2012; Houdt et al., 2011).

### 3.3. Key Theorists and Arguments

Friedrich Hayek and Milton Friedman are seminal figures in the advancement of neoliberal ideology. Hayek argued that centralized planning and government intervention in the economy lead to inefficiency and a loss of freedom, positing that a free-market economy was the best mechanism to ensure individual liberties and economic efficiency (Pierson, 1996). Similarly, Friedman criticized the welfare state for its inefficiency and for infringing on individual freedoms, advocating for a reduced role of the government in economic life to foster entrepreneurial initiative and economic growth (Harlow et al., 2012).

Critically examining these positions, Hartman (2005) notes that the apparent contradiction between neoliberalism and the welfare state may be more complementary than commonly understood, arguing that neoliberalism has not eliminated the welfare state but transformed it to align with market principles (Hartman, 2005). This perspective is echoed in the analysis by Benish, Haber, and Eliahou (2016), who discuss the regulatory welfare state's role in pension markets as an example of neoliberalism's influence in reconfiguring rather than dismantling welfare services (Benish et al., 2016).

From a critical standpoint, scholars like Rudra (2002) and Maron (2021) challenge the neoliberal assertion that market-led growth inevitably benefits all segments of society. They argue that neoliberal policies have led to increased inequality and social stratification, marginalizing vulnerable populations and eroding the social safety net provided by welfare laws (Maron, 2021; Rudra, 2002). Moreover, Calkin (2015) highlights the gendered impacts of neoliberal policies, showing how 'smart economics' approaches often exacerbate rather than mitigate gender inequalities (Calkin, 2015).

## 4. Neoliberal Policies and Welfare Law

### 4.1. Case Studies

This section explores the impacts of neoliberal policies on welfare law through case studies from the United Kingdom and Australia, highlighting the changes in welfare provisions in the context of neoliberal reforms.

#### 4.1.1. United Kingdom: Pension Market Reforms

In the United Kingdom, the introduction of neoliberal policies into the pension market serves as a significant case study illustrating the retraction of welfare law. Benish, Haber, and Eliahou (2016) discuss how regulatory changes aimed at mitigating high charges for low-income savers led to a complex layer of policy reforms within the UK's pension system. Initially intended to protect consumers and ensure more significant savings for retirement, these reforms reflected the neoliberal emphasis on market solutions to social welfare issues. By introducing Auto-Enrolment and promoting privately managed pension schemes, the government shifted the responsibility of retirement savings from the state to individuals and the market (Benish et al., 2016). While these policies were intended to increase private savings for retirement, they also led to increased complexity and dependency on the financial market, thereby restricting direct state provision of pensions and exemplifying a move away from traditional welfare models.

#### 4.1.2. Australia: Disability Welfare Reform

Australia's experience with neoliberal disability welfare reform provides another perspective on the retraction of welfare provisions. Soldatic, Somers, Spurway, and Toorn (2017) examine the impact of such reforms on Aboriginal people with disabilities in the West Kimberley region. The shift towards neoliberal policy frameworks in disability services focused on market-driven solutions and individual responsibility, significantly affecting the provision of care and support for indigenous populations. The introduction of the National Disability Insurance Scheme (NDIS), while aiming to offer participants greater choice and control over their services, inadvertently emphasized efficiency and economic rationalism over the holistic wellbeing of individuals (Soldatic et al., 2017). This reform, although

intended to improve service delivery, has had the unintended effect of exacerbating existing inequalities, with indigenous communities facing barriers to accessing the culturally appropriate and necessary supports due to the marketized nature of the service provision.

#### 4.2. Policy Analysis

The pension market reforms in the United Kingdom and the disability welfare reform in Australia highlight how neoliberal policies can lead to a retraction of welfare provisions, emphasizing market mechanisms and individual responsibility over state intervention and collective care. The intended effects of these reforms—increased efficiency, reduced public expenditure, and greater individual autonomy—are often overshadowed by their unintended consequences, such as increased complexity, dependence on the market, and exacerbation of inequalities.

In the United Kingdom, the reform of the pension system under neoliberal policies aimed at encouraging private saving for retirement has inadvertently made the system more complex and less accessible for low-income individuals (Benish et al., 2016). This complexity illustrates a departure from the welfare state's role in providing universal and accessible support, demonstrating a retraction of welfare law in favor of market-based solutions.

In Australia, the implementation of the NDIS under a neoliberal framework was intended to empower individuals with disabilities by providing them with choice and control over their support services (Soldatic et al., 2017). However, the market-driven approach has neglected the specific needs and circumstances of indigenous communities, revealing the limitations of neoliberal policies in addressing the diverse needs of a multicultural society. This policy shift underscores the challenges of ensuring equitable access to services within a neoliberal welfare model that prioritizes efficiency and market competition.

The case studies of pension market reforms in the United Kingdom and disability welfare reform in Australia exemplify the overarching trend of welfare law retraction under neoliberal policies. While these policies are ostensibly designed to improve efficiency and empower individuals, their implementation often results in increased complexity, reliance on the market, and

unintended negative impacts on equity and access. This analysis underscores the need for a critical reevaluation of neoliberal approaches to welfare reform, considering their broader social implications and the importance of safeguarding equitable access to welfare provisions.

## 5. Critical Analysis

### 5.1. Theoretical Critique

The retraction of welfare law under neoliberal governance can be critically analyzed through various theoretical frameworks that expose the intrinsic contradictions and shortcomings of neoliberal ideology. Hartman (2005) introduces a critical perspective on the relationship between neoliberalism and the welfare state, arguing that neoliberalism's push for market freedom and reduced state intervention does not necessarily lead to the dismantling of welfare services but rather their recalibration towards market-based solutions. This transforms the welfare state from a provider of universal benefits into a facilitator of individual market participation (Hartman, 2005). However, this transformation raises critical questions about the role of the state in ensuring social welfare and the implications of relegating social services to the mechanisms of the market.

Maron (2021) further elaborates on the ideational diversity within neoliberal states, suggesting that while neoliberal policies tend to dominate, there's room for policy variegation that challenges the strict market-oriented logic. This observation is crucial for understanding the complex landscape of welfare law under neoliberal governance, where mixed outcomes can emerge depending on how policies are implemented (Maron, 2021). However, this ideational diversity often still operates within the broader neoliberal framework, which prioritizes efficiency and market solutions over equitable welfare provision, thereby limiting the scope of truly alternative approaches to welfare.

In synthesizing these critiques, it becomes evident that neoliberal governance, with its emphasis on market mechanisms and individual responsibility, fundamentally reconfigures the social contract and the state's role in welfare provision. This reconfiguration, while promoting autonomy and choice on the surface, often masks the erosion of collective welfare systems

and the security they provide, especially for vulnerable populations.

#### Socio-Economic Consequences

The socio-economic consequences of diminished welfare provisions under neoliberal policies are profound, particularly for vulnerable populations. Benish, Haber, and Eliahou (2016) discuss how neoliberal reforms in pension markets have increased complexity and cost, disproportionately affecting low-income savers who are least equipped to navigate these changes (Benish et al., 2016). Similarly, Soldatic, Somers, Spurway, and Toorn (2017) examine how neoliberal disability welfare reforms in Australia have exacerbated existing inequalities, with indigenous communities facing significant barriers in accessing necessary supports due to the commodification of care (Soldatic et al., 2017).

These cases illustrate broader socio-economic impacts, including increased inequality, marginalization, and insecurity among vulnerable populations. Neoliberal reforms, by emphasizing market efficiency and individual responsibility, often neglect the structural factors that contribute to vulnerability, such as systemic inequality, discrimination, and limited access to opportunities. Consequently, the retraction of welfare provisions amplifies these challenges, pushing those in need further to the margins of society and deepening socio-economic divides.

Moreover, the transition to market-based welfare systems can lead to a "race to the bottom," where the quality and accessibility of services are compromised in the quest for efficiency and cost reduction. This not only diminishes the effectiveness of welfare provisions but also undermines the very principles of social justice and equity that underpin the welfare state.

#### 5.2. Legal Implications

The legal ramifications of neoliberal policies on the rights-based approach to welfare are significant, marking a shift from welfare as a universal right to a conditional privilege based on market participation and personal responsibility. This transformation has profound implications for the legal frameworks that govern welfare provision.

Under neoliberal governance, welfare laws increasingly incorporate conditionalities and market principles, such as privatization of services and means-tested benefits, which can erode the legal guarantees of welfare rights.

Houdt, Suvarierol, and Schinkel (2011) describe the emergence of "neoliberal communitarian citizenship," where access to welfare benefits is contingent upon individuals' adherence to certain behaviors and contributions to the community. This conditions-based approach challenges the universality of welfare rights, potentially excluding those who are unable to meet these conditions due to socio-economic or other barriers (Houdt et al., 2011).

Additionally, the privatization of welfare services under neoliberal policies raises concerns about accountability and the enforceability of rights. As welfare provision shifts from public to private hands, the legal mechanisms for ensuring quality and accessibility of services become more complex and less transparent. This can lead to situations where individuals' rights to welfare are compromised, with limited recourse for redress.

In conclusion, the theoretical critiques, socio-economic consequences, and legal implications discussed herein highlight the multifaceted challenges posed by the retraction of welfare law under neoliberal governance. These analyses underscore the need for a robust reevaluation of neoliberal policies, with a focus on ensuring equitable access to welfare provisions and upholding the principles of social justice and rights-based approaches to welfare.

## 6. Counter Perspectives

### 6.1. Alternatives to Neoliberalism

Exploring theoretical and practical alternatives to neoliberalism involves revisiting the foundational principles of social welfare and the role of the state in ensuring equitable access to resources and opportunities for all citizens. One such alternative is the model of "social democracy," which advocates for a more significant state role in redistributing wealth, regulating markets to ensure fairness, and providing universal welfare services to protect against the risks associated with market dependency (Maron, 2021). Social democracy does not reject the market but seeks to balance market efficiency with social equity through progressive taxation, comprehensive social security, and robust public services.

Another counter perspective to neoliberalism is the notion of "participatory democracy," which emphasizes greater citizen involvement in decision-making

processes, particularly regarding policies and practices that affect communal welfare and public goods (Timor-Shlevin, 2020). This approach advocates for a bottom-up model of governance, wherein local communities have a say in how resources are allocated and welfare services are administered, ensuring that these services are responsive to the actual needs and preferences of the communities they aim to serve.

Within the realm of economic theory, "post-Keynesian economics" offers a critique of the neoliberal emphasis on austerity and deregulation, advocating instead for active government intervention to stimulate demand, manage inflation, and reduce unemployment through fiscal and monetary policies (Calkin, 2015). This approach underscores the importance of state capacity in mitigating the excesses of the market and ensuring stable economic conditions conducive to social welfare.

### 6.2. *Reforms and Recommendations*

To mitigate the negative impacts of neoliberal policies on welfare law, several reforms and recommendations emerge from the discussed alternatives. Firstly, re-establishing the principle of welfare as a universal right constitutes a fundamental reform. This involves enshrining access to basic welfare services, such as healthcare, education, and social security, as legal rights irrespective of an individual's market participation or economic contribution (Houdt et al., 2011).

Additionally, introducing progressive taxation policies can ensure a fairer distribution of wealth and provide the financial means for comprehensive social welfare programs (Benish et al., 2016). Such policies would not only alleviate inequality but also generate necessary funds for improving the quality and accessibility of public welfare services.

Promoting cooperative and community-based models of welfare provision offers another avenue for reform. By empowering communities to design and manage their welfare services, these models can ensure that services are tailored to the specific needs of different populations, thereby increasing efficiency and satisfaction (Soldatic et al., 2017).

Finally, enhancing accountability and transparency in the administration of welfare services, particularly those outsourced to private entities, is crucial for protecting the rights and interests of welfare recipients (Harlow et al., 2012). This could involve stricter regulations on

private service providers, regular audits and evaluations of service quality, and mechanisms for beneficiaries to report grievances and seek redress.

In conclusion, challenging the dominant neoliberal paradigm requires not only critiquing its theoretical and practical deficiencies but also proposing viable alternatives and reforms that prioritize social equity, democratic participation, and the universal right to welfare. By integrating principles of social democracy, participatory governance, and economic interventions aimed at market regulation and wealth redistribution, it is possible to conceive of a more equitable and just framework for welfare law.

## 7. **Conclusion**

This article has embarked on a comprehensive examination of the interplay between neoliberalism and the retraction of welfare law, deploying a critical lens to explore the theoretical underpinnings, socio-economic impacts, and legal ramifications of neoliberal policies. Through this critique, it has become evident that neoliberalism, with its emphasis on market deregulation, privatization, and reduced state intervention, fundamentally alters the landscape of welfare law and provision. This reconfiguration, although justified under the guise of efficiency and individual responsibility, has had profound consequences for social equity, access to welfare services, and the legal protections afforded to vulnerable populations.

The case studies from the United Kingdom and Australia, alongside the theoretical and policy analysis, have highlighted the complex dynamics at play. These include the unintended exacerbation of inequalities, the erosion of the universal welfare state, and the challenges posed by market-based welfare models to the rights and well-being of citizens. The exploration of counter perspectives and alternatives to neoliberalism, such as social democracy, participatory democracy, and post-Keynesian economics, offers hopeful avenues for reimagining welfare law and policy in a way that prioritizes public good over market imperatives.

This article proposes that a critical re-evaluation of neoliberal governance is essential to mitigate its negative effects on welfare law. Recommendations for reforms include reinstating the principle of welfare as a universal right, adopting progressive taxation policies, promoting cooperative and community-based models of

welfare provision, and enhancing accountability in the delivery of welfare services. These reforms are not merely technical adjustments but signify a substantial shift towards a more inclusive, equitable, and democratic approach to welfare.

In conclusion, the discourse on neoliberalism and welfare law is far from homogeneous. It is fraught with contradictions and complexities that reflect broader debates about the role of the state, the market, and the individual in securing social welfare. This article contributes to these debates by critically analyzing neoliberalism's impact on welfare law and advocating for alternative frameworks that restore the state's role in ensuring social welfare, uphold equity and justice, and reaffirm the collective responsibility towards vulnerable populations. The path towards more equitable welfare provision demands not only theoretical critique but also practical engagement with policy reform and innovation, guided by principles of social justice and the common good.

#### Authors' Contributions

Authors contributed equally to this article.

#### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

#### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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#### Declaration of Interest

The authors report no conflict of interest.

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#### Ethical Considerations

Given the focus on published academic literature and public domain sources, the review did not involve primary data collection from human participants, thereby minimizing ethical concerns related to privacy and consent. However, ethical considerations were paramount in the interpretation and reporting of findings.

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